

RETIREMENT OFFICE AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Raymond W. Short

AN ACT RELATING TO RETIREMENT; AUTHORIZING FUND TRANSFERS UNDER CERTAIN CIRCUMSTANCES; **h** § **[f]** AMENDING REEMPLOYMENT PROVISIONS; **[h]** § **h** CLARIFYING BENEFICIARY DESIGNATION RULES, ENROLLMENT PROCEDURES, AND APPLICABILITY OF DISABILITY BENEFITS; REQUIRING THE SUBMISSION OF INSURANCE PROGRAM AUDITS TO THE INSURANCE DEPARTMENT; **§ PROVIDING A CONVERSION WINDOW FOR THE PUBLIC SAFETY NONCONTRIBUTORY RETIREMENT SYSTEM;** § AMENDING THE DEFINITION OF TOTAL DISABILITY; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

49-1-301, as last amended by Chapter 267, Laws of Utah 1998

h § **[f]** **49-1-505**, as last amended by Chapters 197 and 288, Laws of Utah 1995 **[h]** § **h**

49-1-606, as last amended by Chapter 267, Laws of Utah 1998

49-1-609, as last amended by Chapter 197, Laws of Utah 1995

§ 49-4a-205, as last amended by Chapter 268, Laws of Utah 1998 §

49-5-203, as enacted by Chapter 1, Laws of Utah 1987

49-5-501, as last amended by Chapter 51, Laws of Utah 1990

49-8-404, as enacted by Chapter 1, Laws of Utah 1987

49-9-103, as last amended by Chapter 292, Laws of Utah 1999

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **49-1-301** is amended to read:

49-1-301. Creation -- Board to act as trustees of the fund -- Commingling and pooling of funds -- Interest earnings.

(1) There is created for the purpose of enlarging the investment base and simplifying investment procedures and functions a common trust fund known as the "Utah State Retirement Investment Fund."

28 (2) (a) The board shall act as trustees of the fund, and through its executive officer, may
 29 commingle and pool the funds and investments of any retirement system, plan, or program into the
 30 Utah State Retirement Investment Fund, as long as the principal amounts of the participating funds
 31 do not lose their individual identity and are maintained as separate trust funds on the books of the
 32 retirement office.

33 (b) In combining the investments of any fund, each of the participating funds shall be
 34 credited initially with its share of the total assets transferred to the Utah State Retirement
 35 Investment Fund, the calculation being made on the basis of the fair market value of the various
 36 investments at the time the investments are credited to the Utah State Retirement Investment Fund.

37 (c) Subsequent transfers of additional capital from participating funds shall be credited
 38 similarly to its respective trust account.

39 (d) Funds may be withdrawn or transferred out of the Utah State Retirement Investment
 40 Fund and credited back to a participating fund, but at no time may the income or principal or
 41 equity credit belonging to one participating fund be transferred to another, except for the purpose
 42 of actuarially recommended transfers in order to adjust employer contribution rates for an
 43 employer that participates in both contributory and noncontributory systems.

44 (3) The assets of the participating funds are for the exclusive benefit of the members and
 45 may not be diverted or appropriated for any purpose other than that permitted by this chapter or
 46 the chapters covering the individual participating funds.

47 (4) (a) Interest and other earnings shall be credited to each participating fund on a pro rata
 48 basis monthly, or otherwise as directed by the board.

49 (b) A portion of the interest and other earnings of the common trust fund may be credited
 50 to a reserve account within the Utah State Retirement Investment Fund to meet adverse
 51 experiences arising from investments or other contingencies. Each participating fund shall retain
 52 its proportionate equity in the reserve account.

53 **h § [f] Section 2. Section 49-1-505 is amended to read:**

54 **49-1-505. Reemployment of a retired member of a system administered by the board.**

55 **The following laws govern the reemployment of a member of any system administered by**
 56 **the board who has retired from any agency and who returns to work at that agency after retirement.**
 57 **A member of any system administered by the board who has retired from any agency and who**
 58 **returns to work for a private employer or at a different agency from which the member retired is [f] § h**

59 ^h § [] not subject to any reemployment restrictions under this section, except as provided in Subsection
60 (4).

61 (1) (a) (i) If a member of any system administered by the board retires from any agency
62 and is reemployed [] § ~~within a six month period~~ § [] by the agency from which the member
63 retired,

64 including exempt positions, but excluding part-time or full-time elected officials, the employer
65 shall immediately notify the administrator.

66 (ii) If the member has full-time employment and is not subject to Subsection (1)(b), the
67 administrator shall cancel the member's retirement allowance and reinstate the member to active
68 member status.

69 (iii) This cancellation of retirement and reinstatement to active status is effective on the
70 first day of the month following the date of reemployment.

71 (iv) If a member's retirement allowance is cancelled and the member is reinstated to active
72 member status pursuant to this subsection, the member may not retire again with a recalculated
73 benefit for a two-year period from the date of cancellation of the original retirement. If the
74 member retires again within the two-year period, the original retirement benefit shall be resumed.

75 (v) A reinstated member shall be credited with the service credits standing to the member's
76 account at the time of the first retirement and from that time shall be treated as a member of the
77 system in all respects, including the accrual of additional service credits but subject to recalculation
78 of the retirement allowance under Subsection (4).

79 (b) (i) If the member is reemployed on a part-time basis or is not an elected official and
80 is otherwise subject to Section 49-4-205, 49-4a-206, or 49-5-204, that member or employee may
81 earn, without penalty, compensation from that position or employment which is not in excess of
82 the exempt earnings permitted by Social Security.

83 (ii) If a member or an employee receives compensation in a calendar year in excess of the
84 limitation, 25% of the retirement allowance shall be suspended.

85 (iii) The effective date of a suspension and reinstatement of an allowance shall be set by
86 the administrator.

87 (iv) Any suspension of a member's retirement allowance pursuant to Subsection (1)(b)(ii)
88 shall be calculated on a calendar year basis.

89 (2) The member and employer shall maintain an accurate record of gross earnings in
90 employment after retirement, shall report the gross earnings on a monthly basis to the retirement [] § ^h

90 ~~h~~ § ~~[f]~~ office, and shall immediately notify the administrator in writing of any postretirement earnings
 91 under Subsection (1)(a) and whether postretirement earnings equal or exceed the exempt earnings
 92 under Subsection (1)(b).

93 (3) If a member is reinstated to active service and subsequently retires after the two-year
 94 period as provided in Subsection (1)(a)(iv), the member's retirement allowance shall be calculated
 95 using:

96 (a) the formula in effect at the date of the member's original retirement for all service prior
 97 to that date; and

98 (b) the formula in effect at the date of the subsequent retirement for all service rendered
 99 between the first and the subsequent retirement dates.

100 (4) ~~h~~ (a) ~~h~~ A member who has retired from any agency and who returns to work at that
 100a agency
 101 or a different agency from which the member retired may not accrue any additional service credit,
 102 except that a member who cancels the retirement allowance under Subsection (1) may earn
 103 additional service credit.

103a ~~h~~ (b) IF A MEMBER MAY NOT ACCRUE ADDITIONAL SERVICE CREDIT UNDER SUBSECTION
 103b (4)(a), THEN THE MEMBER'S EMPLOYER SHALL CONTRIBUTE THE SAME PERCENTAGE OF THE
 103c MEMBER'S SALARY TO A DEFINED CONTRIBUTION PLAN ADMINISTERED BY THE BOARD THAT
 103d WOULD HAVE BEEN CONTRIBUTED IF THE MEMBER WERE A MEMBER OF THE RETIREMENT
 103e SYSTEM. ~~h~~

104 (5) For the purposes of this section "part-time" employment means employment
 105 contemplated as less than full-time by the employer at the time of hire.

106 (6) The board may make rules to implement this section. ~~[f]~~ § ~~h~~

107 Section ~~h~~ § ~~[f]~~ 3. ~~[f]~~ ~~[2-]~~ § ~~h~~ Section 49-1-606 is amended to read:

108 **49-1-606. Beneficiary designations -- Revocation of beneficiary designation --**
 109 **Procedure -- Beneficiary not designated -- Payment to survivors in order established under**
 110 **the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.**

111 (1) The beneficiary designation in a member's file at the retirement office at the time of
 112 the member's death is binding in the payment of any benefits due under this title.

113 (2) A member may revoke a designation of beneficiary at any time and may file a different
 114 beneficiary designation by executing and filing with the retirement office a written beneficiary
 115 designation on forms provided by the retirement office, except where an optional continuing plan
 116 is chosen, or the law makes a specific benefit designation to a dependent spouse, in which case the
 117 beneficiary designation may not be revoked.

118 (3) ~~If no beneficiary is designated [or if the estate is the named beneficiary and if a~~
 119 ~~deceased member does not leave an estate requiring probate in the absence of the amounts due~~
 120 ~~from the retirement system, unless otherwise provided in this title], all benefits payable from the~~

121 retirement system, including retirement benefits accrued but not received prior to death, may be
122 paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence
123 established under Title 75, Chapter 2, [~~the Utah Uniform Probate Code~~] Intestate Succession and
124 Wills.

125 (4) No payment may be made to persons included in any of these groups if at the date of
126 payment there are living persons in any of the groups preceding it. Payment to the persons in any
127 group based upon receipt from those persons of an affidavit in a form satisfactory to the
128 administrator that:

129 (a) there are no living individuals in the group preceding it;

130 (b) that the probate of the estate of the deceased has not been commenced; and

131 (c) that more than three months have elapsed since the date of death of the decedent, shall
132 be in full satisfaction and discharge of all claims for benefits under this title and payable by reason
133 of the death of the decedent.

134 (5) If the location of the nominated beneficiary cannot be ascertained or if the nominated
135 beneficiary is the estate of the deceased person, the administrator may pay the costs of the
136 deceased's last illness, convalescent care, and funeral expenses directly to the undertaking
137 establishment, hospital, doctor, or convalescent home which provided the service. The
138 administrator shall require verified statements of the charges before making partial or full payment.
139 The payment shall discharge the obligation of the system and of the fund up to the amount paid.

140 Section 4. Section **49-1-609** is amended to read:

141 **49-1-609. Nonassignability of benefits or payments -- Exemption from legal process**
142 **-- Deduction of amounts owned.**

143 (1) Except as provided in Subsection (4), the right of any member or beneficiary to any
144 benefit, payment, or any other right accrued or accruing to any person under this title and the assets
145 of the fund created by this title are not subject to alienation or assignment by the member or
146 beneficiary and are not subject to attachment, execution, garnishment, or any other legal or
147 equitable process.

148 (2) This section may not be construed to prohibit the administrator from deducting medical
149 or other insurance premiums from a retirant's allowance as requested by the retirant providing that
150 any request is within limitations and rules prescribed by the board.

151 (3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division

152 of a member's service retirement allowance, continuing monthly death benefit, or refund of
153 contributions upon termination to former spouses and family members pursuant to an order of a
154 court of competent jurisdiction with respect to domestic relations matters on file with the
155 retirement office.

156 (b) The court order shall specify the manner in which the retirement allowance or refund
157 of contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

158 (c) The board may also provide for the division of a member's defined contribution
159 account.

160 (d) The board shall make rules to implement this section.

161 (4) In accordance with federal law, the board may deduct the required amount from any
162 benefit, payment, or other right accrued or accruing to any member of a system, plan, or program
163 under this title to offset any amount that member owes to a system, plan, or program administered
164 by the board.

165 Section 5. Section **49-5-203** is amended to read:

166 **49-5-203. Eligibility for membership in the system.**

167 (1) Any employee who performs covered services for any political subdivision after the
168 effective date of this system shall become a member of this retirement system.

169 (2) (a) Any new employee engaged to perform covered services for an agency or political
170 subdivision after the effective date of this chapter shall undergo a physical examination to
171 determine the employee's fitness for employment, and file a membership form with the retirement
172 office. The employer shall notify the administrator of the employee's employment within 30 days
173 of employment.

174 (b) In political subdivisions with public safety and firefighter personnel where
175 cross-training and duty is required, the employing unit may~~[, with the prior written approval of the~~
176 ~~board, through its executive director,]~~ enroll the dual purpose personnel in the retirement system
177 in which the greatest amount of duty time is contemplated and actually worked. The personnel
178 shall be full-time public safety or firefighter employees of the employing unit.

179 Section 6. Section **49-5-501** is amended to read:

180 **49-5-501. Disability program -- Line-of-duty disability -- Benefits -- Monthly**
181 **allowance.**

182 Any active member who becomes disabled may apply to the retirement office for disability

183 retirement subject to the following provisions:

184 (1) (a) If the disability is classified as a line-of-duty disability, the member shall retire on
185 disability and be granted a disability allowance subject to Section 49-5-502.

186 (b) If the member is a participant in Division A or B, the monthly disability allowance is
187 an amount equal to 50% of the member's final average monthly salary.

188 (2) (a) If the disability is classified as ordinary disability and not incurred in the
189 line-of-duty and if the member has five or more years of service, the member shall retire on
190 disability and be granted a disability allowance subject to Section 49-5-502.

191 (b) If the member is a participant in Division A or B, the monthly disability allowance is
192 an amount equal to 50% of the member's final average monthly salary.

193 Section ~~§ 7.~~ ~~§~~ ~~6.~~ ~~§~~ Section **49-8-404** is amended to read:

194 **49-8-404. Audit submitted to Insurance Department.**

195 The ~~§~~ ~~Insurance Department~~ ~~§~~ ~~board~~ shall ~~§~~ ~~biennially audit all funds and~~
195a **programs authorized**

196 **under this chapter and report its findings to the governor and the Legislature ~~§~~ submit the**
196a **annual**

197 **audited statements of programs under this chapter to the Insurance Department for examination**

198 **and comment] , BUT THE COMMISSIONER MAY ACCEPT THE ANNUAL AUDITED STATEMENT OF**

198a **PROGRAMS UNDER THIS CHAPTER IN LIEU OF THE BIENNIAL AUDIT REQUIREMENT ~~§~~ .**

198b **§ Section 7. Section 49-4a-205 is amended to read:**

198c **49-4a-205. Conversion to system -- Time schedule.**

198d **The following laws govern conversion to the Public Safety Noncontributory Retirement**
198e **System:**

198f **(1) For persons governed by Subsection 49-4a-203(2), the election to participate in the**
198g **noncontributory system shall be made within six months of the effective date of this chapter.**

198h **(2) (a) For political subdivisions governed by Subsection 49-4a-203(3), the election to**
198i **participate as a local government unit shall be made within six months of the effective date of this**
198j **chapter. The political subdivision shall indicate whether or not it elects to participate by enacting a**
198k **resolution or ordinance to that effect. Prior to the enactment of the resolution or ordinance, a**
hearing

198l **shall be held by the political subdivision, at which all public safety employees of the political**
198m **subdivision shall be given an opportunity to be heard on the question of participating in this**
198n **noncontributory retirement system. Notice of the hearing shall be mailed to all employees within 30**
198o **days of the hearing and shall contain the time, place, and purpose of the hearing.**

198p **(b) A person in full-time employment with a political subdivision prior to its election to**
198q **participate has six months from the date the political subdivision elects to participate in which to**
elect

198r **to become a member of the noncontributory system.**

198s **(3) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public**
198t **Safety Noncontributory Retirement System beginning July 1, 1998, and ending December 31, 1998. A §**

Senate Committee Amendments 2-25-2000 rd/dsl

House Floor Amendments 2-22-2000 kh/dsl

House Committee Amendments 2-16-2000 kh/dsl

198u person converting to the system during this time period shall be subject to all the rights, limitations,
198v terms, and conditions of Title 49, Chapter 4a, Public Safety Noncontributory Retirement Act.

198w (4) SUBSECTIONS (1) AND (2) SHALL BE USED TO PROVIDE A TIME PERIOD OF
198x CONVERSION TO THE PUBLIC SAFETY NONCONTRIBUTORY RETIREMENT SYSTEM BEGINNING
198y JULY 1, 2000, AND ENDING DECEMBER 31, 2000. A PERSON CONVERTING TO THE SYSTEM
DURING
198z THIS TIME PERIOD SHALL BE SUBJECT TO ALL THE RIGHTS, LIMITATIONS, TERMS, AND
198aa CONDITIONS OF TITLE 49, CHAPTER 4a, PUBLIC SAFETY NONCONTRIBUTORY RETIREMENT ACT.

§

199 Section ~~h~~ § ~~f~~ 8. ~~f~~ ~~7z~~ § ~~h~~ Section **49-9-103** is amended to read:

200 **49-9-103. Definitions.**

201 (1) "Date of disability" means the date on which a period of continuous disability
202 commences, and may not commence on or before the last day of actual work.

203 (2) "Educational institution" means a political subdivision or an instrumentality of a
204 political subdivision, an instrumentality of the state, or any combination of these entities, which
205 is primarily engaged in educational activities or the administration or servicing of educational
206 activities. The term includes~~[, but is not limited to,]~~ the State Board of Education and any
207 instrumentality of the State Board of Education, institutions of higher education and their branches,
208 school districts, and vocational and technical schools.

209 (3) "Elimination period" means the three months at the beginning of each continuous
210 period of total disability for which no benefit will be paid and commences with the date of
211 disability.

212 (4) "Employee" means any regular full-time employee of an employer who participates in
213 any system administered by the board, except those employees exempt from coverage under

214 Section 49-9-102.

215 (5) "Maximum benefit period" means the maximum period of time the monthly disability
216 income benefit will be paid for any continuous period of total disability.

217 (6) "Medically determinable impairment" means an impairment that results from
218 anatomical, physiological, or psychological abnormalities which can be shown by medically
219 acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must
220 be established by medical evidence consisting of signs, symptoms, and laboratory findings, not
221 only by the individual's statement of symptoms.

222 (7) "Physician" means a legally qualified physician.

223 (8) "Rehabilitative employment" means any board-approved occupation or employment
224 for wage or profit, for which the employee is reasonably qualified by education, training, or
225 experience, in which the employee engages while unable to perform his occupation as a result of
226 injury or illness.

227 (9) "Total disability" means the complete inability, due to medically determinable physical
228 or mental impairment [~~which can be expected to result in death or which has lasted or can be~~
229 ~~expected to last for a continuous period of not less than 12 months~~], to engage in the employee's
230 regular occupation during the elimination period and the first 24 months of disability benefits.
231 Thereafter, "total disability" means the complete inability, based solely on medically determinable
232 physical impairment, to engage in any gainful occupation which is reasonable, considering the
233 employee's education, training, and experience. "Total disability" exists only if during any period
234 of "total disability" the employee is under the regular care of a physician other than the employee.

235 Section ~~h~~ [9.] 8. ~~h~~ **Effective date.**

236 ~~h~~ [~~This act takes effect on July 1, 2000.~~] **IF APPROVED BY TWO-THIRDS OF ALL THE**
236a **MEMBERS ELECTED TO EACH HOUSE, THIS ACT TAKES EFFECT UPON APPROVAL BY THE**
236b **GOVERNOR, OR THE DAY FOLLOWING THE CONSTITUTIONAL TIME LIMIT OF UTAH**
CONSTITUTION
236c **ARTICLE VII, SECTION 8, WITHOUT THE GOVERNOR'S SIGNATURE, OR IN THE CASE OF A VETO,**
236d **THE DATE OF VETO OVERRIDE.** ~~h~~

Legislative Review Note

as of 1-3-00 1:57 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

H.B. 272

01-26-00 7:29 PM

Office of Legislative Research and General Counsel