

**RETIREMENT OFFICE AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Raymond W. Short**

AN ACT RELATING TO RETIREMENT; AUTHORIZING FUND TRANSFERS UNDER CERTAIN CIRCUMSTANCES; AMENDING REEMPLOYMENT PROVISIONS; CLARIFYING BENEFICIARY DESIGNATION RULES, ENROLLMENT PROCEDURES, AND APPLICABILITY OF DISABILITY BENEFITS; REQUIRING THE SUBMISSION OF INSURANCE PROGRAM AUDITS TO THE INSURANCE DEPARTMENT; 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

**49-1-505**, as last amended by Chapters 197 and 288, Laws of Utah 1995

**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

**49-5-203**, 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."

(2) (a) The board shall act as trustees of the fund, and through its executive officer, may commingle and pool the funds and investments of any retirement system, plan, or program into the

Utah State Retirement Investment Fund, as long as the principal amounts of the participating funds do not lose their individual identity and are maintained as separate trust funds on the books of the retirement office.

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

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

(d) Funds may be withdrawn or transferred out of the Utah State Retirement Investment Fund and credited back to a participating fund, but at no time may the income or principal or equity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

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

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

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

Section 2. Section **49-1-505** is amended to read:

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

The following laws govern the reemployment of a member of any system administered by the board who has retired from any agency and who returns to work at that agency after retirement. A member of any system administered by the board who has retired from any agency and who returns

to work for a private employer or at a different agency from which the member retired is not subject to any reemployment restrictions under this section, except as provided in Subsection (4).

(1) (a) (i) If a member of any system administered by the board retires from any agency and is reemployed within a six month period by the agency from which the member retired, including exempt positions, but excluding part-time or full-time elected officials, the employer shall immediately notify the administrator.

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

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

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

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

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

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

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

(iv) Any suspension of a member's retirement allowance pursuant to Subsection (1)(b)(ii)

shall be calculated on a calendar year basis.

(2) The member and employer shall maintain an accurate record of gross earnings in employment after retirement, shall report the gross earnings on a monthly basis to the retirement office, and shall immediately notify the administrator in writing of any postretirement earnings under Subsection (1)(a) and whether postretirement earnings equal or exceed the exempt earnings under Subsection (1)(b).

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

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

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

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

(b) If a member may not accrue additional service credit under Subsection (4)(a), then the member's employer shall contribute the same percentage of the member's salary to a defined contribution plan administered by the board that would have been contributed if the member were a member of the retirement system.

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

(6) The board may make rules to implement this section.

Section 3. Section **49-1-606** is amended to read:

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

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

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

(3) If no beneficiary is designated [~~or if the estate is the named beneficiary and if a deceased member does not leave an estate requiring probate in the absence of the amounts due from the retirement system, unless otherwise provided in this title~~], all benefits payable from the retirement system, including retirement benefits accrued but not received prior to death, may be paid or applied to the benefit of the surviving next of kin of the deceased in the order of precedence established under Title 75, Chapter 2, [~~the Utah Uniform Probate Code~~] Intestate Succession and Wills.

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

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

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

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

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

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

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

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

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

(3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division of a member's service retirement allowance, continuing monthly death benefit, or refund of contributions upon termination to former spouses and family members pursuant to an order of a court of competent jurisdiction with respect to domestic relations matters on file with the retirement office.

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

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

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

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

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

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

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

(2) (a) Any new employee engaged to perform covered services for an agency or political

subdivision after the effective date of this chapter shall undergo a physical examination to determine the employee's fitness for employment, and file a membership form with the retirement office. The employer shall notify the administrator of the employee's employment within 30 days of employment.

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

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

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

Any active member who becomes disabled may apply to the retirement office for disability retirement subject to the following provisions:

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

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

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

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

Section 7. Section **49-8-404** is amended to read:

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

The Insurance Department shall biennially audit all funds and programs authorized under this chapter and report its findings to the governor and the Legislature, but the commissioner may accept the annual audited statement of programs under this chapter in lieu of the biennial audit requirement.

Section 8. Section **49-9-103** is amended to read:

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

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

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

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

(4) "Employee" means any regular full-time employee of an employer who participates in any system administered by the board, except those employees exempt from coverage under Section 49-9-102.

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

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

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

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

(9) "Total disability" means the complete inability, due to medically determinable physical or mental impairment ~~[which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months]~~, to engage in the employee's regular



occupation during the elimination period and the first 24 months of disability benefits. Thereafter, "total disability" means the complete inability, based solely on medically determinable physical impairment, to engage in any gainful occupation which is reasonable, considering the employee's education, training, and experience. "Total disability" exists only if during any period of "total disability" the employee is under the regular care of a physician other than the employee.

**Section 9. Effective date.**

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.