

**UTAH RETIREMENT SYSTEMS AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act.

**Highlighted Provisions:**

This bill:

- ▶ clarifies that an employee does not receive service credit until required contributions are paid to the Utah State Retirement Office;
- ▶ provides that additional acts relating to unlawfully obtaining or appropriating benefit payments are criminal violations;
- ▶ amends the procedures for making an appeal related to a benefit, right, obligation, or employment right;
- ▶ clarifies that a person is still convicted of an employment related offense if the person pleads guilty, even if a charge is reduced or dismissed under a plea agreement;
- ▶ imposes minimum age requirements on certain retirees who will receive in-service retirement distributions;
- ▶ amends certain provisions that govern a participating employer's purchase of service credit on behalf of an employee for years of service provided before the participating employer's admission to the Utah Retirement System;
- ▶ amends the process for establishing the service status of justice court judges with multiple employers; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

33        **49-11-401**, as last amended by Laws of Utah 2010, Chapter 266  
34        **49-11-608**, as renumbered and amended by Laws of Utah 2002, Chapter 250  
35        **49-11-613**, as last amended by Laws of Utah 2016, Chapter 251  
36        **49-11-613.5**, as enacted by Laws of Utah 2016, Chapter 251  
37        **49-11-1205**, as last amended by Laws of Utah 2020, Chapter 449  
38        **49-11-1303 (Effective 01/01/21)**, as last amended by Laws of Utah 2020, Chapter 98  
39        **49-11-1401**, as last amended by Laws of Utah 2020, Chapter 24  
40        **49-12-202**, as last amended by Laws of Utah 2018, Chapter 415  
41        **49-12-406**, as last amended by Laws of Utah 2019, Chapter 31  
42        **49-13-202**, as last amended by Laws of Utah 2018, Chapter 415  
43        **49-13-406**, as last amended by Laws of Utah 2019, Chapter 31  
44        **49-15-202**, as last amended by Laws of Utah 2014, Chapter 15  
45        **49-23-202**, as last amended by Laws of Utah 2012, Chapter 298

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

48        Section 1. Section **49-11-401** is amended to read:

49        **49-11-401. Transfer of service credit -- Eligibility for service credit --**

50        **Computation of service credit -- Retirement from most recent system.**

51        (1) (a) The office shall make the transfer of service credit, together with related  
52        member and participating employer contributions, from one system to another upon terms and  
53        conditions established by the board.

54        (b) The terms and conditions may not result in a loss of accrued benefits.

55        (2) ~~[Transfer of]~~ An employee does not lose active member status by transferring  
56        employment from a position covered by one system to a position covered by another system  
57        ~~[does not cause the employee to lose active member status]~~.

58        (3) In the accrual of service credit, the following provisions apply:

59        (a) ~~[A]~~ (i) a person employed and compensated by a participating employer who meets  
60        the eligibility requirements for membership in a system or the Utah Governors' and Legislators'  
61        Retirement Plan shall receive service credit for the term of the employment provided that all  
62        required contributions are paid to the office~~[-];~~ and

63        (ii) the person may not receive service credit for a term of employment until all

64 required contributions related to that service credit have been paid to the office.

65 (b) An allowance or other benefit may not accrue under this title which is based upon  
66 the same period of employment as has been the basis for any retirement benefits under some  
67 other public retirement system.

68 (c) (i) The board shall fix the minimum time per day, per month, and per year upon the  
69 basis of which one year of service and proportionate parts of a year shall be credited toward  
70 qualification for retirement.

71 (ii) Service may be computed on a fiscal or calendar year basis and portions of years  
72 served shall be accumulated and counted as service.

73 (iii) In any event, all of the service rendered in any one fiscal or calendar year may not  
74 count for more than one year.

75 (d) Service credit shall be accrued on a fiscal or calendar year basis as determined by  
76 the participating employer.

77 (e) A member may not accrue more than one year of service credit per fiscal or  
78 calendar year as determined by the office.

79 (f) Fractions of years of service credit shall be accumulated and counted in proportion  
80 to the work performed.

81 (4) The office may estimate the amount of service credit, compensation, or age of any  
82 member, participant, or alternate payee, if information is not contained in the records.

83 (5) A member shall retire from the system [~~which~~] that most recently covered the  
84 member.

85 (6) (a) Under no circumstances may service credit earned by a member under Chapter  
86 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public  
87 Safety and Firefighter Tier II Contributory Retirement Act, be transferable to any other system  
88 or plan under this title.

89 (b) Under no circumstances may service credit earned by a member under one of the  
90 following systems be transferable to the system created under Chapter 22, New Public  
91 Employees' Tier II Contributory Retirement Act, or under Chapter 23, New Public Safety and  
92 Firefighter Tier II Contributory Retirement Act:

93 (i) Chapter 12, Public Employees' Contributory Retirement Act;

94 (ii) Chapter 13, Public Employees' Noncontributory Retirement Act;

- (iii) Chapter 14, Public Safety Contributory Retirement Act;  
(iv) Chapter 15, Public Safety Noncontributory Retirement Act;  
(v) Chapter 16, Firefighters' Retirement Act; or  
(vi) Chapter 19, Utah Governors' and Legislators' Retirement Act.

Section 2. Section **49-11-608** is amended to read:

**49-11-608. False statements or records -- Unlawfully cashing benefit checks --  
Unlawfully obtaining or appropriating benefit payments.**

(1) A person who knowingly makes any false statement, or who falsifies or permits to be falsified any record necessary for carrying out the intent of this title is in violation of Section 76-6-504.

(2) A person cashing a benefit check to which that person is not entitled is in violation of Section 76-6-501.

(3) A person who obtains a benefit payment, including a direct deposit or electronic benefit payment, to which that person is not entitled and who fails to take reasonable measures to return the benefit payment to the office is in violation of Section 76-6-407.

(4) A person who appropriates property or a benefit of another person, including a direct deposit or electronic benefit payment, by obtaining or exercising unauthorized control over the property or the benefit is in violation of Section 76-6-404.5.

Section 3. Section **49-11-613** is amended to read:

**49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board reconsideration -- Judicial review.**

(1) (a) A member, retiree, participant, alternative payee, covered individual, employer, participating employer, and covered employer shall inform themselves of their benefits, rights [and], obligations, and employment rights under this title.

(b) Subject to ~~[the provisions in]~~ Subsection (8), any dispute regarding a benefit, right, obligation, or employment right under this title is subject to the procedures provided under this section.

(c) (i) A person who disputes a benefit, right, obligation, or employment right under this title shall request a ruling by the executive director who may delegate the decision to the deputy director.

(ii) A request for a ruling to the executive director under this section shall constitute

the initiation of an action for purposes of the limitations periods ~~[prescribed]~~ described in Section 49-11-613.5.

(d) A person who is dissatisfied by a ruling under Subsection (1)(c) with respect to any benefit, right, obligation, or employment right under this title ~~[shall have 30 days from the date of the ruling to]~~ may request a review of that claim by a hearing officer within the time period described in Section 49-11-613.5.

(e) (i) The executive director, on behalf of the board, may request that the hearing officer review a dispute regarding any benefit, right, obligation, or employment right under this title by filing a notice of board action and providing notice to all affected parties in accordance with rules adopted by the board.

(ii) The filing of a notice of board action shall constitute the initiation of an action for purposes of the limitations periods described in Section 49-11-613.5.

(2) The hearing officer shall:

(a) be hired by the executive director after consultation with the board;

(b) follow and enforce the procedures and requirements of:

(i) this title;

(ii) the rules adopted by the board in accordance with Subsection (9); and

(iii) Title 63G, Chapter 4, Administrative Procedures Act, except as specifically modified under this title or the rules adopted by the board in accordance with Subsection (9);

(c) hear and determine all facts relevant to a decision, including facts pertaining to applications for benefits under any system, plan, or program under this title and all matters pertaining to the administration of the office; and

(d) make conclusions of law in determining the person's rights under any system, plan, or program under this title and matters pertaining to the administration of the office.

(3) The board shall review and approve or deny all decisions of the hearing officer in accordance with rules adopted by the board in accordance with Subsection (9).

(4) The moving party in any proceeding brought under this section shall bear the burden of proof.

(5) A party may file an application for reconsideration by the board upon any of the following grounds:

(a) that the board acted in excess of ~~[its]~~ the board's powers;

(b) that the order or the award was procured by fraud;

(c) that the evidence does not justify the determination of the hearing officer; or

(d) that the party has discovered new material evidence that could not, with reasonable diligence, have been discovered or procured prior to the hearing.

(6) The board shall affirm, reverse, or modify the decision of the hearing officer, or remand the application to the hearing officer for further consideration.

(7) (a) A party aggrieved by the board's final decision under Subsection (6) may obtain judicial review by complying with the procedures and requirements of:

(i) this title;

(ii) rules adopted by the board in accordance with Subsection (9); and

(iii) Title 63G, Chapter 4, Administrative Procedures Act, except as specifically modified under this title or the rules adopted by the board in accordance with Subsection (9).

(8) The program shall provide an appeals process for medical claims that complies with federal law.

(9) (a) The board ~~[may]~~ shall make rules to implement this section and to establish procedures and requirements for adjudicative proceedings.

(b) The rules shall be substantially similar to or incorporate provisions of the Utah Rules of Civil Procedure, the Utah Rules of Evidence, and Title 63G, Chapter 4, Administrative Procedures Act.

Section 4. Section **49-11-613.5** is amended to read:

**49-11-613.5. Limitation of actions -- Cause of action.**

(1) (a) Subject to the procedures provided in Section 49-11-613 and except as provided in Subsection (3), an action regarding a benefit, right, obligation, or employment right brought under this title may be commenced only within four years of the ~~[date that]~~ day on which the cause of action accrues.

(b) A person who is dissatisfied with an executive director's ruling under Section 49-11-613 and who seeks a review of that claim by a hearing officer shall file a request for board action within 30 days of the day on which the hearing officer issues the ruling.

(2) (a) A cause of action accrues under this title and the limitation period in this section runs from the ~~[date when]~~ day on which the aggrieved party became aware, or through the exercise of reasonable diligence should have become aware, of the facts giving rise to the cause

188 of action, including when:

189 (i) a benefit, right, or employment right is or should have been granted;

190 (ii) a payment is or should have been made; or

191 (iii) an obligation is or should have been performed.

192 (b) If a claim involves a retirement service credit issue under this title:

193 (i) a cause of action specifically accrues at the time the requisite retirement

194 contributions relating to that retirement service credit are paid or should have been paid to the

195 office; and

196 (ii) the person is deemed to be on notice of the payment or nonpayment of those

197 retirement contributions.

198 (3) If an aggrieved party fails to discover the facts giving rise to the cause of action due

199 to misrepresentation, fraud, intentional nondisclosure, or other affirmative steps to conceal the

200 cause of action, a limitation period prescribed in this section does not begin to run until the

201 aggrieved party actually discovers the existence of the cause of action.

202 (4) The person claiming a benefit, right, obligation, or employment right arising under

203 this title has the burden of bringing the action within the period prescribed in this section.

204 (5) Nothing in this section relieves a member, retiree, participant, alternative payee,

205 covered individual, employer, participating employer, or covered employer of the obligations

206 under this title.

207 (6) The office is not required to bring a claim on behalf of a member, retiree,

208 participant, alternative payee, covered individual, employer, participating employer, or covered

209 employer.

210 (7) (a) A limitation period provided in this section does not apply to actions for which

211 a specific limit is otherwise specified in this title or by contract, including master policies or

212 other insurance contracts.

213 (b) For actions arising under this title, this section supersedes any applicable limitation

214 period provided in Title 78B, Chapter 2, Statutes of Limitations.

215 Section 5. Section **49-11-1205** is amended to read:

216 **49-11-1205. Postretirement reemployment restriction exceptions.**

217 (1) (a) The office may not cancel the retirement allowance of a retiree who is

218 reemployed with a participating employer within one year of the retiree's retirement date if:

- 219 (i) the retiree is not reemployed by a participating employer for a period of at least 60  
220 days from the retiree's retirement date;
- 221 (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree  
222 does not receive any employer paid benefits, including:
- 223 (A) retirement service credit or retirement-related contributions;
- 224 (B) medical benefits;
- 225 (C) dental benefits;
- 226 (D) other insurance benefits except for workers' compensation as provided under Title  
227 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease  
228 Act, and withholdings required by federal or state law for social security, Medicare, and  
229 unemployment insurance; or
- 230 (E) paid time off, including sick, annual, or other type of leave; and
- 231 (iii) (A) the retiree does not earn in any calendar year of reemployment an amount in  
232 excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the  
233 retiree's retirement allowance is based; or
- 234 (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.
- 235 (b) [~~Beginning January 1, 2013, the~~] The board shall adjust the amounts under  
236 Subsection (1)(a)(iii) by the annual change in the Consumer Price Index during the previous  
237 calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index  
238 average as determined by the board.
- 239 (2) A retiree shall be considered as having completed the one-year separation from  
240 employment with a participating employer required under Section 49-11-1204, if the retiree:
- 241 (a) before retiring:
- 242 (i) was employed with a participating employer as a public safety service employee as  
243 defined in Section 49-14-102, 49-15-102, or 49-23-102;
- 244 (ii) [~~and~~] during the employment under Subsection (2)(a)(i), suffered a physical injury  
245 resulting from external force or violence while performing the duties of the employment, [~~and~~]  
246 for which injury the retiree would have been approved for total disability in accordance with  
247 the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of  
248 service are not considered;
- 249 (iii) had less than 30 years of service credit but had sufficient service credit to retire,



with an unreduced allowance making the public safety service employee ineligible for long-term disability payments under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program; ~~and~~

(iv) does not receive any long-term disability benefits from any participating employer; and

(v) is at least 50 years old; and

(b) is reemployed by a different participating employer.

(3) (a) The office may not cancel the retirement allowance of a retiree who is employed as an affiliated emergency services worker within one year of the retiree's retirement date if the affiliated emergency services worker does not receive any compensation, except for:

(i) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money or cash equivalent payment not tied to productivity and paid periodically for services;

(ii) a length-of-service award;

(iii) insurance policy premiums paid by the participating employer in the event of death of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

(iv) reimbursement of expenses incurred in the performance of duties.

(b) For purposes of Subsections (3)(a)(i) and (ii), the total amount of any discounts, tax credits, vouchers, and payments to an affiliated emergency services worker may not exceed \$500 per month.

(c) ~~[Beginning January 1, 2016, the]~~ The board shall adjust the amount under Subsection (3)(b) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(d) A retiree is eligible for an exemption from the requirement to cease service without cancellation of a retirement allowance under this Subsection (3) only if the retiree, at the time of retirement, is at least:

(i) 50 years old, if the retiree is retiring from a public safety system or a firefighter system; or

(ii) 55 years old.

(4) (a) The office may not cancel the retirement allowance of a retiree employed as a part-time appointed or elected board member within one year after the retiree's retirement date

if the part-time appointed or elected board member does not receive any compensation exceeding the amount described in this Subsection (4).

(b) A retiree who is a part-time appointed or elected board member for one or more boards, commissions, councils, committees, panels, or other bodies of participating employers:

(i) may receive an aggregate amount of compensation, remuneration, a stipend, or other benefit for service on a single or multiple boards, commissions, councils, committees, panels, or other bodies of no more than \$5,000 per year; and

(ii) may not receive an employer paid retirement service credit or retirement-related contribution.

(c) For purposes of Subsection (4)(b)(i):

(i) a part-time appointed or elected board member's compensation includes:

(A) an amount paid for the part-time appointed or elected board member's coverage in a group insurance plan provided by the participating employer; and

(B) the part-time appointed or elected board member's receipt of any other benefit provided by the participating employer; and

(ii) the part-time appointed or elected board member's compensation does not include:

(A) an amount the participating employer pays for employer-matching employment taxes, if the participating employer treats the part-time appointed or elected board member as an employee for federal tax purposes; or

(B) an amount that the part-time appointed or elected board member receives for per diem and travel expenses for up to 12 approved meetings or activities of the government board per year, if the per diem and travel expenses do not exceed the amounts established by the Division of Finance under Sections 63A-3-106 and 63A-3-107 or by rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(d) ~~[Beginning January 1, 2021, the]~~ The board shall adjust the amount under Subsection (4)(b)(i) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average, as determined by the board.

(5) (a) If a retiree is reemployed under the provisions of Subsection (1) or (4), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation

requirement under Section 49-11-1204.

(b) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (1)(a)(iii), (3)(b), or (4)(b).

Section 6. Section **49-11-1303 (Effective 01/01/21)** is amended to read:

**49-11-1303 (Effective 01/01/21). Phased retirement -- Eligibility -- Restrictions -- Amortization rate -- Public safety service or firefighter service employees.**

(1) A retiree is eligible for employment with only one position for only one participating employer under phased retirement following the retiree's retirement date if:

(a) the retiree:

(i) is eligible to retire and retires in accordance with this title;

(ii) has been employed full time, for not less than four years immediately before the retiree's retirement date;

(iii) ~~[for a retiree employed as a public safety service employee or a firefighter service employee, is at least 50 years old;]~~ is, at the time of retirement, at least:

(A) 50 years old, if the retiree is employed as a public safety service employee or a firefighter service employee; or

(B) 55 years old;

(iv) completes and submits all required retirement forms to the office; and

(v) prior to the retiree's retirement date, completes and submits all required phased retirement forms to the office; and

(b) the retiree and the participating employer enter into an agreement described under Section 49-11-1304.

(2) A retiree shall begin phased retirement employment after the retiree's retirement date but no later than 120 days after the retiree's retirement date.

(3) Except as provided in Subsection (4), for the period of the phased retirement:

(a) the retiree receives 50% of the retiree's monthly allowance;

(b) the participating employer employs the retiree on a half-time basis;

(c) a participating employer that employs the retiree shall contribute the amortization rate to the office;

(d) the retiree or an alternate payee may not receive an annual cost-of-living adjustment

343 to the retiree's or alternate payee's allowance;

344 (e) any death benefits payable to a surviving spouse or other beneficiary shall be paid

345 based on 100% of the retiree's retirement allowance;

346 (f) the retiree may not receive any employer provided retirement benefits, service credit

347 accruals, or any retirement related contributions from the participating employer; and

348 (g) except as specified under this section, a retiree working under phased retirement

349 shall be treated in the same manner as any other part-time employee working a similar position

350 and number of hours with the participating employer, including:

351 (i) any non-retirement related benefits;

352 (ii) leave benefits;

353 (iii) medical benefits; and

354 (iv) other benefits.

355 (4) (a) If a retiree is employed as a public safety service employee or a firefighter

356 service employee, for the period of the phased retirement the requirements of Subsection (3) or

357 (4)(b) are satisfied.

358 (b) For the period of the phased retirement:

359 (i) the retiree is employed as a public safety service employee or a firefighter service

360 employee;

361 (ii) the retiree receives 25% of the retiree's monthly allowance;

362 (iii) the participating employer employs the retiree on a three-quarter time basis;

363 (iv) a participating employer that employs the retiree shall contribute to the office the

364 certified contribution rate applicable to the system that would have covered the retiree if the

365 retiree's part-time position were considered to be an eligible, full-time position within the

366 system;

367 (v) the retiree or an alternate payee may not receive an annual cost-of-living adjustment

368 to the retiree's or alternate payee's allowance;

369 (vi) any death benefits payable to a surviving spouse or other beneficiary shall be paid

370 based on 100% of the retiree's retirement allowance;

371 (vii) the retiree may not receive any employer provided retirement benefits, service

372 credit accruals, or any retirement related contributions from the participating employer; and

373 (viii) except as specified under this section, a retiree working under phased retirement

shall be treated in the same manner as any other part-time employee working a similar position and number of hours with the participating employer, including:

(A) any non-retirement related benefits;

(B) leave benefits;

(C) medical benefits; and

(D) other benefits.

(5) The office shall begin paying 100% of the retiree's retirement allowance on the first day of the month following the month in which the office receives written notification and any required supporting documentation that the retiree's phased retirement has been irrevocably terminated.

Section 7. Section **49-11-1401** is amended to read:

**49-11-1401. Forfeiture of retirement benefits for employees for employment related offense convictions -- Notifications -- Investigations -- Appeals.**

(1) As used in this section:

(a) "Convicted" means a conviction by plea or by verdict, including a plea of guilty or a plea of no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced in accordance with the plea agreement or reduced or dismissed in accordance with the plea agreement or the plea in abeyance agreement.

(b) "Employee" means a member of a system or plan administered by the board.

(c) (i) "Employment related offense" means a felony committed during employment or the term of an elected or appointed office with a participating employer that is:

(A) during the performance of the employee's duties;

(B) within the scope of the employee's employment; or

(C) under color of the employee's authority.

(ii) "Employment related offense" does not include any federal offense for conduct that is lawful under Title 26, Chapter 61a, Utah Medical Cannabis Act.

(2) (a) Notwithstanding any other provision of this title, an employee shall forfeit accrual of service credit, employer retirement related contributions, including employer contributions to the employer sponsored defined contribution plans, or other retirement related benefits from a system or plan under this title in accordance with this section.

(b) The forfeiture of retirement related benefits under Subsection (2)(a) does not include the employee's contribution to a defined contribution plan.

(3) An employee shall forfeit the benefits described under Subsection (2)(a):

(a) if the employee is convicted of an employment related offense;

(b) beginning on the day on which the employment related offense occurred; and

(c) until the employee is either:

(i) re-elected or reappointed to office; or

(ii) (A) terminated from the position for which the employee was found to have committed an employment related offense; and

(B) rehired or hired as an employee who is eligible to be a member of a Utah state retirement system or plan.

(4) The employee's participating employer shall:

(a) immediately notify the office:

(i) if an employee is charged with an offense that is or may be an employment related offense under this section; and

(ii) if the employee described in Subsection (4)(a)(i) is acquitted of the offense that is or may be an employment related offense under this section; and

(b) if the employee is convicted of an offense that may be an employment related offense:

(i) conduct an investigation, which may rely on the conviction, to determine:

(A) whether the conviction is for an employment related offense; and

(B) the date on which the employment related offense was initially committed; and

(ii) after the period of time for an appeal by an employee under Subsection (5), immediately notify the office of the employer's determination under this Subsection (4)(b).

(5) An employee may appeal the employee's participating employer's determination under Subsection (4)(b) in accordance with the participating employer's procedures for appealing agency action, including Title 63G, Chapter 4, Administrative Procedures Act, if applicable.

(6) (a) Notwithstanding Subsection (4), a district attorney, a county attorney, the attorney general's office, or the state auditor may notify the office and the employee's participating employer if an employee is charged with an offense that is or may be an

employment related offense under this section.

(b) If the employee's participating employer receives a notification under Subsection (6)(a), the participating employer shall immediately report to the entity that provided the notification under Subsection (6)(a):

(i) if the employee is acquitted of the offense;

(ii) if the employee is convicted of an offense that may be an employment related offense; and

(iii) when the participating employer has concluded ~~[its]~~ the participating employer's duties under this section if the employee is convicted, including conducting an investigation, making a determination under Subsection (4)(b) that the conviction was for an employment related offense, and notifying the office under Subsection (7).

(c) The notifying entity under Subsection (6)(a) may assist the employee's participating employer with the investigation and determination described under Subsection (4)(b).

(7) Upon receiving a notification from a participating employer that the participating employer has made a determination under Subsection (4)(b) that the conviction was for an employment related offense, the office shall immediately forfeit any service credit, employer retirement related contributions, including employer contributions to the employer sponsored contribution plans, or other retirement related benefits accrued by or made for the benefit of the employee, beginning on the date of the initial employment related offense determined under Subsection (4)(b).

(8) This section applies to an employee who is convicted on or after the effective date of this act for an employment related offense.

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

(10) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section shall be given effect without the invalid provision or application.

Section 8. Section **49-12-202** is amended to read:

**49-12-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Exceptions -- Nondiscrimination requirements.**

(1) (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.

(b) In addition to ~~[their]~~ participation in this system, a participating [employers] employer may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for ~~[their]~~ the participating employer's employees.

(2) The following employers may be excluded from participation in this system:

(a) an employer not initially admitted or included as a participating employer in this system prior to January 1, 1982, if:

(i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for ~~[its]~~ the employer's employees, except for Social Security; or

(ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

(b) an employer that is a charter school authorized under Title 53G, Chapter 5, Part 3, Charter School Authorization, and does not elect to participate in accordance with Section 53G-5-407;

(c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (4); or

(d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (4).

(3) An employer who did not become a participating employer in this system prior to July 1, 1986, may not participate in this system.

(4) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.

(ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs



under this chapter.

(b) An election provided under Subsection (4)(a):

(i) is a one-time election made no later than the time specified under Subsection (4)(a);

(ii) shall be documented by a resolution adopted by the governing body of the special service district;

(iii) is irrevocable; and

(iv) applies to the special service district as the employer and to all employees of the special service district.

(c) The governing body of the special service district may offer employee benefit plans for ~~its~~ special service district's employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or

(ii) under any other program.

(5) (a) If a participating employer purchases service credit on behalf of a regular full-time ~~employees~~ employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:

(i) purchase service credit ~~[shall be purchased]~~ in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered~~[-]~~; and

(ii) comply with the provisions of Section 49-11-403, except for the requirement described in Subsection 49-11-403(2)(a).

(b) For a purchase made under this Subsection (5), an employee is not required to:

(i) have at least four years of service credit before the purchase can be made; or

(ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Section 9. Section **49-12-406** is amended to read:

**49-12-406. Exceptions for part-time elective or appointive service -- Computation of allowance -- Justice court judges.**

(1) Notwithstanding the provisions of Sections 49-11-401 and 49-12-102, and unless otherwise provided in this section, a member's elective or appointive service rendered on a

basis not considered full-time by the office shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.

(2) (a) (i) A justice court judge who has service with only one participating employer shall be considered part-time or full-time by the office as certified by the participating employer.

(ii) If there is a dispute between the office and a participating employer or justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(b) If a justice court judge has a combination of part-time service and full-time position service with one participating employer, the office shall compute separate allowances on the basis of compensation actually received by the judge during the part-time and full-time periods of service.

(3) (a) A justice court judge who has service with more than one participating employer shall be considered full-time by the office for a period of service in which the judge is certified as full-time by:

(i) a participating employer; ~~[or]~~

(ii) a group of participating employers where the judge's part-time work for each employer, when aggregated, amounts to full-time service; or

~~[(ii)]~~ (iii) the Administrative Office of the Courts beginning on or after January 1, 2009, based on the judge's aggregate caseload of the multiple employers as determined by the judge's caseloads of the individual courts of each employer in accordance with Subsection 78A-7-206(1)(b)(ii).

(b) If a justice court judge has full-time service under Subsection (3)(a), the office shall compute an allowance on the basis of total compensation actually received from all participating employers by the judge during the total period of full-time service.

(c) If a justice court judge has part-time service performed that is not within a period considered full-time service under Subsection (3)(a), the office shall compute a separate allowance on the basis of compensation actually received by the member during the period of part-time service.

(d) If there is a dispute between the office and a participating employer, a group of participating employers, or a justice court judge over whether service is full-time or part-time for any employment period, the disputed service shall be submitted by the office to the Administrative Office of the Courts for determination.

(4) All of the service rendered by a justice court judge in any one fiscal or calendar year may not count for more than one year of service credit.

Section 10. Section **49-13-202** is amended to read:

**49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements -- Service credit purchases.**

(1) (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.

(b) In addition to ~~[their]~~ participation in this system, a participating ~~[employers]~~ employer may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for ~~[their]~~ the participating employer's employees.

(2) The following employers may be excluded from participation in this system:

(a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:

(i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for ~~[its]~~ the employer's employees, except for Social Security; or

(ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

(b) an employer that is a charter school authorized under Title 53G, Chapter 5, Part 3, Charter School Authorization, and does not elect to participate in accordance with Section 53G-5-407;

(c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (5);

(d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district

under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (5); or

(e) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.

(3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).

(4) (a) An employer may, by resolution of ~~its~~ the employer's governing body, apply for admission to this system.

(b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.

(5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.

(ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs under this chapter.

(iii) On or before July 1, 2010, an employer described in Subsection (2)(e) may make an election of nonparticipation as an employer for retirement programs under this chapter.

(b) An election provided under Subsection (5)(a):

(i) is a one-time election made no later than the time specified under Subsection (5)(a);

(ii) shall be documented by a resolution adopted by the governing body of the employer;

(iii) is irrevocable; and

(iv) applies to the employer as described in Subsection (5)(a)(i), (ii), or (iii) and to all employees of that employer.

(c) The employer making an election under Subsection (5)(a) may offer employee benefit plans for ~~[its]~~ the employer's employees:

(i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or

(ii) under any other program.

(6) (a) If a participating employer purchases service credit on behalf of a regular full-time ~~[employees]~~ employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:

(i) purchase service credit ~~[shall be purchased]~~ in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered~~[-]~~; and

(ii) comply with the provisions of Section 49-11-403, except for the requirement described in Subsection 49-11-403(2)(a).

(b) For a purchase made under this Subsection (6), an employee is not required to:

(i) have at least four years of service credit before the purchase can be made; or

(ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Section 11. Section ~~49-13-406~~ is amended to read:

**49-13-406. Exceptions for part-time elective or appointive service -- Computation of allowance -- Justice court judges.**

(1) Notwithstanding the provisions of Sections 49-11-401 and 49-13-102, and unless otherwise provided in this section, a member's elective or appointive service rendered on a basis not considered full-time by the office shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.

(2) (a) (i) A justice court judge who has service with only one participating employer shall be considered part-time or full-time by the office as certified by the participating employer.

(ii) If there is a dispute between the office and a participating employer or justice court judge over whether service is full-time or part-time for any employment period, the disputed

653 service shall be submitted by the office to the Administrative Office of the Courts for  
654 determination.

655 (b) If a justice court judge has a combination of part-time service and full-time position  
656 service with one participating employer, the office shall compute separate allowances on the  
657 basis of compensation actually received by the judge during the part-time and full-time periods  
658 of service.

659 (3) (a) A justice court judge who has service with more than one participating  
660 employer shall be considered full-time by the office for a period of service in which the judge  
661 is certified as full-time by:

662 (i) a participating employer; [or]

663 (ii) a group of participating employers where the judge's part-time work for each  
664 employer, when aggregated, amounts to full-time service; or

665 ~~[(ii)]~~ (iii) the Administrative Office of the Courts beginning on or after January 1,  
666 2009, based on the judge's aggregate caseload of the multiple employers as determined by the  
667 judge's caseloads of the individual courts of each employer in accordance with Subsection  
668 78A-7-206(1)(b)(ii).

669 (b) If a justice court judge has full-time service under Subsection (3)(a), the office shall  
670 compute an allowance on the basis of total compensation actually received from all  
671 participating employers by the judge during the total period of full-time service.

672 (c) If a justice court judge has part-time service performed that is not within a period  
673 considered full-time service under Subsection (3)(a), the office shall compute a separate  
674 allowance on the basis of compensation actually received by the member during the period of  
675 part-time service.

676 (d) If there is a dispute between the office and a participating employer, a group of  
677 participating employers, or a justice court judge over whether service is full-time or part-time  
678 for any employment period, the disputed service shall be submitted by the office to the  
679 Administrative Office of the Courts for determination.

680 (4) All of the service rendered by a justice court judge in any one fiscal or calendar  
681 year may not count for more than one year of service credit.

682 Section 12. Section **49-15-202** is amended to read:

683 **49-15-202. Participation of employers -- Requirements -- Admission -- Full**

**participation in system -- Supplemental programs authorized.**

(1) An employer that employs public safety service employees and is required by Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all ~~[its]~~ the employer's public safety service employees under one of the following systems or plans:

(a) Chapter 12, Public Employees' Contributory Retirement Act;

(b) Chapter 13, Public Employees' Noncontributory Retirement Act;

(c) Chapter 14, Public Safety Contributory Retirement Act;

(d) Chapter 15, Public Safety Noncontributory Retirement Act; or

(e) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

(2) An employer that covers ~~[its]~~ the employer's public safety employees under Subsection (1)(d) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of ~~[its]~~ the participating employer's public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of ~~[its]~~ the participating employer's public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer beginning on or after July 1, 2011.

(4) (a) Until June 30, 2011, an employer that is not participating in this system may by resolution of ~~[its]~~ the employer's governing body apply for coverage of ~~[its]~~ the employer's public safety service employees by this system.

(b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.

(5) (a) If a participating employer purchases service credit on behalf of ~~[employees]~~ an employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:

(i) purchase service credit ~~[must be purchased]~~ in a nondiscriminatory manner on behalf of all current and former employees who were eligible for service credit at the time service was rendered~~[-]; and~~

(ii) comply with the provisions of Section 49-11-403, except for the requirement

described in Subsection 49-11-403(2)(a).

(b) For a purchase made under this Subsection (5), an employee is not required to:

(i) have at least four years of service credit before the purchase can be made; or

(ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

(6) A participating employer may not withdraw from this system.

(7) In addition to ~~their~~ participation in the system, a participating ~~employers~~ employer may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for ~~their~~ the public employer's employees.

Section 13. Section 49-23-202 is amended to read:

**49-23-202. Participation of employers -- Admission requirements.**

(1) (a) An employer is a participating employer and may not withdraw from participation in this system.

(b) A participating employer shall cover ~~its~~ the participating employer's:

(i) public safety service employees in accordance with Section 49-15-202; and

(ii) firefighter service employees in accordance with Section 49-16-202.

(2) (a) An employer may, by resolution of ~~its~~ the employer's governing body, apply for admission to this system.

(b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.

(3) If a participating employer purchases service credit on behalf of a public safety service ~~employees~~ employee or a firefighter service ~~employees~~ employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:

(a) purchase service credit ~~[shall be purchased]~~ in a nondiscriminatory manner on behalf of all current and former public safety service employees or firefighter service employees who were eligible for service credit at the time service was rendered~~[-]; and~~

(b) comply with the provisions of Section 49-11-403.

Section 14. **Effective date.**



746        This bill takes effect on July 1, 2021.