

Title 49. Utah State Retirement and Insurance Benefit Act

Chapter 11 Utah State Retirement Systems Administration

Part 1 General Provisions

49-11-101 Title.

- (1) This title is known as the "Utah State Retirement and Insurance Benefit Act."
- (2) This chapter is known as the "Utah State Retirement Systems Administration."

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-102 Definitions.

As used in this title:

- (1)
 - (a) "Active member" means a member who:
 - (i) is employed by a participating employer and accruing service credit; or
 - (ii) within the previous 120 days:
 - (A) has been employed by a participating employer; and
 - (B) accrued service credit.
 - (b) "Active member" does not include a retiree.
- (2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.
- (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.
- (4)
 - (a) "Agency" means:
 - (i) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;
 - (ii) a county, municipality, school district, special district, or special service district;
 - (iii) a state college or university; or
 - (iv) any other participating employer.
 - (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a subdivision of another entity listed under Subsection (4)(a).
- (5) "Allowance" or "retirement allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.
- (6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.
- (7) "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary.
- (8) "Annuity" means monthly payments derived from member contributions.
- (9) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position

- is designated in the participating employer's charter, creation document, or similar document, and:
- (a) who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407 for a Tier I appointive officer; and
 - (b) whose appointive position is full-time as certified by the participating employer for a Tier II appointive officer.
- (10)
- (a) "At-will employee" means a person who is employed by a participating employer and:
 - (i) who is not entitled to merit or civil service protection and is generally considered exempt from a participating employer's merit or career service personnel systems;
 - (ii) whose on-going employment status is entirely at the discretion of the person's employer; or
 - (iii) who may be terminated without cause by a designated supervisor, manager, or director.
 - (b) "At-will employee" does not include a career employee who has obtained a reasonable expectation of continued employment based on inclusion in a participating employer's merit system, civil service protection system, or career service personnel systems, policies, or plans.
- (11) "Beneficiary" means any person entitled to receive a payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.
- (12) "Board" means the Utah State Retirement Board established under Section 49-11-202.
- (13) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.
- (14) "Board of Higher Education" or "Utah Board of Higher Education" means the Utah Board of Higher Education described in Section 53B-1-402.
- (15) "Certified contribution rate" means the board certified percent of salary paid on behalf of an active member to the office to maintain the system on a financially and actuarially sound basis.
- (16) "Contributions" means the total amount paid by the participating employer and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act.
- (17) "Council member" means a person serving on the Membership Council established under Section 49-11-205.
- (18) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.
- (19) "Current service" means covered service under:
- (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;
 - (e) Chapter 16, Firefighters' Retirement Act;
 - (f) Chapter 17, Judges' Contributory Retirement Act;
 - (g) Chapter 18, Judges' Noncontributory Retirement Act;
 - (h) Chapter 19, Utah Governors' and Legislators' Retirement Act;
 - (i) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (j) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.
- (20) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a system or plan offered under this title to provide a specified allowance to a retiree or a retiree's spouse after retirement that is based on a set formula involving one or more of the following factors:
- (a) years of service;

- (b) final average monthly salary; or
 - (c) a retirement multiplier.
- (21) "Defined contribution" or "defined contribution plan" means any defined contribution plan or deferred compensation plan authorized under the Internal Revenue Code and administered by the board.
- (22) "Educational institution" means a political subdivision or instrumentality of the state or a combination thereof primarily engaged in educational activities or the administration or servicing of educational activities, including:
- (a) the State Board of Education and its instrumentalities;
 - (b) any institution of higher education and its branches;
 - (c) any school district and its instrumentalities;
 - (d) any vocational and technical school; and
 - (e) any entity arising out of a consolidation agreement between entities described under this Subsection (22).
- (23) "Elected official":
- (a) means a person elected to a state office, county office, municipal office, school board or school district office, special district office, or special service district office;
 - (b) includes a person who is appointed to serve an unexpired term of office described under Subsection (23)(a); and
 - (c) does not include a judge or justice who is subject to a retention election under Section 20A-12-201.
- (24)
- (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under federal law.
 - (b) "Employer" may also include an agency financed in whole or in part by public funds.
- (25) "Exempt employee" means an employee working for a participating employer:
- (a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and
 - (b) for whom a participating employer is not required to pay contributions or nonelective contributions.
- (26) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.
- (27) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.
- (28)
- (a) "Inactive member" means a member who has not been employed by a participating employer for a period of at least 120 days.
 - (b) "Inactive member" does not include retirees.
- (29)
- (a) "Initially entering" means hired, appointed, or elected for the first time, in current service as a member with any participating employer.
 - (b) "Initially entering" does not include a person who has any prior service credit on file with the office.
 - (c) "Initially entering" includes an employee of a participating employer, except for an employee that is not eligible under a system or plan under this title, who:
 - (i) does not have any prior service credit on file with the office;
 - (ii) is covered by a retirement plan other than a retirement plan created under this title; and

- (iii) moves to a position with a participating employer that is covered by this title.
- (30) "Institution of higher education" means an institution described in Section 53B-1-102.
- (31)
- (a) "Member" means a person, except a retiree, with contributions on deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act, or with a terminated system.
- (b) "Member" also includes leased employees within the meaning of Section 414(n)(2) of the Internal Revenue Code, if the employees have contributions on deposit with the office. If leased employees constitute less than 20% of the participating employer's work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.
- (32) "Member contributions" means the sum of the contributions paid to a system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a system, and which are made by:
- (a) the member; and
- (b) the participating employer on the member's behalf under Section 414(h) of the Internal Revenue Code.
- (33) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.
- (34) "Normal cost rate":
- (a) means the percent of salary that is necessary for a retirement system that is fully funded to maintain its fully funded status; and
- (b) is determined by the actuary based on the assumed rate of return established by the board.
- (35) "Office" means the Utah State Retirement Office.
- (36) "Participant" means an individual with voluntary deferrals or nonelective contributions on deposit with the defined contribution plans administered under this title.
- (37) "Participating employer" means a participating employer, as defined by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges' Noncontributory Retirement Act, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.
- (38) "Part-time appointed board member" means a person:
- (a) who is appointed to serve as a member of a board, commission, council, committee, or panel of a participating employer; and
- (b) whose service as a part-time appointed board member does not qualify as a regular full-time employee as defined under Section 49-12-102, 49-13-102, or 49-22-102.
- (39) "Pension" means monthly payments derived from participating employer contributions.
- (40) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under Section 49-11-801.
- (41)

- (a) "Political subdivision" means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity employees of the state.
- (b) "Political subdivision" includes special districts, special service districts, or authorities created by the Legislature or by local governments, including the office.
- (c) "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.
- (42) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.
- (43) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.
- (44) "Qualified defined contribution plan" means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.
- (45) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.
- (46) "Retiree" means an individual who has qualified for an allowance under this title.
- (47) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.
- (48) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.
- (49) "Retirement related contribution":
 - (a) means any employer payment to any type of retirement plan or program made on behalf of an employee; and
 - (b) does not include Social Security payments or Social Security substitute payments made on behalf of an employee.
- (50) "Service credit" means:
 - (a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are paid to the office; and
 - (b) periods of time otherwise purchasable under this title.
- (51) "Surviving spouse" means:
 - (a) the lawful spouse who has been married to a member for at least six months immediately before the death date of the member; or
 - (b) a former lawful spouse of a member with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612.
- (52) "System" means the individual retirement systems created by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement Act, the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System, and the

defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

(53) "Technical college" means the same as that term is defined in Section 53B-1-101.5.

(54) "Tier I" means a system or plan under this title for which:

- (a) an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011; or
- (b) a governor or legislator who initially enters office before July 1, 2011.

(55)

(a) "Tier II" means a system or plan under this title provided in lieu of a Tier I system or plan for an employee, governor, legislator, or full-time elected official who does not have Tier I service credit in a system or plan under this title:

- (i) if the employee initially enters regular full-time employment on or after July 1, 2011; or
- (ii) if the governor, legislator, or full-time elected official initially enters office on or after July 1, 2011.

(b) "Tier II" includes:

- (i) the Tier II hybrid system established under:
 - (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or
 - (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and
- (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:
 - (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or
 - (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

(56) "Unfunded actuarial accrued liability" or "UAAL":

- (a) is determined by the system's actuary; and
- (b) means the excess, if any, of the accrued liability of a retirement system over the actuarial value of its assets.

(57) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Amended by Chapter 16, 2023 General Session

49-11-103 Purpose -- Liberal construction.

(1) The purpose of this title is to establish:

- (a) retirement systems and the Utah Governors' and Legislators' Retirement Plan for members which provide:
 - (i) a uniform system of membership;
 - (ii) retirement requirements;
 - (iii) benefits for members;
 - (iv) funding on an actuarially sound basis;
 - (v) contributions; and
 - (vi) economy and efficiency in public service; and
- (b) a central administrative office and a board to administer the various systems, plans, and programs established by the Legislature or the board.

(2) This title shall be liberally construed to provide maximum benefits and protections consistent with sound fiduciary and actuarial principles.

Amended by Chapter 10, 2018 General Session

Part 2

Retirement Office and Board

49-11-201 Establishment of retirement office -- An independent state agency -- Office exemption.

- (1)
 - (a) There is established the Utah State Retirement Office, which may also be known and function as the Utah State Retirement Systems or the Utah Retirement Systems.
 - (b) The office shall administer the systems, plans, and programs and perform all other functions assigned to it under this title.
- (2)
 - (a) The office is an independent state agency.
 - (b) It is subject to legislative and executive department budgetary review and comment.
- (3) The office may establish branch offices upon approval of the board.
- (4) The board and office are exempt from those acts which are applicable to state and other governmental entities under this code.

Amended by Chapter 15, 2014 General Session

49-11-202 Establishment of Utah State Retirement Board -- Quorum -- Terms -- Officers -- Expenses and per diem.

- (1) There is established the Utah State Retirement Board composed of seven board members determined as follows:
 - (a) Four board members, with experience in investments or banking, shall be appointed by the governor from the general public.
 - (b) One board member shall be a school employee appointed by the governor from at least three nominations submitted by the governing board of the school employees' association that is representative of a majority of the school employees who are members of a system administered by the board.
 - (c) One board member shall be a public employee appointed by the governor from at least three nominations submitted by the governing board of the public employee association that is representative of a majority of the public employees who are members of a system administered by the board.
 - (d) One board member shall be the state treasurer.
- (2) Four board members constitute a quorum for the transaction of business.
- (3)
 - (a) All appointments to the board shall be made on a nonpartisan basis, with the advice and consent of the Senate.
 - (b) Board members shall serve until their successors are appointed and take the constitutional oath of office.
 - (c) When a vacancy occurs on the board for any reason, the replacement shall be appointed for the unexpired term.
- (4)
 - (a) Except as required by Subsection (4)(b), all appointed board members shall serve for four-year terms.

- (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that:
 - (i) approximately half of the board is appointed every two years; and
 - (ii) no more than two of the board members appointed under Subsection (1)(a) are appointed every two years.
 - (c) A board member who is appointed as a school employee or as a public employee who retires or who is no longer employed with a participating employer shall immediately resign from the board.
- (5)
- (a) Each year the board shall elect a president and vice president from its membership.
 - (b) A board member may not receive compensation or benefits for the board member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 352, 2020 General Session

49-11-203 Powers and duties of board.

- (1) The board shall:
- (a) appoint an executive director to administer the office;
 - (b) receive and act upon reports covering the operations of the systems, plans, programs, and funds administered by the office;
 - (c) ensure that the systems, plans, programs, and funds are administered according to law;
 - (d) review any final order of a hearing officer and approve or modify the order at the board's discretion in accordance with Section 49-11-613;
 - (e) examine and approve an annual operating budget for the office;
 - (f) serve as investment trustees of the Utah State Retirement Investment Fund as provided under this title;
 - (g) maintain, in conjunction with participating employers and members, the systems, plans, and programs on an actuarially sound basis;
 - (h) report annually to the governor, the Legislature, and each participating employer the contribution rates, premium rates, and any adjustments necessary to maintain the systems, plans, and programs on a financially and actuarially sound basis;
 - (i) receive and act upon recommendations of the executive director;
 - (j) recommend to the governor and Legislature, through the executive director, any necessary or desirable changes to this title;
 - (k) develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board's policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans, or programs;
 - (l) adopt interest rates, premium rates, and annual contribution rates after reviewing actuarial recommendations;
 - (m) establish the compensation of the executive director and adopt compensation plans and policies based on market surveys for positions in the office;

- (n) take action consistent with this title for the administration of the systems, plans, and programs in order to carry out the purposes of this title;
 - (o) provide for audits of the systems, plans, programs, and funds;
 - (p) take actions not in conflict with the board's trust and fiduciary responsibilities or other law, with respect to the governance of the office which are substantially similar to those governing other public agencies;
 - (q) in accordance with the board's fiduciary responsibilities, make investment decisions with the sole purpose of maximizing the risk-adjusted return on the investments;
 - (r) to the extent practicable:
 - (i)
 - (A) retain the right to vote investor proxies; or
 - (B) if the investments are commingled with another investor's funds, request the right to vote investor proxies; and
 - (ii) ensure proxy voting is exercised to maximize risk-adjusted returns for the exclusive benefit of beneficiaries;
 - (s) make proxy voting records available to the state treasurer upon the state treasurer's request; and
 - (t) otherwise exercise the powers and perform the duties conferred on the board by this title.
- (2) The board may:
- (a) subpoena witnesses and compel the witnesses' attendance to testify before the board, for which purpose each board member may administer oaths and affirmations to witnesses and others transacting business of the office;
 - (b) establish councils to recommend to the board and the executive director policies affecting members of any systems, plans, and programs administered by the board;
 - (c) pay the travel expenses of council members who attend council meetings; and
 - (d) sue and be sued in the board's own name.
- (3) The state treasurer is subject to the same restrictions on disclosure of the proxy voting records described in Subsection (1)(s) as the board.

Amended by Chapter 242, 2023 General Session

49-11-204 Powers and duties of executive director.

The executive director shall:

- (1) act as the executive officer of the board and the office;
- (2) administer the various systems, plans, programs, and functions assigned to the board or office;
- (3) subject to board review, develop and implement internal policies and procedures which administer and govern the day-to-day operations of the systems, plans, and programs;
- (4) transmit orders of a hearing officer made under Section 49-11-613 to the board;
- (5) provide information concerning the operation of the office to the board, the governor, the Legislature, participating employers, and employer and employee associations, unless otherwise restricted under Section 49-11-618;
- (6) inform the Legislature of any recommendations from the board regarding any necessary or desirable changes to this title;
- (7) consult with the Legislature on all legislation under this title;
- (8)
 - (a) recommend to the board an annual administrative budget covering the operations of the office and, upon approval, submit the budget along with the actuarial status of the funds to the governor and the Legislature for review and comment; and

- (b) direct and control the subsequent expenditures of the budget;
- (9) employ, within the limitations of the budget, personnel to administer the systems, plans, programs, and funds assigned to the office, including consultants, actuaries, attorneys, medical examiners, investment counselors, and accountants to accomplish the purposes of this title;
- (10) establish independent financial records for each of the systems, plans, and programs or combine all financial records using acceptable principles of accounting to identify the assets and vested interests of each system, plan, or program;
- (11) maintain individual records necessary to provide benefits under this title;
- (12) keep in convenient form all records, accounts, and data necessary for the administration and actuarial valuation of the systems, plans, and programs;
- (13) adopt fees, charges, and upon the recommendation of the actuary, interest rates and tables for the administration of the systems, plans, and programs;
- (14) make payment of all monthly allowances and any defined contribution distributions, and may consolidate payments at the sole discretion of the executive director;
- (15) ensure that the integrity of the various funds is maintained through appropriate accounting records;
- (16) at least every three years:
 - (a) make an actuarial investigation into the mortality, service, and other experience of the members, participants, beneficiaries, and covered individuals of the systems, plans, and programs;
 - (b) actuarially value the assets and liabilities of the administered funds and accounts; and
 - (c) determine the rate of interest being earned by the funds;
- (17) report to the board findings under Subsection (16), with recommendations, including proposed changes in the rates of contribution or benefits that are necessary to maintain the actuarial soundness of the systems, plans, or programs;
- (18) regulate participating employers by:
 - (a) educating them on their duties imposed by this title;
 - (b) specifying the time, place, and manner in which contributions shall be withheld and paid; and
 - (c) requiring any reports necessary for the administration of this title; and
- (19) otherwise exercise the powers and perform the duties conferred on the executive director by this title.

Amended by Chapter 31, 2019 General Session

49-11-205 Membership Council established -- Members -- Chair -- Duties -- Expenses and per diem.

- (1) There is established a Membership Council to perform the duties under Subsection (5).
- (2) The Membership Council shall be composed of 15 council members selected as follows:
 - (a) three council members shall be school employees selected by the governing board of an association representative of a majority of school employees who are members of a system administered by the board;
 - (b) one council member shall be a classified school employee selected by the governing board of the association representative of a majority of classified school employees who are members of a system administered by the board;
 - (c) two council members shall be public employees selected by the governing board of the association representative of a majority of the public employees who are members of a system administered by the board;

- (d) one council member shall be a municipal officer or employee selected by the governing board of the association representative of a majority of the municipalities who participate in a system administered by the board;
 - (e) one council member shall be a county officer or employee selected by the governing board of the association representative of a majority of counties who participate in a system administered by the board;
 - (f) one council member shall be a representative of members of the Judges' Noncontributory Retirement System selected by the Judicial Council;
 - (g) one council member shall be a representative of members of the Public Safety Retirement Systems selected by the governing board of the association representative of the majority of peace officers who are members of the Public Safety Retirement Systems;
 - (h) one council member shall be a representative of members of the Firefighters' Retirement System selected by the governing board of the association representative of the majority of paid professional firefighters who are members of the Firefighters' Retirement System;
 - (i) one council member shall be a retiree selected by the governing board of the association representing the largest number of retirees, who are not public education retirees, from the Public Employees' Contributory, Public Employees' Noncontributory, and New Public Employees' Tier II Contributory Retirement Systems;
 - (j) one council member shall be a retiree selected by the governing board of the association representing the largest number of public education retirees;
 - (k) one council member shall be a school business official selected by the governing board of the association representative of a majority of the school business officials from public education employers who participate in a system administered by the board; and
 - (l) one council member shall be a special district officer or employee selected by the governing board of the association representing the largest number of special service districts and special districts who participate in a system administered by the board.
- (3)
- (a) Each entity granted authority to select council members under Subsection (2) may also revoke the selection at any time.
 - (b) Each term on the council shall be for a period of four years, subject to Subsection (3)(a).
 - (c) Each term begins on July 1 and expires on June 30.
 - (d) When a vacancy occurs on the council for any reason, the replacement shall be selected for the remainder of the unexpired term.
- (4) The council shall annually designate one council member as chair.
- (5) The council shall:
- (a) recommend to the board and to the Legislature benefits and policies for members of any system or plan administered by the board;
 - (b) recommend procedures and practices to improve the administration of the systems and plans and the public employee relations responsibilities of the board and office;
 - (c) examine the record of all decisions affecting retirement benefits made by a hearing officer under Section 49-11-613;
 - (d) submit nominations to the board for the position of executive director if that position is vacant;
 - (e) advise and counsel with the board and the director on policies affecting members of the various systems administered by the office; and
 - (f) perform other duties assigned to it by the board.
- (6) A member of the council may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;

- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 16, 2023 General Session

Part 3

Investment Fund

49-11-301 Creation -- Board to act as trustees of the fund -- Commingling and pooling of funds -- Interest earnings -- Funded ratio.

- (1)
 - (a) There is created a common trust fund known as the "Utah State Retirement Investment Fund" for the purpose of enlarging the investment base and simplifying investment procedures and functions.
 - (b) The Utah State Retirement Investment Fund may sue and be sued in its own name.
- (2)
 - (a) The board shall act as trustees of the Utah State Retirement Investment Fund and, through the executive director, may commingle and pool the funds and investments of any system, plan, or program into the Utah State Retirement Investment Fund, if 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 office.
 - (b)
 - (i) 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.
 - (ii) The value of the transferred assets shall be calculated in accordance with generally accepted accounting principles.
 - (c) Subsequent transfers of additional capital from participating funds shall be credited similarly to its respective trust account.
 - (d) The income or principal or equity credit belonging to one participating fund may not be transferred to another, except for the purpose of:
 - (i) actuarially recommended transfers in order to adjust employer contribution rates for an employer that participates in both contributory and noncontributory systems; or
 - (ii) transfers which reflect the value of service credit accrued in different systems during a member's career.
- (3) The assets of the funds are for the exclusive benefit of the members, participants, and covered individuals and may not be diverted or appropriated for any purpose other than that permitted by this title.
- (4)
 - (a) Interest and other earnings shall be credited to each participating fund on a pro rata equity position basis.
 - (b)
 - (i) 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.
 - (ii) Each participating fund shall retain its proportionate equity in the reserve account.

- (5)
 - (a) The actuarial funded ratio of the systems may reach and be maintained at 110%, as determined by the board's actuary using assumptions adopted by the board, before the board is required to certify a decrease in contribution rates.
 - (b) Except as provided in Subsection (6), the board may not increase contribution rates to attain an actuarial funded ratio greater than 100%.
- (6)
 - (a) The cost of any amendment to this title shall be included in the final contribution rates adopted and certified by the board in accordance with Subsections 49-11-102(14) and 49-11-203(1)(l).
 - (b) If a preliminary certified contribution rate approved by the board prior to an annual general session or special session of the Legislature was maintained at a previous year's level that is higher than the contribution rate calculated by the board's actuary for that year in accordance with Subsection (5)(a), the board's final certified contribution rate shall be the sum of the actuarially determined costs from any amendment to this title during the general session or special session and the preliminary certified contribution rate.

Amended by Chapter 10, 2018 General Session

49-11-302 Board duties with respect to fund.

- (1) The board:
 - (a) shall review and establish the asset allocation of the Utah State Retirement Investment Fund for investment, and with the executive director, shall determine the method of investing the funds;
 - (b) through the executive director:
 - (i) shall invest the money in the Utah State Retirement Investment Fund; and
 - (ii) may provide for the holding, purchasing, selling, assigning, transferring, and disposing of any of the securities and investments in which any of the money of the Utah State Retirement Investment Fund is invested.
- (2) Fees for all services shall be paid from the interest earnings of the Utah State Retirement Investment Fund.
- (3) Title to real estate or any other fund investment may be:
 - (a) held in the name of the Utah State Retirement Investment Fund; or
 - (b) held in another name or names as determined by the board.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-303 Fund investment standard -- Prudent investor rule.

The fund shall be invested in accordance with the prudent investor rule established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

Amended by Chapter 116, 2005 General Session

49-11-304 Administrative costs -- Payable from fund.

General administrative costs of operating the office shall be assessed to the systems, plans, programs, and funds on a pro rata basis and shall be paid from earnings of the Utah State Retirement Investment Fund.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-305 Self-insurance option -- Purchase of liability insurance.

- (1) The office may self insure and may purchase commercial insurance in any amount.
- (2) The office may also purchase excess commercial insurance above the limits provided by the Governmental Immunity Act against any:
 - (a) risk created or recognized by the Governmental Immunity Act; or
 - (b) other action for which the board, office, or any of its employees, may be held liable.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-306 Definitions -- Scrutinized companies investment report -- Content -- Reporting -- Exceptions.

- (1) As used in this section:
 - (a) "Active business operations" means all business operations that are not inactive business operations.
 - (b)
 - (i) "Business operations" means investing, with actual knowledge on or after August 5, 1996, in Iran's petroleum sector which investment directly and significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.
 - (ii) "Business operations" does not include the retail sale of gasoline and related consumer products.
 - (c) "Company" means any foreign sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or any other foreign entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries or parent companies or affiliates of these entities or business associations, that exists for the purpose of making a profit.
 - (d)
 - (i) "Direct holdings" means all publicly traded equity securities of a company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.
 - (ii) "Direct holdings" does not include publicly traded equity securities of a company held as part of a passive indexing investment strategy.
 - (e) "Inactive business operations" means the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for that purpose.
 - (f) "Iran" means the Islamic Republic of Iran.
 - (g) "Petroleum resources" means petroleum or natural gas.
 - (h) "Public fund" means the Utah State Retirement Investment Fund created under Section 49-11-301.
 - (i) "Scrutinized business operations" means any active business operations that:
 - (i) are subject to or liable for sanctions under Public Law 104-172, the Iran Sanctions Act of 1996, as amended; and
 - (ii) involve the maintenance of:
 - (A) the company's existing assets or investments in Iran; or
 - (B) the deployment of new investments to Iran that meet or exceed the threshold referred to in Public Law 104-172, the Iran Sanctions Act of 1996, as amended.
 - (j) "Scrutinized company" means any company engaging in scrutinized business operations.

- (2)
 - (a) The Utah State Retirement Office shall identify those scrutinized companies in which the public fund has direct holdings. In making the determination, the board shall review and rely on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities.
 - (b) The office shall assemble a list of all identified scrutinized companies.
 - (c) The office shall update the list, on an annual basis, with information provided and received from those entities listed in Subsection (2)(a).
- (3) The office shall prepare an annual report of public fund investments in scrutinized companies.
- (4) The report shall include amounts and other data and statistics designed to explain the past and current extent to which public fund investments in scrutinized companies:
 - (a) are present; and
 - (b) are being prevented under Subsection (6).
- (5) The report shall be provided to the governor, the board, the president of the Senate, the speaker of the House of Representatives, and to each member and staff of the Retirement and Independent Entities Committee created under Section 63E-1-201.
- (6) Beginning July 1, 2011, using the most current list assembled under Subsection (2), the office shall prevent the investment of public funds direct holdings in a scrutinized company:
 - (a) for public funds managed within the office, by not investing in direct holdings in a scrutinized company; and
 - (b) for public funds managed by contract by a professional investment manager:
 - (i) for existing contracts, by requesting that no more direct holdings be acquired in a scrutinized company; and
 - (ii) for future contracts, by stipulating in the contract that no new direct holdings be acquired in a scrutinized company.
- (7) The provisions of this section do not apply to:
 - (a) money invested in a defined contribution plan as defined under Section 49-11-102; or
 - (b) investments in a company that is primarily engaged in:
 - (i) supplying goods or services intended to relieve human suffering in Iran; or
 - (ii) promoting health, education, religious, welfare, or journalistic activities in Iran.

Amended by Chapter 352, 2011 General Session

49-11-307 Report on funded status -- Study of compensation.

- (1)
 - (a) The office shall report the funded status of the Utah State Retirement Investment Fund to the Retirement and Independent Entities Committee created under Section 63E-1-201.
 - (b) The report under Subsection (1)(a) shall be made at least annually or as requested by the committee.
- (2)
 - (a) If the Utah State Retirement Investment Fund reaches a funded status of 100%, the office shall make a report to that effect.
 - (b) The report shall be provided to the governor, the board, the president of the Senate, the speaker of the House of Representatives, and to each member and staff of the Retirement and Independent Entities Committee created under Section 63E-1-201.
- (3) Upon receipt of the report under Subsection (2)(b), the committee shall conduct a study on participating employee compensation and benefits to determine the need for adjustments in

retirement benefits, salary, and other benefits for the recruitment and retention of a qualified workforce.

- (4) The committee shall report any findings and recommendations to the Legislative Management Committee.

Enacted by Chapter 266, 2010 General Session

Part 4

Service Credits

49-11-401 Transfer of service credit -- Eligibility for service credit -- Computation of service credit -- Retirement from most recent system.

- (1)
- (a) The office shall make the transfer of service credit, together with related member and participating employer contributions, from one system to another upon terms and conditions established by the board.
 - (b) The terms and conditions may not result in a loss of accrued benefits.
- (2) An employee does not lose active member status by transferring employment from a position covered by one system to a position covered by another system.
- (3) In the accrual of service credit, the following provisions apply:
- (a)
 - (i) a person employed and compensated by a participating employer who meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan shall receive service credit for the term of the employment provided that all required contributions are paid to the office; and
 - (ii) the person may not receive service credit for a term of employment until all required contributions related to that service credit have been paid to the office;
 - (b) an allowance or other benefit may not accrue under this title which is based upon the same period of employment as has been the basis for any retirement benefits under some other public retirement system;
 - (c)
 - (i) the board shall fix the minimum time per day, per month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward qualification for retirement;
 - (ii) service may be computed on a fiscal or calendar year basis and portions of years served shall be accumulated and counted as service; and
 - (iii) in any event, all of the service rendered in any one fiscal or calendar year may not count for more than one year;
 - (d) service credit shall be accrued on a fiscal or calendar year basis as determined by the participating employer;
 - (e) a member may not accrue more than one year of service credit per fiscal or calendar year as determined by the office; and
 - (f) fractions of years of service credit shall be accumulated and counted in proportion to the work performed.
- (4) The office may estimate the amount of service credit, compensation, or age of any member, participant, or alternate payee, if information is not contained in the records.

(5) A member shall retire from the system that most recently covered the member.

(6)

- (a) Under no circumstances may service credit earned by a member under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, be transferable to any other system or plan under this title.
- (b) Under no circumstances may service credit earned by a member under one of the following systems be transferable to the system created under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or under Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act:
 - (i) Chapter 12, Public Employees' Contributory Retirement Act;
 - (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.

Amended by Chapter 193, 2021 General Session

49-11-402 Purchase of military service credit.

- (1) Except as provided under Subsection (7), a member who is absent from employment with a participating employer by reason of an official call to full-time United States military service may receive service credit for that military service as follows:
 - (a) the member, the participating employer, or the member and participating employer jointly shall make the required payments, as determined by the office, to the system in which the member participated at the time of the official call, according to the law governing that particular system;
 - (b) prior to a member's retirement date, the required payments shall be made:
 - (i) during the period of full-time United States military service;
 - (ii) after the military service, but within a period not to exceed three times the period of military service up to a maximum of five years; or
 - (iii) as otherwise allowed by federal law;
 - (c) required payments shall be based on the member's compensation at the time of the official military call;
 - (d) if a required payment is not made within the time allowed under Subsection (1)(b), the member or participating employer may purchase the service credit as allowed in Subsection (2); and
 - (e) the member shall return to employment with the participating employer upon receiving an honorable discharge from military service and there may not be intervening employment outside of the employment with the participating employer.
- (2)
 - (a) A member, a participating employer, or a member and a participating employer jointly, may purchase service credit for full-time United States military service, resulting from an official call to duty, if the member has four or more years of service credit and the military service does not otherwise qualify for service credit under this title.
 - (b) Payment to the office for a military service credit purchase shall be made to the system under which the member is currently covered in an amount determined by the office based on a formula recommended by the actuary and adopted by the board.

- (c) The purchase shall be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.
- (d) If total payment is not completed prior to retirement, service credit shall be prorated in accordance with the amount paid.
- (3) For purposes of Subsection (2), full-time United States military service does not include any regularly scheduled or annual military service that is required by a reserve unit, National Guard unit, or any other United States military unit.
- (4)
 - (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated.
 - (b) If the recalculated cost exceeds the amount paid for the purchase, the member may:
 - (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
 - (ii) not pay the increased cost and have the purchased service credit prorated.
- (5) If the recalculated cost under Subsection (4) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.
- (6)
 - (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.
 - (b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.
- (7) Notwithstanding the provisions under Subsection (1), a member may receive service credit for military service covered under the provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. Sec. 4301 et seq., under the terms and conditions provided under that law.

Amended by Chapter 243, 2015 General Session

49-11-403 Purchase of public service credit not otherwise qualifying for benefit.

- (1) A member, a participating employer, or a member and a participating employer jointly may purchase service credit equal to the period of the member's employment in the following:
 - (a) United States federal employment;
 - (b) employment in a private school based in the United States, if the member received an employer paid retirement benefit for the employment;
 - (c) public employment in another state or territory of the United States which qualifies the member for membership in the public plan or system covering the employment, but only if the member does not qualify for any retirement benefits based on the employment;
 - (d) forfeited service credit in this state if the member does not qualify for an allowance based on the service credit;
 - (e) full-time public service while on an approved leave of absence;
 - (f) the period of time for which disability benefits were paid if:
 - (i) the member was receiving:
 - (A) long-term disability benefits;
 - (B) short-term disability benefits; or
 - (C) worker's compensation disability benefits; and
 - (ii) the member's employer had not entered into a benefit protection contract under Section 49-11-404 during the period the member had a disability due to sickness or accident;

- (g) employment covered by a retirement plan offered by a public or private system, organization, or company designated by the Utah Board of Higher Education, if the member forfeits any retirement benefit from that retirement plan for the period of employment to be purchased under this Subsection (1)(g);
 - (h) employment in a charter school located within the state if the member forfeits any retirement benefit under any other retirement system or plan for the period of employment to be purchased under this Subsection (1)(h); or
 - (i) employment with a participating employer that is exempt from coverage under this title under a written request for exemption with the office, if the member forfeits any retirement benefit under any other retirement system or plan for the period of employment to be purchased under this Subsection (1)(i).
- (2) A member shall:
- (a) have at least four years of service credit before a purchase can be made under this section; and
 - (b) forfeit service credit and any defined contribution balance based on employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.
- (3)
- (a) To purchase credit under this section, the member, a participating employer, or a member and a participating employer jointly shall make payment to the system under which the member is currently covered.
 - (b) The amount of the payment shall be determined by the office based on a formula that is:
 - (i) recommended by the actuary; and
 - (ii) adopted by the board.
- (4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.
- (5) Total payment must be completed prior to the member's effective date of retirement or service credit will be prorated in accordance with the amount paid.
- (6)
- (a) For a purchase made before July 1, 2010, if any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated at the time of retirement.
 - (b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:
 - (i) pay the increased cost, plus interest, to receive the full amount of service credit; or
 - (ii) not pay the increased cost and have the purchased service credit prorated.
 - (c) For a purchase made on or after July 1, 2010:
 - (i) the purchase shall be made in accordance with rules:
 - (A) adopted by the board based on recommendations by the board's actuary; and
 - (B) in effect at the time the purchase is completed; and
 - (ii) the cost of the service credit purchase shall not be recalculated at the time of retirement.
- (7) If the recalculated cost under Subsection (6)(a) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.
- (8)
- (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

- (b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.
- (9) An employee who elects to participate exclusively in the defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, may not purchase service credit for that period of employment.

Amended by Chapter 365, 2020 General Session

49-11-404 Benefit protection contract authorized -- Annual report required.

- (1)
 - (a) A participating employer may establish a salary protection program under which the participating employer's employees are paid during periods of disability.
 - (b) If a salary protection program is established, a participating employer may enter into benefit protection contracts with the office.
 - (c) A salary protection program shall:
 - (i) pay benefits based on the rate of compensation of the member with a disability at the time of disability;
 - (ii) pay benefits over the period of the disability;
 - (iii) not include settlement or lump sum payments of any type;
 - (iv) be based upon the member being awarded and receiving ongoing monthly disability benefits that are:
 - (A) substantially equivalent to the long-term disability programs offered under Chapter 21, Public Employees' Long-Term Disability Act; or
 - (B) workers' compensation indemnity benefits provided in accordance with Title 31A, Insurance Code; and
 - (v) comply with requirements adopted by the board.
- (2) A benefit protection contract shall allow:
 - (a) the member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;
 - (b) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;
 - (c) the member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and
 - (d) the benefit for the member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract.
- (3)
 - (a) The office shall establish the manner and times when employer contributions are paid.
 - (b) A failure to make the required payments is cause for the office to cancel a contract.
 - (c) Service credit and salary credit granted and accrued up to the time of cancellation may not be forfeited.
- (4) For an employee covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, a benefit protection contract shall allow:
 - (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:

- (i) the member with a disability to be considered an active member in a system and continue to accrue service credit and salary credit based on the member's rate of pay in effect at the time disability commences;
- (ii) the office to require participating employer contributions to be paid before granting service credit and salary credit to the member;
- (iii) the member with a disability to remain eligible during the contract period for any benefits provided by the system that covers the member; and
- (iv) the benefit for the member with a disability to be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract; and
- (b) for the defined contribution portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System, or for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to continue making the nonelective contributions on behalf of the member with a disability or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1), 49-23-302(1)(a), or 49-23-401(1).
- (5) A participating employer that has entered into a benefit protection contract under this section shall submit an annual report to the office, which identifies:
 - (a) the employees receiving long-term disability benefits under policies initiated by the participating employer and approved under the benefit protection contract;
 - (b) the employees that have applied for long-term disability benefits and who are waiting approval; and
 - (c) the insurance carriers that are actively providing long-term disability benefits.
- (6) If an employer fails to provide the annual report required under Subsection (5), the benefits that would have accrued under the benefit protection contract shall be forfeited.
- (7) The board may adopt rules to implement and administer this section.

Amended by Chapter 122, 2022 General Session

49-11-405 Service credit from different systems or plans -- Eligibility and calculation of service credit.

- (1)
 - (a) A member who has service credit from two or more systems or one or more systems and the Utah Governors' and Legislators' Retirement Plan may combine service credit for purposes of determining eligibility for retirement.
 - (b) The provisions of Subsection (1)(a) do not apply to concurrent service.
- (2) To be eligible for the calculation under Subsection (3), the member's service credit earned under the different systems or the Utah Governors' and Legislators' Retirement Plan shall at least equal the minimum amount of service credit required to retire from the system which most recently covered the member.
- (3) If a member meets the requirements of Subsection (2), the office shall calculate the member's allowance using all service credit earned from any system or the Utah Governors' and Legislators' Retirement Plan, with no actuarial reduction applied to the allowance, except the service credit used to calculate the benefit shall be increased or decreased to reflect the value of the assets transferred.
- (4) The office shall establish the standards used for calculating any increase or decrease in the service credit.

- (5) This section does not apply to a retiree who is subject to Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.

Amended by Chapter 310, 2016 General Session

49-11-406 Governor's appointed executives and senior staff -- Appointed legislative employees -- Transfer of value of accrued defined benefit -- Procedures.

(1) As used in this section:

- (a) "Defined benefit balance" means the total amount of the contributions made on behalf of a member to a defined benefit system plus refund interest.
- (b) "Senior staff" means an at-will employee who reports directly to an elected official, executive director, or director and includes a deputy director and other similar, at-will employee positions designated by the governor, the speaker of the House, or the president of the Senate and filed with the Division of Human Resource Management and the Utah State Retirement Office.

(2) In accordance with this section and subject to requirements under federal law and rules made by the board, a member who has service credit from a system may elect to be exempt from coverage under a defined benefit system and to have the member's defined benefit balance transferred from the defined benefit system or plan to a defined contribution plan in the member's own name if the member is:

- (a) the state auditor;
- (b) the state treasurer;
- (c) an appointed executive under Subsection 67-22-2(1)(a);
- (d) an employee in the Governor's Office;
- (e) senior staff in the Governor's Office of Planning and Budget;
- (f) senior staff in the Governor's Office of Economic Opportunity;
- (g) senior staff in the Commission on Criminal and Juvenile Justice;
- (h) senior staff in the Public Lands Policy Coordinating Office, created in Section 63L-11-201;
- (i) a legislative employee appointed under Subsection 36-12-7(3)(a); or
- (j) a legislative employee appointed by the speaker of the House of Representatives, the House of Representatives minority leader, the president of the Senate, or the Senate minority leader.

(3) An election made under Subsection (2):

- (a) is final, and no right exists to make any further election;
- (b) is considered a request to be exempt from coverage under a defined benefits system; and
- (c) shall be made on forms provided by the office.

(4) The board shall adopt rules to implement and administer this section.

Amended by Chapter 64, 2021 General Session

Amended by Chapter 282, 2021 General Session

Amended by Chapter 344, 2021 General Session

Amended by Chapter 382, 2021 General Session

49-11-407 Service credit purchases by active employees only.

Notwithstanding any other provision of this title, only an active member may purchase service credit under this title.

Enacted by Chapter 439, 2011 General Session

Part 5

General Member Provisions

49-11-501 Refunds of member contributions -- Transfers of contributions to defined contribution plan.

- (1) If a member shall for any cause, except retirement, permanent or temporary disability, or death, terminate employment with a participating employer the member may leave the member contributions in the fund or may receive a refund of the member contributions as provided under this section.
- (2) A member who applies for a refund of member contributions shall apply in writing on forms provided by the office.
- (3) A refund of member contributions may not be made to a member within 60 days from the last date of the pay period for which contributions are made by or on behalf of the member.
- (4) If the member is reemployed by a participating employer within the time period under Subsection (3), the member is not eligible for a refund.
- (5) A member who receives a refund of member contributions forfeits the service credit based on those contributions.
- (6) A member who is exempted from or becomes ineligible for service credit in a system but who remains employed by a participating employer may request a direct transfer of member contributions to a qualified plan.
- (7) A member who remains employed with an employer which has withdrawn from a system may request a plan-to-plan transfer of member contributions to a qualified defined contribution plan administered by the board or a qualified plan offered by the member's employer.
- (8) Refund interest shall be paid on refunds of member contributions under this section.

Amended by Chapter 240, 2003 General Session

49-11-502 Redeposits of refunds -- Time period.

- (1)
 - (a) If a member receives a refund of member contributions and is subsequently reemployed in a position covered by a system or the Utah Governors' and Legislators' Retirement Plan, the participating employer or the member may redeposit an amount equal to the member contributions refunded and interest charged under Section 49-11-503.
 - (b) The interest shall be compounded annually from the date of refund through the month of payment.
 - (c) If a redeposit is made, service credit shall be restored to the member's account and credited to the same system or the Utah Governors' and Legislator's Retirement Plan from which the refund was taken.
- (2)
 - (a) A member may redeposit an amount equal to a prior refund of member contributions and interest charges in one lump sum or in monthly installments by payroll deduction in a time period determined by the office.
 - (b) If the total redeposit is not made prior to the member's retirement date, the amount of redeposit paid to the office shall be refunded to the member without interest and the member is not entitled to service credit based on the amount of the refund.

- (c) The interest rate charged during the installment period shall be a fixed rate calculated at the time of the first installment payment in accordance with Section 49-11-503.
- (3) A member who redeposits a refund of member contributions under this section shall receive the amount of service credit forfeited in taking the refund.
- (4)
 - (a) For purposes of this section, the Public Employees' Contributory Retirement System created under Chapter 12, Public Employees' Contributory Retirement Act, and the Public Employees' Noncontributory Retirement System created under Chapter 13, Public Employees' Noncontributory Retirement Act, are considered one system.
 - (b) For purposes of this section, the Public Safety Contributory Retirement System created under Chapter 14, Public Safety Contributory Retirement Act, and the Public Safety Noncontributory Retirement System created under Chapter 15, Public Safety Noncontributory Retirement Act, are considered one system.
 - (c) For purposes of this section, the Judges' Contributory Retirement System created under Chapter 17, Judges' Contributory Retirement Act, and the Judges' Noncontributory Retirement System created under, Chapter 18, Judges' Noncontributory Retirement Act, are considered one system.
- (5)
 - (a) The board may make rules to allow a member to make the necessary payments to the office for redeposits under this title as permitted by federal law.
 - (b) The office may reject any payments if the office determines the tax status of the systems, plans, or programs may be jeopardized by allowing the payment.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-503 Rate of interest on redeposits, adjustments, and delinquent payments.

The rate of interest charged on redeposits of refunds, adjustments, or delinquent payments is the greater of:

- (1) the interest rate as determined under a formula approved by the board; or
- (2) the actuarial interest rate as of the preceding June 30.

Amended by Chapter 240, 2003 General Session

49-11-504 Reemployment of a retiree -- Restrictions.

- (1) As used in this section:
 - (a) "full-time" means:
 - (i) employment requiring 20 or more hours of work per week; or
 - (ii) at least a half-time teaching contract.
 - (b) "Reemployed," "reemploy," or "reemployment" means the same as those terms are defined in Section 49-11-1202.
- (2)
 - (a) Except for the provisions of Subsection (3), the provisions of this section do not apply to a person who is subject to the provisions of Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.
 - (b) This section does not apply to employment as an elected official.
- (3) A person who is not a retiree under this title is not subject to any postretirement restrictions under this title.

- (4) A retiree of an agency who is reemployed may not earn additional service credit, if the retiree is reemployed by:
 - (a) a different agency; or
 - (b) the same agency after six months from the retirement date.
- (5) A retiree of an agency who is reemployed on a full-time basis by the same agency within six months of the date of retirement is subject to the following:
 - (a) the agency shall immediately notify the office;
 - (b) the office shall cancel the retiree's allowance and reinstate the retiree to active member status;
 - (c) the allowance cancellation and reinstatement to active member status is effective on the first day of the month following the date of reemployment;
 - (d) the reinstated retiree may not retire again with a recalculated benefit for a two-year period from the date of cancellation of the original allowance, and if the retiree retires again within the two-year period, the original allowance shall be resumed; and
 - (e) a reinstated retiree retiring after the two-year period shall be credited with the service credit in the retiree's account at the time of the first retirement and from that time shall be treated as a member of a system, including the accrual of additional service credit, but subject to recalculation of the allowance under Subsection (9).
- (6) A retiree of an agency who is reemployed by the same agency within six months of retirement on a less than full-time basis by the same agency is subject to the following:
 - (a) the retiree may earn, without penalty, compensation from that position which is not in excess of the exempt earnings permitted by Social Security;
 - (b) if a retiree receives compensation in a calendar year in excess of the Social Security limitation, 25% of the allowance shall be suspended for the remainder of the six-month period;
 - (c) the effective date of a suspension and reinstatement of an allowance shall be set by the office; and
 - (d) any suspension of a retiree's allowance under this Subsection (6) shall be applied on a calendar year basis.
- (7) For six months immediately following retirement, the retiree and participating employer who are subject to Subsection (6) shall:
 - (a) maintain an accurate record of gross earnings in employment;
 - (b) report the gross earnings at least monthly to the office;
 - (c) immediately notify the office in writing of any postretirement earnings under Subsection (6); and
 - (d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (6).
- (8)
 - (a) If a participating employer hires a retiree, the participating employer may not make a retirement related contribution in an amount that exceeds the normal cost rate as defined under Section 49-11-102 on behalf of the retiree under Subsection (8)(b).
 - (b) The contributions under Subsection (8)(a) are not required, but if paid, shall be paid to a:
 - (i) defined contribution plan administered by the board; or
 - (ii) deferred compensation plan administered by the board.
- (9) A retiree who has returned to work, accrued additional service credit, and again retires shall have the retiree's allowance recalculated using:
 - (a) the formula in effect at the date of the retiree's original retirement for all service credit accrued prior to that date; and

- (b) the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.
- (10) The board may make rules to implement this section.

Amended by Chapter 24, 2020 General Session

Part 6

Procedures and Records

49-11-601 Payment of employer contributions -- Penalties for failure to comply -- Adjustments to be made.

- (1) The employer contributions, fees, premium taxes, contribution adjustments, and other required payments shall be paid to the office by the participating employer as determined by the executive director.
- (2) A participating employer that fails to withhold the amount of any member contributions, as soon as administratively possible, shall also pay the member contributions to the office out of its own funds.
- (3) Except as limited by Subsections (6) and (7), if a participating employer does not make the contributions required by this title within 30 days of the end of the pay period, the participating employer is liable to the office as provided in Section 49-11-604 for:
 - (a) delinquent contributions;
 - (b) interest on the delinquent contributions as calculated under Section 49-11-503; and
 - (c) a penalty equal to the greater of:
 - (i) \$250; or
 - (ii) 50% of the total contributions for the employees for the period of the reporting error.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) Contributions made in error will be refunded to the participating employer or member that made the contributions.
- (6)
 - (a) An employer described in Subsection 49-12-202(2)(c) or (d), or Subsection 49-13-202(2)(c), (d), or (e) that paid retirement benefits to an employee or retiree that were not required by this title may offer the retirement benefits paid to the employee as a substantial substitute to service credit and retirement benefits that may have been earned by the employee under this title.
 - (b) An employee who received retirement benefits under Subsection (6)(a) may sign an affidavit that:
 - (i) acknowledges the substantial substitute received by the employee under Subsection (6)(a); and
 - (ii) irrevocably relinquishes service credit and retirement benefits that may have accrued to the employee under this title effective from the employee's date of employment with the employer described in Subsection (6)(a) to the date of the employer's election under Section 49-12-202 or 49-13-202.

- (c) Nothing in this section shall be construed to diminish an employer's right to recover past retirement benefits other than Social Security, paid to an employee or retiree, in error or under mistaken belief that the employer was not a participating employer.
- (7) If the employer files with the office an irrevocable written relinquishment of service credit signed by the member or retiree:
 - (a) the office shall proportionally reduce any delinquent contributions, penalties, fees, or interest assessed against a participating employer in connection with a member or retiree described in Subsection (6)(a); and
 - (b) the system has no liability to the employee for benefits relinquished under Subsection (6)(b).

Amended by Chapter 243, 2015 General Session

49-11-602 Participating employer to maintain records -- Time limit -- Penalties for failure to comply.

- (1) A participating employer shall:
 - (a) maintain records necessary to calculate benefits under this title and other records necessary for proper administration of this title as required by the office; and
 - (b) maintain records that indicate whether an employee is receiving:
 - (i) a benefit under state or federal law that, under Subsection 49-12-102(1)(b)(vi) or (vii), is excluded from the definition of benefits normally provided for purposes of Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory Retirement Act, or Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (ii) a benefit under a benefit package generally offered to similarly situated employees.
- (2) A participating employer shall maintain the records required under Subsection (1) until the earliest of:
 - (a) three years after the date of retirement of the employee from a system or plan;
 - (b) three years after the date of death of the employee; or
 - (c) 65 years from the date of employment with the participating employer.
- (3) A participating employer shall be liable to the office for:
 - (a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to members, resulting from the participating employer's failure to maintain records under this section; and
 - (b) a penalty equal to 1% of the participating employer's last month's contributions.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) The office may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.
- (6)
 - (a) A participating employer shall enroll an employee, make reports, submit contributions, and provide other requested information electronically in a manner approved by the office.
 - (b) A participating employer shall treat any information provided electronically or otherwise by the office as subject to the confidentiality provisions of this title.

Amended by Chapter 141, 2017 General Session

49-11-603 Participating employer to report and certify -- Time limit -- Penalties for failure to comply.

- (1) As soon as administratively possible, but in no event later than 30 days after the end of each pay period, a participating employer shall report and certify to the office:
 - (a) the eligibility for service credit accrual of:
 - (i) each current employee;
 - (ii) each new employee as the new employee begins employment; and
 - (iii) any changes to eligibility for service credit accrual of each employee;
 - (b) the compensation of each current employee eligible for service credit; and
 - (c) other factors relating to the proper administration of this title as required by the executive director.
- (2)
 - (a) Each participating employer shall submit the reports required under Subsection (1) in a format approved by the office.
 - (b) Each participating employer shall include in the reports a certification, for each employee, whether the employee is:
 - (i) an eligible employee who is accruing service credit;
 - (ii) an ineligible employee who may not accrue service credit;
 - (iii) a reemployed retiree; or
 - (iv) an employee who is eligible for employer contributions to a defined contribution plan administered under this title.
- (3) A participating employer shall be liable to the office for:
 - (a) any liabilities and expenses, including administrative expenses and the cost of increased benefits to employees, resulting from the participating employer's failure to correctly report and certify records under this section;
 - (b) a penalty equal to the greater of:
 - (i) \$250; or
 - (ii) 50% of the total contributions for the employees for the period of the reporting error; and
 - (c) attorney fees.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.
- (5) The office may estimate the length of service, compensation, or age of any employee, if that information is not contained in the records.

Amended by Chapter 171, 2022 General Session

49-11-604 Office audits of participating employers -- Penalties for failure to comply.

- (1)
 - (a) The office may perform an on-site compliance audit of a participating employer to determine compliance with reporting, contribution, and certification requirements under this title.
 - (b) The office or its independent auditor may perform an on-site compliance audit of a participating employer or request records to be provided by the participating employer, including records required to complete:
 - (i) audited financial statements;
 - (ii) schedules of employer allocations and pension reporting in accordance with Governmental Accounting Standards Board statements; and
 - (iii) service organizational controls reports.

- (c) The office may request records to be provided by the participating employer at the time of the audit.
- (d) Audits shall be conducted at the sole discretion of the office after reasonable notice to the participating employer of at least five working days.
- (e) The participating employer shall extract and provide records as requested by the office in an appropriate, organized, and usable format.
- (f) Failure of a participating employer to allow access, provide records, or comply in any way with an office audit shall result in the participating employer being liable to the office for:
 - (i) any liabilities and expenses, including administrative expenses and travel expenses, resulting from the participating employer's failure to comply with the audit; and
 - (ii) a penalty equal to 1% of the participating employer's last month's contributions.
- (2) If the audit reveals a participating employer's failure to make contributions as required under Section 49-11-601, a failure to maintain records as required under Section 49-11-602, or a failure to correctly report or certify eligibility as required under Section 49-11-603, the participating employer shall reimburse the office for the cost of the audit.
- (3) If the audit reveals that an incorrect benefit has been paid by the office to a member, participant, alternate payee, or beneficiary due to a participating employer's failure to comply with the requirements of Section 49-11-601, 49-11-602, or 49-11-603, in addition to the liabilities contained in Subsection (2), the participating employer shall be liable to the office for the following:
 - (a) the actuarial cost of correcting the incorrect benefit; and
 - (b) administrative expenses.
- (4) The executive director may waive all or any part of the interest, penalties, expenses, and fees if the executive director finds there were extenuating circumstances surrounding the participating employer's failure to comply with this section.

Amended by Chapter 10, 2018 General Session

49-11-605 Notification and correction of violations.

If a participating employer discovers that it has violated Section 49-11-601, 49-11-602, or 49-11-603 prior to the office becoming aware of the violation, notifies the office of the violation in writing, and corrects the violation within a period agreed to by the office, the penalties under those sections shall be waived.

Enacted by Chapter 250, 2002 General Session

49-11-606 Full participation.

Except as provided in Sections 49-12-203, 49-12-204, 49-13-203, 49-13-204, 49-14-203, and 49-15-203, participating employers shall cover all employees eligible for service credit under this title.

Enacted by Chapter 250, 2002 General Session

49-11-607 Determination of benefits -- Errors in records or calculations -- Correction of errors by the office.

- (1) After the retirement date, which shall be set by a member in the member's application for retirement, no alteration, addition, or cancellation of a benefit may be made except as provided in Subsections (2), (3), and (4) or other law.

- (2)
 - (a) Errors in the records or in the calculations of the office which result in an incorrect benefit to any member, retiree, participant, covered individual, alternate payee, or beneficiary shall be corrected by the office if the correction results in a modification of the benefit amount of \$5 or more.
 - (b) Future payments shall be made to any member, retiree, participant, covered individual, alternate payee, or beneficiary to:
 - (i) pay the benefit to which the member or beneficiary was entitled; or
 - (ii) recover any overpayment.
- (3)
 - (a) Errors in the records or calculation of a participating employer which result in an incorrect benefit to a member, retiree, participant, covered individual, alternate payee, or beneficiary shall be corrected by the participating employer.
 - (b) If insufficient employer contributions have been received by the office, the participating employer shall pay any delinquent employer contributions, plus interest under Section 49-11-503, required by the office to maintain the system, plan, or program affected on an actuarially sound basis.
 - (c) If excess contributions have been received by the office, the contributions shall be refunded to the participating employer or member which paid the contributions.
- (4) If a dispute exists between a participating employer and a member or the office and a member at the time of the member's retirement which will affect the member's benefit calculation, and notice of the dispute is given to the office prior to the calculation of a member's benefit, the benefit may be paid based on the member's retirement date and the records available and then recalculated upon settlement of the dispute.

Amended by Chapter 31, 2019 General Session

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 76-6-407.

Amended by Chapter 193, 2021 General Session

49-11-609 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) As used in this section, "member" includes a member, retiree, participant, covered individual, a spouse of a retiree participating in the insurance benefits created by Sections 49-12-404,

49-13-404, 49-22-307, and 49-23-306, or an alternate payee under a domestic relations order dividing a defined contribution account.

- (2)
 - (a) Except as provided under Subsection (2)(b) or (c), the most recent beneficiary designations signed by the member and filed with the office, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.
 - (b)
 - (i) The divorce or annulment of a member's marriage shall revoke the member's former spouse as a beneficiary from any of the member's beneficiary designations.
 - (ii) A revocation of a former spouse as a beneficiary in accordance with Subsection (2)(b)(i) does not revoke any other beneficiaries named on the member's beneficiary designations.
 - (c) A former spouse whose beneficiary designation is revoked solely under Subsection (2)(b) shall be revived on the member's beneficiary designations by:
 - (i) the member's remarriage to the former spouse; or
 - (ii) a nullification of the divorce or annulment.
 - (d) A revocation under Subsection (2)(b) does not apply to a former spouse named as a beneficiary in a beneficiary designation signed by the member and filed with the office after the date of the divorce or annulment.
 - (e) The office is not liable for having made a payment of any benefits to a beneficiary designated in a beneficiary designation affected by a divorce, annulment, or remarriage before the office received written notice of the divorce, annulment, or remarriage.
- (3)
 - (a) Except where an optional continuing benefit is chosen, or the law makes a specific benefit designation to a dependent spouse, a member may revoke a beneficiary designation at any time and may execute and file a different beneficiary designation with the office.
 - (b) A beneficiary designation or change of beneficiary designation shall be completed on forms provided by the office.
- (4)
 - (a) All benefits payable by the office may be paid or applied to the benefit of the decedent's heirs in the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills, if:
 - (i) no beneficiary is designated or if all designated beneficiaries have predeceased the member;
 - (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by the office within 12 months of the date a reasonable attempt is made by the office to locate the beneficiaries; or
 - (iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date that beneficiary forms are sent to the beneficiary's last-known address.
 - (b)
 - (i) A payment may not be made to a person included in any of the groups referred to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups preceding it.
 - (ii) Payment to a person in any group may be based upon receipt of an affidavit in a form satisfactory to the office that:
 - (A) there are no living individuals in the group preceding it;
 - (B) the probate of the estate of the deceased has not been commenced; and
 - (C) more than 30 days have elapsed since the date of death of the decedent.
- (5) Benefits paid under this section shall be:
 - (a) a full satisfaction and discharge of all claims for benefits under this title; and

(b) payable by reason of the death of the decedent.

Amended by Chapter 24, 2020 General Session

49-11-610 Benefits payable in name of beneficiary -- Delivery.

- (1)
 - (a) Any benefits payable to a beneficiary shall be made in the name of and delivered to the beneficiary or the lawfully appointed guardian or conservator of the beneficiary, or delivered as otherwise ordered by a court of competent jurisdiction under Title 75, Utah Uniform Probate Code.
 - (b) If the benefit involves a payment not to exceed an amount authorized by the Utah Uniform Probate Code to any one beneficiary, the office may, without the appointment of a guardian or conservator or the giving of a bond, pay the amount due to the beneficiary or to the persons assuming their support.
 - (c) The payment shall be in either a lump sum or in monthly amounts.
 - (d) The total of the payments made under this section shall fully discharge and release the office from any further claims.
- (2) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.
- (3) The allowance shall begin on the first day of the month following the month in which the:
 - (a) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (b) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 15, 2014 General Session

49-11-611 Benefits and money in the fund exempt from taxation -- Exceptions.

- (1) Except as provided under Subsection (2), the benefits accrued or paid to any beneficiary of any system or plan administered by the board and the contributions, money, securities, and other assets in the funds created by this title are exempt from any state, county, or municipal tax.
- (2) An allowance, a refund of member contributions, or other benefits that are subject to federal income tax, which is received by a member, retiree, alternate payee, participant, or beneficiary of any system or plan administered by the board and which has not been taxed is subject to Title 59, Chapter 10, Individual Income Tax Act.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-612 Domestic relations order benefits -- Nonassignability of benefits or payments -- Exemption from legal process.

- (1) As used in this section, "domestic relations order benefits" means:
 - (a) an allowance;
 - (b) a defined contribution account established under:
 - (i) Part 8, Defined Contribution Plans;
 - (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or
 - (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act;
 - (c) a continuing monthly death benefit established under:
 - (i) Chapter 14, Part 5, Death Benefit;

- (ii)Chapter 15, Part 5, Death Benefit;
 - (iii)Chapter 16, Part 5, Death Benefit;
 - (iv)Chapter 17, Part 5, Death Benefit;
 - (v)Chapter 18, Part 5, Death Benefit; or
 - (vi)Chapter 19, Part 5, Death Benefit;
 - (d) a lump sum death benefit provided under:
 - (i)Chapter 12, Part 5, Death Benefit;
 - (ii)Chapter 13, Part 5, Death Benefit;
 - (iii)Chapter 22, Part 5, Death Benefit; or
 - (iv)Chapter 23, Part 5, Death Benefit; or
 - (e) a refund of member contributions upon termination.
- (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree, participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or any other retirement right accrued or accruing under this title and the assets of the funds created by this title are not subject to alienation or assignment by the member, retiree, participant, or their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal or equitable process.
- (3)
- (a) The office may, upon the request of the retiree, deduct from the retiree's allowance, insurance premiums or other dues payable on behalf of the retiree, but only to those entities that have received the deductions prior to February 1, 2002.
 - (b) The office may, upon the request of a retiree of a public safety or firefighter system, deduct insurance premiums from the retiree's allowance or defined contribution plan administered by the board.
- (4)
- (a) The office shall provide for the division of domestic relations order benefits with former spouses and family members under an order of a court of competent jurisdiction with respect to domestic relations matters on file with the office.
 - (b) The court order shall specify the manner in which the domestic relations order benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
 - (c) Domestic relations order benefits split under a domestic relations order are subject to the following:
 - (i) the amount to be paid or the period for which payments shall be made under the original domestic relations order may not be altered if the alteration affects the actuarial calculation of the allowance;
 - (ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and
 - (iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.
 - (d)
 - (i) Except as provided under Subsection (4)(d)(ii), to be valid, a court order under this section must be on file with the office before the member's date of death.
 - (ii) A court order under this section received by the office after the member's date of death shall be considered valid if it is received in good order before benefits relating to the member's death are paid or settled.
 - (e) A court order under this section may not require and may not be interpreted in any way to require the office to provide any type of benefit or any option not otherwise provided under this title.

- (5) 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 or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.
- (6) The board shall make rules to implement this section.

Amended by Chapter 24, 2020 General Session

49-11-613 Appeals procedure -- Right of appeal to hearing officer -- Board reconsideration -- Judicial review -- Docketing abstract of final administrative order.

- (1)
 - (a) A member, retiree, participant, alternative payee, covered individual, employer, participating employer, and covered employer shall inform themselves of their benefits, rights, obligations, and employment rights under this title.
 - (b) Subject to 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 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 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 (10); 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 (10);
 - (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 (10).
- (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 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 party aggrieved by the board's final decision under Subsection (6) may obtain judicial review by complying with the procedures and requirements of:
 - (a) this title;
 - (b) rules adopted by the board in accordance with Subsection (10); and
 - (c) 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 (10).
- (8) The program shall provide an appeals process for medical claims that complies with federal law.
- (9)
 - (a)
 - (i) Any interested party may file, in a district court of any county in the state, an abstract of a final administrative order approved by the board in accordance with this section.
 - (ii) Upon receiving the filing of an abstract, the clerk of the district court shall:
 - (A) docket the abstract; and
 - (B) note the date of the abstract's receipt on the abstract and in the docket.
 - (b)
 - (i) From the day on which an interested party files the abstract with a district court, the final administrative order approved by the board is a lien upon the real property of the obligor situated in that county.
 - (ii) Unless satisfied, the lien is for a period of eight years after the day on which the board approves the final administrative order.
 - (c) The final administrative order approved by the board fixing the liability of the obligor has the same effect as any other money judgment entered by a district court.
 - (d)
 - (i) Except as provided in Subsection (9)(d)(ii), an attachment, a garnishment, or an execution on a judgment included in or accruing under a final administrative order approved by the board and filed and docketed in accordance with Subsection (9)(a) has the same manner and same effect as an attachment, a garnishment, or an execution on a judgment of a district court.
 - (ii) A writ of garnishment on earnings continues to operate, and to require the garnishee to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval, until the office or a court releases the writ of garnishment in writing.
 - (e) The lien and enforcement remedies provided by this section are in addition to any other lien or remedy provided by law.
 - (f) A party may bring an action upon a final administrative order approved by the board within eight years after the day on which the board approves the final administrative order.
 - (g) A final administrative order may be renewed administratively by complying with the procedures and requirements provided in rule adopted by the board in accordance with Subsection (10).

(10)

- (a) The board 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.

Amended by Chapter 37, 2023 General Session

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), a party may bring an action regarding a benefit, right, obligation, or employment right brought under this title within four years after the 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 after the day on which the executive director issues the ruling.

(2)

- (a) A cause of action accrues under this title and the limitation period in this section runs from the 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 of action, including when:
 - (i) a benefit, right, or employment right is or should have been granted;
 - (ii) a payment is or should have been made; or
 - (iii) an obligation is or should have been performed.
- (b) If a claim involves a retirement service credit issue under this title:
 - (i) a cause of action specifically accrues at the time the requisite retirement contributions relating to that retirement service credit are paid or should have been paid to the office; and
 - (ii) the person is deemed to be on notice of the payment or nonpayment of those retirement contributions.
- (3) If an aggrieved party fails to discover the facts giving rise to the cause of action due to misrepresentation, fraud, intentional nondisclosure, or other affirmative steps to conceal the cause of action, a limitation period prescribed in this section does not begin to run until the aggrieved party actually discovers the existence of the cause of action.
- (4) The person claiming a benefit, right, obligation, or employment right arising under this title has the burden of bringing the action within the period prescribed in this section.
- (5) Nothing in this section relieves a member, retiree, participant, alternative payee, covered individual, employer, participating employer, or covered employer of the obligations under this title.
- (6) The office is not required to bring a claim on behalf of a member, retiree, participant, alternative payee, covered individual, employer, participating employer, or covered employer.
- (7)
 - (a) A limitation period provided in this section does not apply to actions for which a specific limit is otherwise specified in this title or by contract, including master policies or other insurance contracts.
 - (b) For actions arising under this title, this section supersedes any applicable limitation period provided in Title 78B, Chapter 2, Statutes of Limitations.

Amended by Chapter 37, 2023 General Session

49-11-614 Vesting on termination of system or plan.

If any system or the Utah Governors' and Legislators' Retirement Plan is terminated, the accrued benefits of each member in the terminated system or plan shall immediately become vested and nonforfeitable.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-615 Election to grandfather -- Applicability of provisions.

- (1) Notwithstanding any other provision of this title, the allowance payable to any person who becomes a member of any system, administered by the board on or after January 1, 1990, may not exceed the limitation imposed by Section 415 of the Internal Revenue Code of 1986, as amended, which is incorporated by reference.
- (2) This constitutes an election of the grandfather provision under Section 415(b)(10)(C) of the Internal Revenue Code.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-616 Benefits information.

- (1) The office shall provide written general information to each participating employer concerning benefits available under this title.
- (2)
 - (a) A participating employer shall provide the information under Subsection (1) to each eligible employee:
 - (i) immediately upon termination of service, leave of absence, commencement of long-term disability benefits, or retirement; and
 - (ii) in person or, if the employee is unavailable to receive the information in person, by mailing the information to the employee's last known address.
 - (b)
 - (i) Each participating employer shall maintain the records necessary to demonstrate that the employer has provided the information outlined in Subsection (1) as required in Subsection (2)(a).
 - (ii) The records shall be made available to the office upon request.
- (3)
 - (a) The office shall provide each participating employer with a form to be signed by each employee to verify that the employee has been given in person the information required by this section.
 - (b) If an employer provides information under Subsection (1) by mail as provided in Subsection (2)(a)(ii), the employer shall:
 - (i) indicate on the form that the information was mailed to the employee and the address to which the information was mailed;
 - (ii) maintain the records necessary to demonstrate that the employer complied with the requirements under this Subsection (3); and
 - (iii) make the records available to the office upon request.

Amended by Chapter 243, 2015 General Session

49-11-617 Original documents.

- (1) At the reasonable discretion of the office, any document relating to this title may be treated as an original, whether created by photocopy, facsimile, e-mail, electronic transmission, imaging, or other technology.
- (2) The office may communicate with participating employers, members, beneficiaries, and others through electronic means as determined appropriate by the office.

Amended by Chapter 316, 2013 General Session

49-11-618 Members and beneficiaries subject to chapter -- Furnishing of information -- Confidentiality of information.

- (1)
 - (a) Every member, retiree, participant, covered individual, alternate payee, and beneficiary is subject to this chapter, rules made by the board or office, board actions, resolutions, policies, and procedures adopted under this title.
 - (b) Each member, retiree, participant, covered individual, alternate payee, and beneficiary shall furnish to the office any information required to carry out the purposes of this title.
- (2)
 - (a) All data in the possession of the office is confidential, and may not be divulged by the office except as permitted by board action.
 - (b) All data in the possession of the office or divulged pursuant to board action shall be used for the sole purpose of carrying into effect the provisions of this title.

Renumbered and Amended by Chapter 250, 2002 General Session

49-11-619 Permanent relinquishment of benefit -- Procedure.

- (1)
 - (a) Except for defined contribution plans authorized by this title, a member, retiree, or beneficiary may permanently relinquish a benefit under this title by signing an irrevocable written relinquishment.
 - (b) If the retiree has designated a beneficiary which is still living, the written relinquishment must be signed by both the retiree and the beneficiary.
- (2) The value of the benefit permanently relinquished under Subsection (1) shall remain in the fund from which the benefit was relinquished and shall be used in the calculation of future contribution rates.
- (3) A designated beneficiary may disclaim beneficiary status and the benefit shall then be payable first to any alternate designated beneficiary, then dispersed under Title 75, Chapter 2, Intestate Succession and Wills, as applicable.
- (4) The office is not required to recognize or accept any written relinquishment that jeopardizes the tax qualified status of the systems, plans, or programs or otherwise violates federal law.

Amended by Chapter 252, 2008 General Session

49-11-620 Closing the retirement account -- Status of retirees and beneficiaries.

- (1) The monthly benefit payable for the month a retiree, beneficiary, or alternate payee dies shall be a full monthly benefit and shall be payable to the estate of the deceased.

- (2) If more than one year has elapsed since the death of a retiree whose designated beneficiary is deceased and whose account payable to the beneficiary amounts to \$100 or less, the account shall be closed and further payment may not be made.

Enacted by Chapter 250, 2002 General Session

49-11-621 Change in employer -- Eligibility for retirement.

- (1) If a participating employer is dissolved, consolidated, merged, or is structurally changed in any way, but similar services are provided by the same members after the change, the members may not be considered terminated for purposes of eligibility for retirement until the members actually terminate and are otherwise eligible for retirement.
- (2) The board may adopt rules to implement this section.

Enacted by Chapter 116, 2005 General Session

49-11-622 Subsidiaries or other companies owned by independent corporations -- Participation -- Withdrawal.

- (1) Notwithstanding any other provision of this title, an independent corporation, as defined in Section 63E-1-102, which participates in a system or plan prior to July 1, 2006, and which owns a subsidiary, or other company may provide for the participation of employees with that system or plan as follows:
 - (a) the independent corporation shall determine a date that is no later than January 1, 2007, on which the independent corporation shall make an election under Subsection (2);
 - (b) an employee hired by the independent corporation and transferred to a subsidiary, or other company on or after the date set under Subsection (1)(a) may not participate in a system or plan; and
 - (c) the independent corporation shall pay to the office any actuarial or administrative cost, determined by the office, to have arisen out of the transfer of the employees from the independent corporation.
- (2) The independent corporation described under Subsection (1) shall elect to:
 - (a) continue its participation for all current employees covered by a system or plan and transferred to a subsidiary, or other company, as of the date set under Subsection (1)(a); or
 - (b) withdraw from participation in all systems or plans for all employees covered by a system or plan and transferred to the subsidiary, or other company, as of the date set under Subsection (1)(a).
- (3) If an independent corporation elects to continue participation under Subsection (2)(a), the independent corporation and the transferred employees shall continue to be subject to the laws and the rules governing the system or plan in which the employee participates, including the accrual of service credit and payment of contributions.

Enacted by Chapter 309, 2006 General Session

49-11-623 Withdrawing entity -- Participation election date -- Withdrawal costs -- Rulemaking.

- (1) As used in this section, "withdrawing entity" means an entity that:
 - (a) participates in a system or plan under this title prior to July 1, 2014;
 - (b) provides mental health and substance abuse services for a county under Section 17-50-318;

- (c) after beginning participation with a system or plan under this title, has modified its federal tax status to a nonprofit organization that qualifies under Section 501(c)(3) of the Internal Revenue Code; and
 - (d) is not a state institution of higher education as described in Section 53B-2-101.
- (2) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of its employees with that system or plan as follows:
- (a) the withdrawing entity shall determine a date that is no later than January 1, 2017, on which the withdrawing entity shall make an election under Subsection (3); and
 - (b) subject to the provisions of Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.
- (3) The withdrawing entity described under Subsection (2) may elect to:
- (a)
 - (i) continue its participation for all current employees of the withdrawing entity, who are covered by a system or plan as of the date set under Subsection (2)(a); and
 - (ii) withdraw from participation in all systems or plans for all persons initially entering employment with the withdrawing entity, beginning on the date set under Subsection (2)(a);or
 - (b) withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).
- (4)
- (a) An election provided under Subsection (3):
 - (i) is a one-time election made no later than the date specified under Subsection (2)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;
 - (iii) is irrevocable; and
 - (iv) applies to the withdrawing entity as the employer and to all employees of the withdrawing entity.
 - (b) Notwithstanding an election made under Subsection (3), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (2)(a) is not affected by this section.
- (5) If a withdrawing entity elects to continue participation under Subsection (3), the withdrawing entity shall continue to be subject to the laws and the rules governing the system or plan in which an employee participates, including the accrual of service credit and payment of contributions.
- (6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:
- (a) the costs described under Subsection (2)(b); and
 - (b) arrangements for the payment of the costs described under Subsection (2)(b).
- (7) The board shall make rules to implement this section.

Amended by Chapter 364, 2015 General Session

49-11-624 Withdrawing entity -- Participation election date -- Withdrawal costs -- Rulemaking.

- (1) As used in this section, "withdrawing entity" means the mutual corporation that is the successor to the quasi-public corporation created under Chapter 33, Workers' Compensation Fund, which is the chapter repealed by Laws of Utah 2017, Chapter 363.

- (2) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of its employees with that system or plan as follows:
- (a) the withdrawing entity shall determine a date that is no later than January 1, 2018, on which the withdrawing entity shall make an election under Subsection (3); and
 - (b) subject to Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.
- (3) The withdrawing entity described under Subsection (2) may elect to:
- (a)
 - (i) continue its participation for all current employees of the withdrawing entity, who are covered by a system or plan as of the date set under Subsection (2)(a); and
 - (ii) withdraw from participation in all systems or plans for all persons initially entering employment with the withdrawing entity, beginning on the date set under Subsection (2)(a);or
 - (b) withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).
- (4)
- (a) An election provided under Subsection (3):
 - (i) is a one-time election made no later than the date specified under Subsection (2)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;
 - (iii) is irrevocable; and
 - (iv) applies to the withdrawing entity as the employer and to all employees of the withdrawing entity.
 - (b) Notwithstanding an election made under Subsection (3), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (2)(a) is not affected by this section.
- (5) If a withdrawing entity elects to continue participation under Subsection (3), the withdrawing entity shall continue to be subject to the laws and the rules governing the system or plan in which an employee participates, including the accrual of service credit and payment of contributions.
- (6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:
- (a) the costs described under Subsection (2)(b); and
 - (b) arrangements for the payment of the costs described under Subsection (2)(b).
- (7) The board shall make rules to implement this section.

Revisor instructions Chapter 273, 2018 General Session
Revisor instructions Chapter 363, 2017 General Session
Enacted by Chapter 363, 2017 General Session

49-11-625 Withdrawing independent entity -- Participation election date -- Withdrawal costs -- Rulemaking.

- (1) As used in this section, "withdrawing entity" means an entity that:
- (a) participates in a system or plan under this title before January 1, 2021;
 - (b) is an independent entity listed under Subsection 63E-1-102(4)(b); and

- (c) after beginning participation with a system or plan under this title, has restructured the entity's business operations and employment of employees under contract through a regional, multi-state partnership.
- (2) A withdrawing entity may elect to withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set in accordance with Subsection (3)(a).
- (3) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of the withdrawing entity's employees with the system or plan as follows:
 - (a) the withdrawing entity shall determine a date that is before July 1, 2022, on which the withdrawing entity shall make an election under Subsection (2); and
 - (b) subject to Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.
- (4)
 - (a) An election made under Subsection (2):
 - (i) shall be made on or before the date specified under Subsection (3)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;
 - (iii) remains in effect unless and until the withdrawing entity again becomes a participating entity with the office in accordance with Subsection (5); and
 - (iv) applies to a withdrawing entity as the employer and to all employees of the withdrawing entity.
 - (b) Notwithstanding an election made under Subsection (2), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (3)(a) is not affected by this section.
 - (c) Notwithstanding any other provision of this title, a withdrawing entity that makes an election under Subsection (2) may provide or participate in any type of public or private retirement for the withdrawing entity's employees.
- (5) After the withdrawal and subject to the laws and rules governing participating employer admission, the withdrawing entity may elect, by resolution of the withdrawing entity's governing body, to resume participation with the office and apply for admission as a participating employer in a system or plan under this title.
- (6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:
 - (a) the costs described in Subsection (3)(b); and
 - (b) arrangements for the payment of the costs described in Subsection (3)(b).
- (7) The board shall make rules to implement this section.

Enacted by Chapter 193, 2021 General Session

49-11-626 Withdrawing entity -- Participation election date -- Withdrawal costs -- Rulemaking.

- (1) As used in this section, "withdrawing entity" means an entity that:
 - (a) participates in a system or plan under this title before January 1, 2023; and
 - (b)
 - (i) is a public employees' association;
 - (ii) is an insurer that is subject to the disclosure requirements of Section 31A-4-113; or

- (iii) after beginning participation with a system or plan under this title, has modified the entity's federal tax status to a nonprofit organization that qualified under Section 501(c)(3) of the Internal Revenue Code.
- (2) Notwithstanding any other provision of this title, a withdrawing entity may provide for the participation of the withdrawing entity's employees with that system or plan as follows:
 - (a) the withdrawing entity shall determine a date that is no later than July 1, 2025, on which the withdrawing entity shall make an election and complete withdrawal under Subsection (3);
 - (b) the withdrawing entity shall provide to the office notice of the withdrawing entity's intent to enter into an agreement described in Subsection (2)(c);
 - (c) the withdrawing entity and the office may enter into an intent to withdraw agreement to document a good faith arrangement to complete a withdrawal under this section; and
 - (d) subject to Subsection (6), the withdrawing entity shall pay to the office any reasonable actuarial and administrative costs determined by the office to have arisen out of an election made under this section.
- (3) The withdrawing entity may elect to:
 - (a)
 - (i) continue the withdrawing entity's participation for all current employees of the withdrawing entity, who are covered by a system or plan on the date set under Subsection (2)(a); and
 - (ii) withdraw from participation in all systems and plans for all persons initially entering employment with the withdrawing entity, beginning on the date set under Subsection (2)(a);or
 - (b) withdraw from participation in all systems or plans for all current and future employees of the withdrawing entity, beginning on the date set under Subsection (2)(a).
- (4)
 - (a) An election made under Subsection (3):
 - (i) shall be made on or before the date specified under Subsection (2)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the withdrawing entity;
 - (iii) remains in effect unless and until the withdrawing entity again becomes a participating employer with the office in accordance with Subsection (5); and
 - (iv) applies to the withdrawing entity as the employer and to all employees of the withdrawing entity.
 - (b) Notwithstanding an election made under Subsection (3), any eligibility for service credit earned by an employee under this title before the date specified under Subsection (2)(a) is not affected by this section.
 - (c) Notwithstanding any other provision of this title, a withdrawing entity that makes an election under Subsection (3) may provide or participate in any type of public or private retirement for the withdrawing entity's employees after the withdrawal.
- (5) After the withdrawal and subject to the laws and rules governing participating employer admission, the withdrawing entity may elect, by resolution of the withdrawing entity's governing body, to resume participation with the office and apply for admission as a participating employer in a system or plan under this title.
- (6) Before a withdrawing entity may withdraw under this section, the withdrawing entity and the office shall enter into an agreement on:
 - (a) the costs described under Subsection (2)(d); and
 - (b) arrangements for the payment of the costs described under Subsection (2)(d).

Amended by Chapter 512, 2023 General Session

Part 7

Allowance Increase

49-11-701 Allowance increase to offset tax liability -- Administration.

- (1) This section applies to members of any system administered by the board under this title, whose retirement allowance remained exempt from the tax imposed under Title 59, Chapter 10, Individual Income Tax Act, pursuant to Laws of Utah 1988, Chapter 195, Section 2, but whose allowance has subsequently become subject to that tax.
- (2) Any member who meets the conditions established under Subsection (1) shall receive the following:
 - (a) the administrator shall calculate the member's retirement allowance pursuant to the formula governing the system from which the member retired;
 - (b) the administrator shall then increase the allowance calculated under Subsection (2)(a) by 3%; and
 - (c) the adjusted retirement allowance under Subsection (2)(b) is the new basis upon which any future adjustments to benefits are made.
- (3)
 - (a) For all members who retire or are receiving retirement allowances in calendar year 1989, the administrator shall apply the 3% adjustment under Subsection (2) to all retirement allowances received in 1989, so that the period for which the allowance becomes subject to the tax under Title 59, Chapter 10, Individual Income Tax Act, and the period for which the 3% adjustment is given are the same.
 - (b) For all members who retire after December 31, 1989, and who meet the requirements of Subsection (1), the administrator shall apply the 3% adjustment under Subsection (2) beginning on the effective date of retirement.
- (4) Any penalty or interest for underpayment of taxes under Title 59, Chapter 1, General Taxation Policies, or Chapter 10, Individual Income Tax Act, shall be waived for members whose noncompliance is attributable to Section 49-11-611 and this section. This only applies to tax year 1989.
- (5) The administrator shall comply with Title 59, Chapter 10, Part 4, Withholding of Tax, with respect to withholding of taxes.
- (6)
 - (a) The retirement board shall annually certify the contribution rate necessary for each system to comply with this section and may adopt rules to administer this section.
 - (b) This contribution rate shall be reported separately from the total contribution rate necessary to fund the systems on an actuarially sound basis and may not be used in comparative studies of public employee benefits.

Amended by Chapter 250, 2008 General Session

Part 8

Defined Contribution Plans

49-11-801 Defined contribution plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.

- (1)
 - (a) The board shall establish and administer defined contribution plans established under the Internal Revenue Code.
 - (b) Voluntary deferrals and nonelective contributions shall be permitted according to the provisions of these plans as established by the board.
 - (c) Except as provided in Subsections 49-22-303(2)(a), 49-22-401(3)(a), 49-23-302(2)(a), and 49-23-401(3)(a), the defined contribution account balance is vested in the participant.
- (2)
 - (a) Voluntary deferrals and nonelective contributions shall be posted to the participant's account.
 - (b) Except as provided in Subsections 49-22-303(3), 49-22-401(4), 49-23-302(3), and 49-23-401(4), participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.
- (3)
 - (a) The board may make rules and create plan documents to implement and administer this section.
 - (b) The board may adopt rules under which a participant may put money into a defined contribution plan as permitted by federal law.
 - (c) The office may reject any payments if the office determines the tax status of the systems, plans, or programs would be jeopardized by allowing the payment.
 - (d) Costs of administration shall be paid as established by the board.
- (4) Voluntary deferrals and nonelective contributions may be invested separately or in conjunction with the Utah State Retirement Investment Fund.
- (5) The board or office may take actions necessary to protect the tax qualified status of the systems, plans, and programs under its control, including the movement of individuals from defined contribution plans to defined benefit systems or the creation of excess benefit plans authorized by federal law.
- (6) The office may, at its sole discretion, correct errors made in the administration of its defined contribution plans.

Amended by Chapter 258, 2015 General Session

49-11-802 Permanent relinquishment of defined contribution benefit -- Procedure.

A participant or designated beneficiary under a defined contribution plan may permanently relinquish the benefit by signing an irrevocable written relinquishment.

Enacted by Chapter 250, 2002 General Session

Part 9
Insurance Premium Tax Revenues Distribution

49-11-901.5 Premium tax revenues -- Distribution.

- (1)
 - (a) In accordance with this section there shall be paid to the office:

- (i) 50% of the annual tax levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for property insurance, as defined under Section 31A-1-301, and as applied to fire and allied lines insurance collected by insurance companies within the state; and
- (ii) 10% of all money assessed and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon premiums for life insurance, as defined in Section 31A-1-301, within the state.
- (b) Payments to the fund shall be made annually until the service liability under this part is liquidated, after which the tax revenue provided in this Subsection (1) ceases.
- (2) The office shall distribute the premium tax revenue paid under Subsection (1) as follows:
 - (a) an amount determined by the office to fully fund the long-term disability program provided for firefighters under Section 49-23-601;
 - (b) an amount determined by the office to the Firefighters' Retirement Trust Fund created under Section 49-16-104 equal to the amount when calculated as a percentage of the certified contribution rate for members in Divisions A and B, as defined under Section 49-16-301, that is the percentage of the certified contribution rate paid to the Firefighters' Retirement Trust Fund on July 1, 2004; and
 - (c) any remaining amount in accordance with Section 49-11-902.

Enacted by Chapter 290, 2011 General Session

Enacted by Chapter 439, 2011 General Session

49-11-902 Premium tax revenues -- Formula -- Deposits.

- (1) If the premium tax revenue received by the office under Subsection 49-11-901.5(1) and first paid in accordance with Subsections 49-11-901.5(2)(a) and (b), including any remaining amount, the office shall deposit the amount in the:
 - (a) Public Safety Contributory Trust Fund created under Section 49-14-104; and
 - (b) Public Safety Noncontributory Retirement Trust Fund created under Section 49-15-104.
- (2) The money deposited under this section shall be used to fund an increase for retirees in the public safety retirement systems from a 2.5% maximum annual cost-of-living adjustment to a 4% maximum annual cost-of-living adjustment under Sections 49-14-403 and 49-15-403 in the public safety retirement systems.
- (3) As required to implement this section, the office shall make the calculations and deposits for the equitable apportionment of money between:
 - (a) Division A1 and B1; and
 - (b) the contributory and noncontributory trust funds.

Amended by Chapter 290, 2011 General Session

Amended by Chapter 439, 2011 General Session

49-11-903 State appropriation funding offset -- Proportionate share determination and reporting.

- (1) As used in this section:
 - (a) "Baseline period" means calendar years 2013, 2014, and 2015.
 - (b) "Premium tax receipts" means the money received by the office under Subsection 49-11-901.5(1) and paid in accordance with Subsections 49-11-901.5(2)(a) and (b).

- (c) "State appropriation" means the ongoing state appropriation from the General Fund to the Firefighters Retirement Fund that offsets the gross expense of the Firefighters' Retirement System.
- (2) The office shall make a determination for the Firefighters' Retirement System, as recommended by the actuary and adopted by the executive director, as follows:
 - (a) determine for the baseline period:
 - (i) the average annual dollar amount of premium tax receipts;
 - (ii) the average annual dollar amount of total employer contributions; and
 - (iii) the proportionate share of total dollar employer contributions funded by premium tax receipts for the baseline period, which is calculated as the average annual dollar amount of premium tax receipts divided by the average annual dollar amount of total employer contributions;
 - (b) determine for each calendar year, beginning after calendar year 2020, the proportionate share of total dollar employer contributions funded by the state appropriation, which is calculated as the dollar amount of the state appropriation divided by the total dollar employer contributions; and
 - (c) if the proportionate share for the year exceeds the proportionate share for the baseline period under Subsection (2)(a)(iii), recommend the actuarially determined dollar amount, if any, that the state appropriation may be reduced by in the future to maintain an equivalent proportionate share that is not expected to exceed the proportionate share for the baseline period.
- (3)
 - (a) If the determination under Subsection (2)(c) results in recommending a reduction to the state appropriation, the office shall report the dollar amount of the recommended reduction to the governor and Legislature, which may be included in the annual report on contribution rates required under Subsection 49-11-203(1)(h).
 - (b) If the Legislature reduces the state appropriation, the board's subsequent certified contribution rates for the Firefighters' Retirement System shall include any additional member or employer contributions required to maintain the system on a financially and actuarially sound basis due to the reduced funding offset dollars.
- (4) As required to implement this section, the office may make the determinations using actuarial assumptions and methods adopted by the board.

Amended by Chapter 451, 2022 General Session

Part 10

Partial Lump-Sum Payments

49-11-1001 Partial lump-sum payment option.

- (1) Except as provided in Subsection (5), at the time of application for retirement, a member may elect to receive a lump-sum payment of a portion of the member's retirement allowance equal to 12 or 24 months of the member's allowance to be paid upon retirement.
- (2) The member's allowance shall be reduced to reflect the actuarial value of the lump-sum received under Subsection (1).
- (3) A member who has received a lump-sum payment under this section is not eligible for another lump-sum payment under this section.

- (4) The board may make rules to implement this section.
- (5) A member or participant of a system or plan under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, is not eligible to make an election under this section.

Amended by Chapter 266, 2010 General Session

Part 11

Public Information Disclosure

49-11-1101 Public financial information disclosure on website -- Exclusions.

- (1) The office shall provide the following financial information for the public on its website:
 - (a) administrative expense transactions from its general ledger accounting system; and
 - (b) employee compensation information by individual employee at least annually.
- (2) For purposes of this part, the office is not required to provide other information for public access on its website, if the disclosure of the information would conflict with the fiduciary obligations of the board, including:
 - (a) revenue transactions; and
 - (b) member and participant information.

Amended by Chapter 281, 2016 General Session

49-11-1102 Public notice of administrative board meetings -- Posting on Utah Public Notice Website.

- (1) The office shall provide advance public notice of meetings and agendas on the Utah Public Notice Website established in Section 63A-16-601 for administrative board meetings.
- (2) The office may post other public materials, as directed by the board, on the Utah Public Notice Website.

Amended by Chapter 84, 2021 General Session

Amended by Chapter 345, 2021 General Session

49-11-1103 Public information requests.

The office shall establish, in policy, time limits to respond to public information requests.

Enacted by Chapter 281, 2016 General Session

Part 12

Postretirement Reemployment Restrictions Act

49-11-1201 Title.

This part is known as the "Postretirement Reemployment Restrictions Act."

Enacted by Chapter 310, 2016 General Session

49-11-1202 Definitions.

As used in this part:

- (1)
 - (a) "Affiliated emergency services worker" means a person who:
 - (i) is employed by a participating employer;
 - (ii) performs emergency services for another participating employer that is a different agency;
 - (iii) is trained in techniques and skills required for the emergency service;
 - (iv) continues to receive regular training required for the service;
 - (v) is on the rolls as a trained affiliated emergency services worker of the participating employer; and
 - (vi) provides ongoing service for a participating employer, which service may include service as a volunteer firefighter, reserve law enforcement officer, search and rescue worker, emergency medical technician, ambulance worker, park ranger, or public utilities worker.
 - (b) "Affiliated emergency services worker" does not include a person who performs work or service but does not meet the requirements of Subsection (1)(a).
- (2) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's reemployed position were deemed to be an eligible, full-time position within that system.
- (3) "Part-time appointed or elected board member" means an individual who:
 - (a) serves in a position:
 - (i) as a member of a board, commission, council, committee, panel, or other body of a participating employer; and
 - (ii) that is designated in the participating employer's governing statute, charter, creation document, or similar document;
 - (b) is appointed or elected to the position for a definite and fixed term of office by official and duly recorded action of the participating employer;
 - (c) except for the service in the position, does not perform other work or service for compensation for the participating employer, whether as an employee or under a contract; and
 - (d) retires from a participating employer that is different than the participating employer with the position in which the person serves.
- (4)
 - (a) "Reemployed," "reemploy," or "reemployment" means work or service performed for a participating employer after retirement, in exchange for compensation.
 - (b) Reemployment includes work or service performed on a contract for a participating employer if the retiree is:
 - (i) listed as the contractor; or
 - (ii) an owner, partner, or principal of the contractor.
- (5) "Retiree":
 - (a) means a person who:
 - (i) retired from a participating employer; and
 - (ii) begins reemployment on or after July 1, 2010, with a participating employer; and
 - (b) does not include a person:
 - (i)
 - (A) who was reemployed by a participating employer before July 1, 2010; and
 - (B) whose participating employer that reemployed the person under Subsection (5)(b)(i)(A) was dissolved, consolidated, merged, or structurally changed in accordance with Section 49-11-621 on or after July 1, 2010; or

- (ii) who is working under a phased retirement agreement in accordance with Title 49, Chapter 11, Part 13, Phased Retirement.

Amended by Chapter 449, 2020 General Session

49-11-1203 Applicability.

- (1)
 - (a) This part does not apply to employment as an elected official if the elected official's position is not full time as certified by the participating employer.
 - (b) The provisions of this part apply to an elected official whose elected position is full time as certified by the participating employer.
- (2)
 - (a) This part does not apply to employment as a part-time appointed board member who does not receive any remuneration, stipend, or other benefit for the part-time appointed board member's service.
 - (b) For purposes of this Subsection (2), remuneration, stipend, or other benefit does not include receipt of per diem and travel expenses up to the amounts established by the Division of Finance in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (3) This part does not apply to a person who is reemployed as an active senior judge or an active senior justice court judge as described by Utah State Court Rules, appointed to hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution.
- (4) An exemption under this section from the provisions of this part is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter retirement system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-11-1204 General restrictions -- Election following one-year separation -- Amortization rate.

- (1) A retiree may not for the same period of reemployment:
 - (a)
 - (i) earn additional service credit; or
 - (ii) receive any retirement related contribution from a participating employer; and
 - (b) receive a retirement allowance.
- (2)
 - (a) Except as provided under Section 49-11-1205, the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.
 - (b) If the office cancels the retiree's retirement allowance under Subsection (2)(a), the retiree may be eligible to earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title.

- (3) If a reemployed retiree, in accordance with Subsection (2)(a), is exempt from having the allowance cancelled, including for completing the one-year separation from employment with a participating employer, the retiree may elect to:
 - (a) cancel the retiree's retirement allowance and instead earn additional service credit in the reemployed position and receive an allowance in accordance with Subsections (4)(a) and (5) and other provisions of this title; or
 - (b) continue to receive the retiree's retirement allowance, forfeit earning additional service credit, and forfeit any retirement-related contribution from the participating employer that reemployed the retiree.
- (4)
 - (a) If a retiree's retirement allowance is cancelled and the retiree is eligible for retirement coverage in a reemployed position, the office shall reinstate the retiree to active member status on the first day of the month following the date of the employee's eligible reemployment.
 - (b) Except as provided under Subsection (4)(c), if the retiree is not otherwise eligible for retirement coverage in the reemployed position, the participating employer that reemploys the retiree shall contribute the amortization rate to the office on behalf of the retiree.
 - (c) A participating employer that reemploys a retiree in accordance with Subsection 49-11-1205(1) is not required to contribute the amortization rate to the office.
- (5)
 - (a) For a retiree reinstated to active member status under Subsection (4)(a) who retires within two years from the date of reemployment, the office:
 - (i) may not recalculate a retirement benefit for the retiree; and
 - (ii) shall resume the allowance that was being paid to the retiree at the time of the cancellation.
 - (b) Subject to Subsection (1), for a retiree who is reinstated to active membership under Subsection (4)(a) and retires two or more years after the date of reinstatement to active membership, the office shall:
 - (i) resume the allowance that was being paid at the time of cancellation; and
 - (ii) calculate an additional allowance for the retiree based on the formula in effect at the date of the subsequent retirement for all service credit accrued between the first and subsequent retirement dates.

Amended by Chapter 24, 2020 General Session

49-11-1205 Postretirement reemployment restriction exceptions.

- (1)
 - (a) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:
 - (i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;
 - (ii) upon reemployment after the break in service under Subsection (1)(a)(i), the retiree does not receive any employer paid benefits, including:
 - (A) retirement service credit or retirement-related contributions;
 - (B) medical benefits;
 - (C) dental benefits;
 - (D) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, Title 34A, Chapter 3, Utah Occupational Disease

- Act, and withholdings required by federal or state law for social security, Medicare, and unemployment insurance; or
- (E) paid time off, including sick, annual, or other type of leave; and
- (iii)
 - (A) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based; or
 - (B) the retiree is reemployed as a judge as defined under Section 78A-11-102.
- (b) The board shall adjust the amounts under Subsection (1)(a)(iii) 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.
- (2) A retiree shall be considered as having completed the one-year separation from employment with a participating employer required under Section 49-11-1204, if the retiree:
 - (a) before retiring:
 - (i) was employed with a participating employer as a public safety service employee as defined in Section 49-14-102, 49-15-102, or 49-23-102;
 - (ii) during the employment under Subsection (2)(a)(i), suffered a physical injury resulting from external force or violence while performing the duties of the employment, for which injury the retiree would have been approved for total disability in accordance with the provisions under Chapter 21, Public Employees' Long-Term Disability Act, if years of service are not considered;
 - (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;
 - (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) 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) 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).

Amended by Chapter 193, 2021 General Session

49-11-1206 Notice of postretirement reemployment.

- (1) A participating employer shall immediately notify the office:
 - (a) if the participating employer reemploys a retiree;
 - (b) whether the reemployment is subject to Section 49-11-1204 or Subsection 49-11-1205(1), (2), or (3); and
 - (c) of any election by the retiree under Section 49-11-1204.

- (2) A participating employer shall certify to the office whether the position of an elected official is or is not full time.
- (3) A retiree subject to this part shall report to the office the status of the reemployment under Section 49-11-1204 or 49-11-1205.

Enacted by Chapter 310, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

49-11-1207 Postretirement reemployment -- Violations -- Penalties.

- (1)
 - (a) If the office receives notice or learns of the reemployment of a retiree in violation of Section 49-11-1204 or 49-11-1205, the office shall:
 - (i) immediately cancel the retiree's retirement allowance;
 - (ii) keep the retiree's retirement allowance cancelled for the remainder of the calendar year if the reemployment with a participating employer exceeded the limitation under Subsection 49-11-1205(1)(a)(iii)(A), (3)(b), or (4)(b); and
 - (iii) recover any overpayment resulting from the violation in accordance with the provisions of Section 49-11-607 before the allowance may be reinstated.
 - (b) Reinstatement of an allowance following cancellation for a violation under this section is subject to the procedures and provisions under Section 49-11-1204.
- (2) If a retiree or participating employer failed to report reemployment in violation of Section 49-11-1206, the retiree, participating employer, or both, who are found to be responsible for the failure to report, are liable to the office for the amount of any overpayment resulting from the violation.
- (3) A participating employer is liable to the office for a payment or failure to make a payment in violation of this part.
- (4) If a participating employer fails to notify the office in accordance with Section 49-11-1206, the participating employer is immediately subject to a compliance audit by the office.

Amended by Chapter 171, 2022 General Session

49-11-1208 Rulemaking.

The board may make rules to implement this part.

Enacted by Chapter 310, 2016 General Session

Part 13 Phased Retirement

49-11-1301 Definitions.

As used in this part:

- (1) "Amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's part-time position were considered to be an eligible, full-time position within that system.
- (2) "Full-time" means a:

- (a) regular full-time employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 40 hours or more per week and who receives benefits normally provided by the participating employer;
 - (b) teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches full time;
 - (c) firefighter service employee whose employment normally requires an average of 2,080 hours of regularly scheduled firefighter service per year; and
 - (d) public safety service employee whose employment normally requires an average of 2,080 hours of regularly scheduled public safety service per year.
- (3) "Half-time" means:
- (a) a regular employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours per week and who receives benefits normally provided by the participating employer;
 - (b) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time;
 - (c) a firefighter service employee whose employment normally requires an average of 1,040 hours of regularly scheduled firefighter service per year;
 - (d) a public safety service employee whose employment normally requires an average of 1,040 hours of regularly scheduled public safety service per year; and
 - (e) for a retiree employed before retirement as a public safety service employee or a firefighter service employee in a position for which the participating employer established a regularly scheduled work period in excess of 2,080 hours per year, one-half of that regularly scheduled work period as long as the retiree has continuing employment in that same position.
- (4) "Phased retirement" means continuing employment:
- (a) on a half-time basis of a retiree with the same participating employer following the retiree's retirement date while the retiree receives a reduced retirement allowance; or
 - (b) on a three-quarter time basis of a retiree with the same participating employer following the retiree's retirement date while the retiree receives a reduced retirement allowance if the retiree is employed as a public safety service employee or a firefighter service employee.
- (5) "Three-quarter time" means:
- (a) a firefighter service employee whose employment normally requires an average of 1,560 hours of regularly scheduled firefighter service per year;
 - (b) a public safety service employee whose employment normally requires an average of 1,560 hours of regularly scheduled public safety service per year; and
 - (c) for a retiree who was employed before retirement as a public safety service employee or a firefighter service employee in a position for which the participating employer established a regularly scheduled work period in excess of 2,080 hours per year, three quarters of that regularly scheduled work period as long as the retiree has continuing employment in that same position.

Amended by Chapter 98, 2020 General Session

49-11-1302 Phased retirement -- Voluntary participation -- Employer duties.

A participating employer may elect to participate in phased retirement for a retiree who has not completed the one-year employment separation requirement under Section 49-11-1204 under the conditions established under this part, if the participating employer:

- (1) establishes written policies and procedures for phased retirement that shall include provisions for:
 - (a) granting and denying a request for phased retirement;
 - (b) needed approvals within the participating employer;
 - (c) time limits or other restrictions;
 - (d) identifying positions that may be included or excluded; and
 - (e) the elements of a written agreement described under Section 49-11-1304;
- (2) enters into an agreement described under Section 49-11-1304;
- (3) submits an application to the office for phased retirement on behalf of the parties of the agreement described under Section 49-11-1304; and
- (4) complies with this part.

Enacted by Chapter 280, 2016 General Session

Amended by Chapter 310, 2016 General Session, (Coordination Clause)

49-11-1303 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) 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 to the retiree's or alternate payee's allowance;
 - (e) any death benefits payable to a surviving spouse or other beneficiary shall be paid based on 100% of the retiree's retirement allowance;
 - (f) the retiree may not receive any employer provided retirement benefits, service credit accruals, or any retirement related contributions from the participating employer; and
 - (g) 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:

- (i) any non-retirement related benefits;
 - (ii) leave benefits;
 - (iii) medical benefits; and
 - (iv) other benefits.
- (4)
- (a) If a retiree is employed as a public safety service employee or a firefighter service employee, for the period of the phased retirement the requirements of Subsection (3) or (4)(b) are satisfied.
 - (b) For the period of the phased retirement:
 - (i) the retiree is employed as a public safety service employee or a firefighter service employee;
 - (ii) the retiree receives 25% of the retiree's monthly allowance;
 - (iii) the participating employer employs the retiree on a three-quarter time basis;
 - (iv) a participating employer that employs the retiree shall contribute to the office the certified contribution rate applicable to the system that would have covered the retiree if the retiree's part-time position were considered to be an eligible, full-time position within the system;
 - (v) the retiree or an alternate payee may not receive an annual cost-of-living adjustment to the retiree's or alternate payee's allowance;
 - (vi) any death benefits payable to a surviving spouse or other beneficiary shall be paid based on 100% of the retiree's retirement allowance;
 - (vii) the retiree may not receive any employer provided retirement benefits, service credit accruals, or any retirement related contributions from the participating employer; and
 - (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.

Amended by Chapter 193, 2021 General Session

49-11-1304 Phased retirement agreements.

- (1) The participating employer and a willing and eligible retiree shall enter into a written agreement to participate in phased retirement.
- (2) The agreement shall specify the period of the phased retirement and, at the discretion of the agreeing parties, address:
 - (a) hours of work;
 - (b) job duties; and
 - (c) other arrangements related to the employment.

Enacted by Chapter 280, 2016 General Session

49-11-1305 Reporting -- Penalties.

- (1)

- (a) A participating employer shall, within five business days, notify the office if the participating employer enters a phased retirement agreement with a retiree.
 - (b) A participating employer shall report to the office any change in status of the phased retirement in accordance with rules established under Section 49-11-1308.
 - (c) If a participating employer fails to notify the office in accordance with this section, the participating employer is immediately subject to a compliance audit by the office.
- (2)
- (a) A retiree who has entered into phased retirement agreement under this section shall report to the office the phased retirement agreement in accordance with rules established under Section 49-11-1308.
 - (b) If the retiree fails to report to the office as required under this section, the office shall withhold one month's allowance for each month the retiree fails to make the report, in a timely manner, required under Subsection (2)(a).
- (3) If a retiree receives a retirement allowance or portion of a retirement allowance in error or in violation of this part:
- (a) the office shall cancel the retiree's retirement allowance; and
 - (b) the office shall recover any overpayment in accordance with Section 49-11-607.
- (4) If a retiree or participating employer violates this part, including a failure to report in accordance with this section, the retiree, participating employer, or both that are found to be responsible for the violation are liable to the office for the amount of any allowance overpayment, failure to make a required payment or contribution, or other amount needed to correct an error or incorrect benefit resulting from the violation.

Enacted by Chapter 280, 2016 General Session

49-11-1306 Reset of one year separation.

If a retiree is employed under a phased retirement agreement under this part, the termination date of the phased retirement employment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection 49-11-1204(2).

Amended by Chapter 98, 2020 General Session

49-11-1307 Phased retirement -- Adjustments or termination.

- (1) The Legislature may make adjustments to or terminate the phased retirement option created under this part, including:
 - (a) amending phased retirement eligibility, restrictions, scope, or duration provisions;
 - (b) closing phased retirement to additional retirees; or
 - (c) terminating phased retirement for all participating retirees.
- (2) A participating employer and retiree enter into a phased retirement agreement subject to the adjustments or termination reserved in this section.

Enacted by Chapter 280, 2016 General Session

49-11-1308 Rulemaking.

The board may make rules to implement this part.

Enacted by Chapter 280, 2016 General Session

Part 14

Forfeiture of Retirement Benefits

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 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(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 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.

Amended by Chapter 328, 2023 General Session

Chapter 12

Public Employees' Contributory Retirement Act

Part 1

General Provisions

49-12-101 Title.

This chapter is known as the "Public Employees' Contributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Benefits normally provided" means a benefit offered by an employer, including:
 - (i) a leave benefit of any kind;
 - (ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage;
 - (iii) employer contributions to a health savings account, health reimbursement account, health reimbursement arrangement, or medical expense reimbursement plan; and
 - (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit.
 - (b) "Benefits normally provided" does not include:
 - (i) a payment for social security;
 - (ii) workers' compensation insurance;
 - (iii) unemployment insurance;
 - (iv) a payment for Medicare;
 - (v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);
 - (vi) any other benefit that state or federal law requires an employer to provide an employee who would not otherwise be eligible to receive the benefit; or
 - (vii) any benefit that an employer provides an employee in order to avoid a penalty or tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.
- (2)
 - (a) "Compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:
 - (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
 - (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (v) member contributions.
 - (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
 - (c) "Compensation" does not include:
 - (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments;

- (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs; or
 - (vi) a teacher salary bonus described in Section 53F-2-513.
 - (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3)
- (a) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(b), (c), (d), (e), and (f).
 - (b) Except as provided in Subsection (3)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (e) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (f) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (7).
- (4) "Participating employer" means an employer that meets the participation requirements of Sections 49-12-201 and 49-12-202.
- (5)
- (a) "Regular full-time employee" means an employee:
 - (i) whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year;
 - (ii) whose employment normally requires an average of 20 hours or more per week, except as modified by the board; and
 - (iii) who receives benefits normally provided by the participating employer.
 - (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407;
 - (iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

- (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
 - (i)
 - (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
 - (ii)
 - (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
 - (iii) who is a person working on a contract:
 - (A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (6) "System" means the Public Employees' Contributory Retirement System created under this chapter.
- (7) "Years of service credit" means:
 - (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
 - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 171, 2022 General Session

49-12-103 Creation of system.

There is created for members employed by a participating employer the "Public Employees' Contributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-104 Creation of trust fund.

- (1) There is created the "Public Employees' Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2

Membership Eligibility

49-12-201 System membership -- Eligibility.

- (1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:
 - (a) the date on which the participating employer began participating in this system; or
 - (b) the effective date of employment of the regular full-time employee with the participating employer.
- (2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.
- (3) Notwithstanding the provisions of Subsection (1), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

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 participation in this system, a participating employer may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for 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 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 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, 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 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, 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 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 employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:
 - (i) purchase service credit 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.

Amended by Chapter 328, 2023 General Session

49-12-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
 - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the Utah Board of Higher Education, or the technical college board of trustees for an employee of each technical college, during any period

- in which required contributions based on compensation have been paid on behalf of the employee by the employer;
- (c) an employee serving as an exchange employee from outside the state for an employer who has not elected to make all of the employer's exchange employees eligible for service credit in this system;
 - (d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;
 - (e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);
 - (g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d);
 - (h) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);
 - (i) an employee described in Subsection (1)(i)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-624(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);
 - (j) an employee who is employed with a withdrawing entity that has elected under Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this system; or
 - (k) an employee who is employed with a withdrawing entity that elects under Section 49-11-626 to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-626(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
- (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3)
- (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.
 - (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).
 - (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).

- (4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:
- (a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;
 - (b) an elected official;
 - (c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;
 - (d) an employee of the Governor's Office of Planning and Budget;
 - (e) an employee of the Governor's Office of Economic Opportunity;
 - (f) an employee of the Commission on Criminal and Juvenile Justice;
 - (g) an employee of the Governor's Office;
 - (h) an employee of the Public Lands Policy Coordinating Office, created in Section 63L-11-201;
 - (i) an employee of the State Auditor's Office;
 - (j) an employee of the State Treasurer's Office;
 - (k) any other member who is permitted to make an election under Section 49-11-406;
 - (l) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;
 - (m) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to the organization's members; and
 - (n) an employee serving as an exchange employee from outside the state for an employer who has elected to make all of the employer's exchange employees eligible for service credit in this system.
- (5)
- (a) Each participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (4).
 - (b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.
- (6)
- (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
- (a) maintain a list of employee exemptions; and
 - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.
- (9) An employee's exclusion, exemption, participation, or election described in this section:
- (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 512, 2023 General Session

49-12-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

- (1)
 - (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or a public or private retirement system, organization, or company, designated as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).
 - (b) The election is final, and no right exists to make any further election.
 - (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).
 - (d) The technical college board of trustees of each technical college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each technical college is eligible to participate in under Subsection (1)(a).
- (2)
 - (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
 - (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Utah Board of Higher Education, or the technical college board of trustees of each technical college for each technical college, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by:
 - (A) except as provided in Subsection (2)(b)(ii)(B), the Utah Board of Higher Education; or
 - (B) the technical college board of trustees of each technical college for regular full-time employees of each technical college.
 - (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.
- (3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.
- (4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.
- (5)
 - (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education shall have a one-time irrevocable election to participate in this system if the employee:
 - (i) was hired after January 1, 1979;
 - (ii) whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system; and

- (iii) has service credit in a system under this title.
- (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
- (c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.
- (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.
- (6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment while covered under another retirement program sponsored by the institution of higher education by complying with the requirements of Section 49-11-403.
- (7) The board shall make rules to implement this section.
- (8) An employee's participation or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

Amended by Chapter 365, 2020 General Session

Part 3

Contributions

49-12-301 Contributions -- Two levels -- Election by a participating employer to pay employee contributions -- Accounting for and vesting of member contributions -- Deductions.

- (1) Participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two levels according to participating employers as follows:
 - (a) Level A includes the state, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.
 - (b) Level B includes all other participating employers in this system.
- (3)
 - (a) A participating employer may elect to pay all or part of the required member contributions, in addition to the required participating employer contributions.
 - (b) Any amount contributed by a participating employer under this section shall vest to the member's benefit as though the member had made the contribution.
 - (c) The required member contributions shall be reduced by the amount that is paid by the participating employer.
- (4)
 - (a) All member contributions are credited by the office to the account of the individual member.
 - (b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) All member contributions are vested and nonforfeitable.

- (5)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-302 Purchase of service credit.

Any member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase the service credit in accordance with Section 49-11-403.

Enacted by Chapter 250, 2002 General Session

Part 4
Defined Benefit

49-12-401 Eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or
 - (iv) the member has accrued at least 30 years of service credit.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.

- (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
- (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
- (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-12-402 Service retirement plans -- Calculation of retirement allowance.

- (1)
 - (a) Except as provided under Section 49-12-701, retirees of this system may choose from the six retirement options described in this section.
 - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an annual allowance calculated as follows:
 - (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is:
 - (i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued prior to July 1, 1975; plus
 - (ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued on and after July 1, 1975.
 - (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, unless the member has 30 or more years of accrued credit in which event no reduction is made to the allowance.
- (c)
 - (i) Years of service includes any fractions of years of service to which the retiree may be entitled.
 - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
 - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member

contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

- (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
- (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
- (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (4)
 - (a)
 - (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the Utah Board of Higher Education to \$4,800.
 - (ii) This limitation is not applicable to retirees who elected to continue in this system by July 1, 1967.
 - (b) Periods of employment which are exempt from this system under Subsection 49-12-203(1) (b), may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the Utah Board of Higher Education based on this period of employment are forfeited.
- (5)
 - (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
 - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (6)

- (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is no court order filed in the matter.
- (b) A conversion to an Option One benefit under this Subsection (6) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.

Amended by Chapter 365, 2020 General Session

49-12-403 Allowance payable by lump sum payment.

- (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-404 Lump-sum death benefit for retiree and spouse.

- (1)
 - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
 - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
 - (c) The board may make rules for the administration of this lump-sum death benefit.
- (2)
 - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
 - (a) A retiree whose retirement date is on or after July 1, 1995, may elect to cancel the lump-sum death benefit under this section.
 - (b) The cancellation under this Subsection (3) is irrevocable.
 - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Amended by Chapter 118, 2004 General Session

49-12-405 Death of married member -- Service retirement benefits to surviving spouse.

- (1) Upon the request of a deceased member's surviving spouse, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
 - (a) the member has:
 - (i) 25 or more years of service credit;
 - (ii) attained age 60 with 20 or more years of service credit;

- (iii) attained age 62 with 10 or more years of service credit; or
 - (iv) attained age 65 with four or more years of service credit; and
- (b) the member dies leaving a surviving spouse.
- (2) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:
 - (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (3) The Option Three benefit calculation, when there are 25 or more years of service credit, shall be calculated without a reduction in allowance under Section 49-12-402.
- (4) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any payments made under Section 49-12-501 and constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing claim for benefits under Section 49-12-501.
- (6) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

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

Amended by Chapter 193, 2021 General Session

49-12-407 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-12-402 or 49-12-404, if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-408 Minimum monthly allowance.

- (1) A retiree under this system may not receive less than \$9 per month for each year of service credit at the time of retirement.

- (2) The increased allowance provided by this section may not exceed the allowance payable under Option One under Section 49-12-402, by more than 75%.
- (3) The cost of providing this benefit shall be assumed within the contribution rate established under Section 49-12-301.

Renumbered and Amended by Chapter 250, 2002 General Session

49-12-409 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Amended by Chapter 116, 2005 General Session

Part 5

Death Benefit

49-12-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim -- Exclusion.

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:
 - (a) benefit levels;
 - (b) classes of members; and
 - (c) a living benefit option.
- (3) This death benefit is payable when:
 - (a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-12-402 requires to be treated as the death of a member before retirement;
 - (b) the office receives acceptable proof of death; and
 - (c) benefits are not payable under Section 49-12-404.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:

- (a) the return of any member contributions under this chapter; plus
- (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer as a portion of the contribution rate established under Section 49-12-301.
- (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless:
 - (a) that member has 10 or more years of accrued service credit prior to July 1, 1987; or
 - (b) the death of the member occurs either:
 - (i) within a period of 120 days after the last day of work for which the person received compensation; or
 - (ii) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office, and the office is not liable for any further or additional claims or assessments on behalf of the member.
- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid to a beneficiary of a retiree under this system.

Amended by Chapter 316, 2013 General Session

Part 6

Disability

49-12-601 Disability retirement -- Medical examinations -- Reemployment of retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit to medical examination.

- (1) Only members of this system who became eligible for a disability retirement allowance before January 1, 1983, are covered under this section.
- (2)
 - (a) The board may, upon the recommendation of the administrator, require any retirant who has been retired for disability and who has not attained the age of 60 years, to undergo a medical examination by a physician, physician assistant, or surgeon, appointed by the board, at the place of residence of the retirant or other place mutually agreed upon.
 - (b) Upon the basis of the examination, the board shall determine whether the retirant with a disability is still incapacitated, physically or mentally, for service under this chapter.

- (c) If the board determines that the retirant is not incapacitated, the retirement allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the same class as that held by the retirant when retired for disability.
 - (d) If any employing unit is unable to reinstate the retirant, the board shall continue the disability retirement allowance of the retirant until employment is available.
- (3)
- (a) If a retirant with a disability under this system reenters covered service and is eligible for membership in the retirement system, the retirement allowance shall be cancelled and the retirant shall immediately become a member of the retirement system.
 - (b)
 - (i) The member's individual account shall be credited with an amount which is the actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the member's retirement allowance which was derived from the member's accumulated contributions.
 - (ii) The amount credited may not exceed the amount of accumulated contributions standing at the time of retirement.
 - (c) Each member shall receive credit for the service in the member's account at the time of retirement.
- (4) If the retirement allowance of any retirant with a disability is cancelled for any cause other than reentry into service, the retirant shall be paid the accumulated contributions less the amounts prescribed by Subsection (6).
- (5)
- (a) If any member retired for disability engages in a gainful occupation prior to attaining age 60, the administrator shall reduce the amount of the retirement allowance to an amount which, when added to the compensation earned monthly by the retirant in that occupation, may not exceed the amount of the final average monthly salary on the basis of which the current service retirement allowance was determined.
 - (b) If the earning capacity of the retirant is further altered, the administrator may further alter the retirement allowance as provided in this Subsection (5).
 - (c) In no event, however, may the retirement benefit be reduced below that portion of the retirant's allowance derived from the retirant's own accumulated contributions.
 - (d) When the retirant reaches age 60, the retirement allowance shall be made equal to the amount upon which the retirant was originally retired and may not again be modified for any cause.
- (6)
- (a) If any member who retired for disability under age 60, refuses to submit to a medical examination, the retirement allowance may be discontinued until the retirant withdraws that refusal.
 - (b) If the refusal continues for one year the disability status may be cancelled and membership terminated.
 - (c)
 - (i) The retirant's accumulated contribution account shall be the actuarial equivalent on the date of the retirant's change of status, based on a disabled life, of that portion of the disability retirement allowance which was derived from the retirant's accumulated contributions.
 - (ii) The amount credited may not exceed the amount of the retirant's accumulated contributions at the time of disability retirement.

Amended by Chapter 349, 2019 General Session

Part 7

Early Retirement Incentive

49-12-701 Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on reemployment.

- (1) Any member of this system may retire and receive the allowance allowed under Subsection (2) if the member meets the following requirements as of the member's retirement date:
 - (a) the member is eligible for retirement under Section 49-12-401, or has 25 years of service credit;
 - (b) the member elects to forfeit any stipend for retirement offered by the participating employer; and
 - (c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).
- (2)
 - (a) A member who retires under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.
 - (b) An actuarial reduction may not be applied to the allowance granted under this section.
- (3) In order to receive the allowance allowed by this section, a member shall submit an application to the office as follows:
 - (a)
 - (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, or September, 1987.
 - (ii) If a Level A member elects to retire, the executive director or participating employer may request the member to delay the retirement date until a later date, but no later than June 30, 1988.
 - (iii) If the member agrees to delay the retirement date, the retirement date shall be delayed, but service credit may not be accrued after the member's original retirement date elected by the member, and compensation earned after the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement allowance.
 - (b)
 - (i) For political subdivision employees under Level B, the application shall be filed by September 30, 1987.
 - (ii) The retirement date shall then be set by the member on the 1st or 16th day of July, August, September, October, November, or December, 1987.
- (4)
 - (a) The cost of providing the allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.
 - (b) The cost of providing the allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.
 - (c) The rate increase under Subsections (4)(a) and (b) shall be funded:
 - (i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (4)(d), which is funded by savings derived from this early retirement incentive and a work force reduction;

- (ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53F, Chapter 2, State Funding -- Minimum School Program; and
 - (iii) for political subdivisions under Level B, by direct contributions by the participating employer.
- (d)
- (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (4)(c)(i) and (ii) shall be reported to the Legislature and shall be appropriated as provided by law.
 - (ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.
 - (iii) In the case of Subsection (4)(c)(ii), the State Board of Education shall certify the amount of savings derived from this early retirement incentive.
 - (iv) The State Board of Education and the participating employer may not spend the savings until appropriated by the Legislature as provided by law.
- (5) A member who retires under this section is subject to Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.
- (6) The board may adopt rules to administer this section.
- (7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Amended by Chapter 415, 2018 General Session

Chapter 13

Public Employees' Noncontributory Retirement Act

Part 1

General Provisions

49-13-101 Title.

This chapter is known as the "Public Employees' Noncontributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-102 Definitions.

As used in this chapter:

- (1) "Benefits normally provided" means the same as that term is defined in Section 49-12-102.
- (2)
 - (a) "Compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:
 - (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law; and

- (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
 - (c) "Compensation" does not include:
 - (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments;
 - (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs; or
 - (vi) a teacher salary bonus described in Section 53F-2-513.
 - (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3)
- (a) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(b), (c), (d), and (e).
 - (b) Except as provided in Subsection (3)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) If the member retires more than six months from the date of termination of employment and for purposes of computing the member's final average salary only, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement.
 - (e) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (7).
- (4) "Participating employer" means an employer that meets the participation requirements of Sections 49-13-201 and 49-13-202.
- (5)
- (a) "Regular full-time employee" means an employee:
 - (i) whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year;
 - (ii) whose employment normally requires an average of 20 hours or more per week, except as modified by the board; and
 - (iii) who receives benefits normally provided by the participating employer.
 - (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;

- (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-13-407;
 - (iv) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and
 - (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
- (i)
 - (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
 - (ii)
 - (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
 - (iii) who is a person working on a contract:
 - (A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (6) "System" means the Public Employees' Noncontributory Retirement System.
- (7) "Years of service credit" means:
- (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
 - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 171, 2022 General Session

49-13-103 Creation of system.

There is created for members employed by a participating employer the "Public Employees' Noncontributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-104 Creation of trust fund.

- (1) There is created the "Public Employees' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2

Membership Eligibility

49-13-201 System membership -- Eligibility.

- (1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.
 - (a) A person entering regular full-time employment with the state or its educational institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this system.
 - (b) A person entering regular full-time employment with the state or its educational institutions after July 1, 2011, who has service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible for service credit in this system.
 - (c) A regular full-time employee of the state or its educational institutions prior to July 1, 1986, may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.
- (2) An employer, other than the state and its educational institutions, may participate in this system except that once an employer elects to participate in this system, that election is irrevocable and the election must be made before July 1, 2011.
 - (a) Until June 30, 2011, a person initially entering regular full-time employment with a participating employer which elects to participate in this system is eligible for service credit in this system.
 - (b) A person in regular full-time employment with a participating employer prior to the participating employer's election to participate in this system may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.
- (3) Notwithstanding the provisions of Subsections (1) and (2), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

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 participation in this system, a participating employer may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for 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 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 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, 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 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 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, 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 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 employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:
 - (i) purchase service credit 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.

Amended by Chapter 328, 2023 General Session

49-13-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
 - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the Utah Board of Higher Education, or the technical college board of trustees for an employee of each technical college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;
 - (c) an employee serving as an exchange employee from outside the state for an employer who has not elected to make all of the employer's exchange employees eligible for service credit in this system;
 - (d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;
 - (e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5);

- (g) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);
- (h) an employee described in Subsection (1)(h)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-624(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);
- (i) an employee who is employed with a withdrawing entity that has elected under Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this system; or
- (j) an employee who is employed with a withdrawing entity that elects under Section 49-11-626 to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-626(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
 - (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3)
 - (a) Upon cessation of the participating employer contributions, an employee under Subsection (1) (b) is eligible for service credit in this system.
 - (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).
- (4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:
 - (a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;
 - (b) an elected official;
 - (c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;
 - (d) an employee of the Governor's Office of Planning and Budget;
 - (e) an employee of the Governor's Office of Economic Opportunity;
 - (f) an employee of the Commission on Criminal and Juvenile Justice;
 - (g) an employee of the Governor's Office;
 - (h) an employee of the State Auditor's Office;
 - (i) an employee of the State Treasurer's Office;
 - (j) any other member who is permitted to make an election under Section 49-11-406;
 - (k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;

- (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
 - (m) an employee serving as an exchange employee from outside the state for an employer who has elected to make all of the employer's exchange employees eligible for service credit in this system.
- (5)
- (a) Each participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (4).
 - (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.
- (6)
- (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
- (a) maintain a list of employee exemptions; and
 - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.
- (9) An employee's exclusion, exemption, participation, or election described in this section:
- (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 512, 2023 General Session

49-13-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

- (1)
- (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or in a retirement system with a public or private retirement system, organization, or company, designated as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).
 - (b) The election is final, and no right exists to make any further election.
 - (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).
 - (d) The technical college board of trustees of each technical college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each technical college is eligible to participate in under Subsection (1)(a).
- (2)

- (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
- (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Utah Board of Higher Education, or the technical college board of trustees of each technical college for regular full-time employees of each technical college, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by:
 - (A) except as provided in Subsection (2)(b)(ii)(B), the Utah Board of Higher Education; or
 - (B) the technical college board of trustees of each technical college for regular full-time employees of each technical college.
- (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.
- (3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.
- (4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.
- (5)
 - (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system shall have a one-time irrevocable election to participate in this system.
 - (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
 - (c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.
 - (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.
- (6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment while covered under another retirement program by complying with the requirements of Section 49-11-403.
- (7) The board shall make rules to implement this section.
- (8) An employee's participation or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

Amended by Chapter 365, 2020 General Session

49-13-205 Conversion to system -- Time schedule -- Conversion windows.

- (1) An employee governed under Section 49-13-201 shall make the election to participate in this system within six months of July 1, 1986.
- (2)
 - (a)
 - (i) An employer governed under Sections 49-13-201 and 49-13-202 shall make the election to participate in this system within six months of July 1, 1986.
 - (ii) The employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.
 - (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the employer, at which all employees of the political subdivision shall be given an opportunity to be heard on the question of participating in this system.
 - (iv) Notice of the hearing shall be mailed to all employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.
 - (b) A regular full-time employee has six months from the date the employer elects to participate in this system in which to make the election to participate in this system and become eligible for service credit in this system.
- (3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.
- (4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995.
- (5) Subsection (2) shall be used to provide a fourth time period of conversion to this system beginning July 1, 2009 for an entity created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act, and the entity's employees.
- (6) Subsection (2) shall be used to provide a fifth time period of conversion to this system beginning July 1, 2015.
- (7) A member of the Contributory Retirement System who is employed by one agency and who either transfers to or is reemployed by another agency shall be enrolled in the Noncontributory Retirement System as of the date of employment, if the participating employer has elected to participate in the Noncontributory Retirement System.

Amended by Chapter 176, 2015 General Session

Part 3

Contributions

49-13-301 Contributions -- Two levels.

- (1) Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two levels according to participating employers as follows:
 - (a) Level A includes the state, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.
 - (b) Level B includes all other participating employers in this system.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-302 Purchase of service credit.

Any member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase such service credit in accordance with Section 49-11-403.

Enacted by Chapter 250, 2002 General Session

49-13-303 Supplemental benefit established -- Defined contribution plan options -- Contribution by employer and employee -- Immediate vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.

(1)

- (a) Participating employers in Level A under Section 49-13-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, shall make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system an amount equal to at least 1.5% of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the regular full-time employee and which is sponsored by the board, by that Level A employer, or by a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
- (b) All other Level A participating employers under Section 49-13-301 shall make a nonelective contribution on behalf of each of its regular full-time employees who are members of this system an amount equal to at least 1.5% of the member's compensation to the defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.
- (c) The member or participating employer may make additional payments to either the qualified 401(k) plan which receives the 1.5% employer contribution described in this Subsection (1), or to any other defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which is selected by the member and sponsored by the board, that Level A employer, or a group of similar Level A employers, and which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(2)

- (a) Participating employers in Level B under Section 49-13-301 may make nonelective contributions on behalf of each of its regular full-time employees who are members of this system to the 401(k) defined contribution plan sponsored by the board or to a qualified plan sponsored by the participating employer which has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
- (b) The member may also make voluntary deferrals to the same 401(k) plan which the member selected to receive the employer contribution described in Subsection (2)(a).
- (3) Each qualified defined contribution 401(k) plan is separate and distinct from any other qualified defined contribution 401(k) plan for all purposes, including purposes of fiduciary liability and plan administration.
- (4) A member may not make voluntary deferrals to any other qualified 401(k) plan sponsored by a state or local government.
- (5) The total amount contributed by the participating employer and the member under Subsection (1) or (2) vests to the member's benefit immediately and is nonforfeitable.

- (6) The board may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (7) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 4

Defined Benefit

49-13-401 Eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years;
 - (iv) the member has accrued at least 30 years of service credit; or
 - (v) the member has accrued at least 25 years of service credit, in which case the member shall be subject to the reduction under Subsection 49-13-402(2)(b).
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).

- (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
- (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-13-402 Service retirement plans -- Calculation of retirement allowance.

- (1)
 - (a) Except as provided under Subsection (7) or Section 49-13-701, retirees of this system may choose from the six retirement options described in this section.
 - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an allowance calculated as follows:
 - (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued.
 - (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, plus a full actuarial reduction for each year of retirement prior to age 60, unless the member has 30 or more years of accrued credit, in which event no reduction is made to the allowance.
- (c)
 - (i) Years of service include any fractions of years of service to which the retiree may be entitled.
 - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
 - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

- (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (4)
 - (a)
 - (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the Utah Board of Higher Education to \$4,800.
 - (ii) This limitation is not applicable to retirees who elected to continue in the Public Employees' Contributory Retirement System by July 1, 1967.
 - (b) Periods of employment which are exempt from this system as permitted under Subsection 49-13-203(1)(b) may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the Utah Board of Higher Education based on this period of employment are forfeited.
- (5)
 - (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
 - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (6)
 - (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.
 - (b) A conversion to an Option One benefit under this Subsection (6) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.
- (7) A retiree may not choose payment of an allowance under a retirement option described in this section that is not applicable to that retiree, including because the retiree did not make member contributions or does not have a lawful spouse at the time of retirement.

Amended by Chapter 365, 2020 General Session

49-13-403 Allowance payable by lump-sum payment.

- (1) If a retiree's allowance, as computed under Section 49-13-402, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Renumbered and Amended by Chapter 250, 2002 General Session

49-13-404 Lump-sum death benefit for retiree and spouse.

- (1)
 - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
 - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
 - (c) The board shall make rules for the administration of this lump-sum death benefit.
- (2)
 - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
 - (a) A retiree whose retirement date is on or after July 1, 1995, may elect to cancel the lump-sum death benefit under this section.
 - (b) The cancellation under this Subsection (3) is irrevocable.
 - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Amended by Chapter 118, 2004 General Session

49-13-405 Death of married members -- Service retirement benefits to surviving spouse.

- (1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-13-402 without an actuarial reduction.
- (2) Upon the request of a deceased member's surviving spouse, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
 - (a) the member has:
 - (i) 15 or more years of service credit;
 - (ii) attained age 62 with 10 or more years of service credit; or
 - (iii) attained age 65 with four or more years of service credit; and
 - (b) the member dies leaving a surviving spouse.
- (3) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

- (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (4) The allowance payable to a surviving spouse under Subsection (2) is:
- (a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;
 - (b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;
 - (c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or
 - (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.
- (5) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (6) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-13-501 and shall constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing a claim for benefits under Section 49-13-501.
- (7) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

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

Amended by Chapter 193, 2021 General Session

49-13-407 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
- (a) an original allowance paid under Section 49-13-402 or 49-13-405, if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
- (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Amended by Chapter 260, 2006 General Session

49-13-408 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Amended by Chapter 116, 2005 General Session

Part 5

Death Benefit

49-13-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:
 - (a) benefit levels;
 - (b) classes of members; and
 - (c) a living benefit option.
- (3) This death benefit is payable when:
 - (a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-13-402 requires to be treated as the death of a member before retirement;
 - (b) the office receives acceptable proof of death; and
 - (c) benefits are not payable under Section 49-13-404.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:
 - (a) the return of any member contributions under this chapter; plus
 - (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer as a portion of the contribution rate established under Section 49-13-301.
- (7) The portion of the death benefit provided under Subsection (4)(b), may not be paid to the beneficiary of an inactive member unless:

- (a) that member has 10 or more years of service credit prior to July 1, 1987; or
- (b) the death of the member occurs either:
 - (i) within a period of 120 days after the last day of work for which the person received compensation; or
 - (ii) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.
- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Amended by Chapter 316, 2013 General Session

Part 6 Reserved

Part 7 Early Retirement Incentive

49-13-701 Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on reemployment.

- (1) Any member of this system may retire and receive the allowance allowed under Subsection (2) if the member meets the following requirements as of the member's retirement:
 - (a) the member is eligible for retirement under Section 49-13-401, or has 25 years of service credit;
 - (b) the member elects to forfeit any stipend for retirement offered by the participating employer; and
 - (c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).
- (2)
 - (a) A member who retires under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.
 - (b) No actuarial reduction may be applied to the allowance granted under this section.
- (3) In order to receive the allowance allowed by this section, a member shall submit an application to the office as follows:
 - (a)

- (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, or September, 1987.
- (ii) If a Level A member elects to retire, the executive director or participating employer may request the member to delay the retirement date until a later date, but no later than June 30, 1988.
- (iii) If the member agrees to delay the retirement date, the retirement date shall be delayed, but service credit may not be accrued after the member's original retirement date elected by the member, and compensation earned after the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement allowance.
- (b)
 - (i) For political subdivision employees under Level B, the application shall be filed by September 30, 1987.
 - (ii) The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, September, October, November, or December, 1987.
- (4)
 - (a) The cost of providing the allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.
 - (b) The cost of providing the allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.
 - (c) The rate increase under Subsections (4)(a) and (b) shall be funded:
 - (i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (4)(d), which is funded by savings derived from this early retirement incentive and a work force reduction;
 - (ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53F, Chapter 2, State Funding -- Minimum School Program; and
 - (iii) for political subdivisions under Level B, by direct contributions by the participating employer.
 - (d)
 - (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (4)(c)(i) and (ii) shall be reported to the Legislature and shall be appropriated as provided by law.
 - (ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.
 - (iii) In the case of Subsection (4)(c)(ii), the State Board of Education shall certify the amount of savings derived from this early retirement incentive.
 - (iv) The State Board of Education and the participating employer may not spend the savings until appropriated by the Legislature as provided by law.
- (5) A member who retires under this section is subject to Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.
- (6) The board may make rules to administer this section.
- (7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Amended by Chapter 415, 2018 General Session

Chapter 14

Public Safety Contributory Retirement Act

Part 1

General Provisions

49-14-101 Title.

This chapter is known as the "Public Safety Contributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-14-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts the public safety service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:
 - (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) the monetary value of remuneration paid in kind, including a residence, use of equipment or uniform, travel, or similar payments;
 - (v) a lump-sum payment or special payments covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
 - (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).
- (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.
- (3)
 - (a) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(b), (c), and (d).
 - (b) Except as provided in Subsection (3)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(b) may be exceeded if:

- (i) the public safety service employee has transferred from another agency; or
- (ii) the public safety service employee has been promoted to a new position.
- (d) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (10).
- (4)
 - (a) "Line-of-duty death" means a death resulting from:
 - (i) external force, violence, or disease occasioned by an act of duty as a public safety service employee; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service employee.
 - (b) "Line-of-duty death" does not include a death that:
 - (i) occurs during an activity that is required as an act of duty as a public safety service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (iv) occurs in a manner other than as described in Subsection (4)(a).
- (5) "Participating employer" means an employer that meets the participation requirements of Section 49-14-201.
- (6)
 - (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a law enforcement officer in accordance with Section 53-13-103;
 - (ii) a correctional officer in accordance with Section 53-13-104;
 - (iii) a special function officer approved in accordance with Sections 49-14-201 and 53-13-105;
 - (iv) a dispatcher who is certified in accordance with Section 53-6-303;
 - (v) a full-time member of the Board of Pardons and Parole created under Section 77-27-2;
 - (vi) the commissioner of the Department of Public Safety; or
 - (vii) the executive director of the Department of Corrections.
 - (b) Except for a position described in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the course of employment, the employee's life or personal safety is at risk.
 - (c) Except for the minimum hour requirement, Subsections (6)(a) and (b) do not apply to any person who was eligible for service credit in this system before January 1, 1984.
- (7) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.
- (8)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (9) "System" means the Public Safety Contributory Retirement System created under this chapter.
- (10) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a public safety service

employee was employed by a participating employer, including time the public safety service employee was absent in the service of the United States government on military duty.

Amended by Chapter 171, 2022 General Session

49-14-103 Creation of system.

There is created for members performing public safety service and who are employed by a participating employer the "Public Safety Contributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-14-104 Creation of trust fund.

- (1) There is created the "Public Safety Contributory Retirement Trust Fund" for the purpose of paying the benefits and the costs of administering this system.
- (2) The fund shall consist of a number of individual trust accounts created as needed to receive the money and assets transferred into them from the respective terminated systems, all money paid into them, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2 Membership Eligibility

49-14-201 System membership -- Eligibility.

- (1) Except as provided in Section 49-15-201, a public safety service employee of a participating employer participating in this system is eligible for service credit in this system at the earliest of:
 - (a) July 1, 1969, if the public safety service employee was employed by the participating employer on July 1, 1969, and the participating employer was participating in this system on that date;
 - (b) the date the participating employer begins participating in this system if the public safety service employee was employed by the participating employer on that date; or
 - (c) the date the public safety service employee is employed by the participating employer and is eligible to perform public safety service, except that a public safety service employee initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.
- (2)
 - (a)
 - (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll those dual purpose employees in the system in which the greatest amount of time is actually worked.
 - (ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.

- (b)
 - (i) Before transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.
 - (ii) The office may request documentation to verify the appropriateness of the transfer.
- (3) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.
- (4)
 - (a)
 - (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.
 - (ii) The office may require documentation to justify the inclusion of any position under this system.
 - (b) If there is a dispute between the office and a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.
 - (c)
 - (i) The Peace Officer Standards and Training Council's authority to decide eligibility for public safety service credit is limited to claims for coverage under this system for time periods after July 1, 1989.
 - (ii) A decision of the Peace Officer Standards and Training Council may not be applied to service credit earned in another system before July 1, 1989.
 - (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.
 - (iv) A decision of the Peace Officer Standards and Training Council granting a position coverage under this system may be applied retroactively only if:
 - (A) the participating employer covered other similarly situated positions under this system during the time period in question; and
 - (B) the position otherwise meets all eligibility requirements for receiving service credit in this system during the period for which service credit is to be granted.
- (5) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.
- (6) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.
- (7) A public safety service employee who is transferred or promoted to an administration position requiring the performance of duties that consist primarily of management or supervision of public safety service employees shall continue to earn public safety service credit in this system during the period in which the employee remains employed in the same department.
- (8) An employee of the Department of Corrections shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and

- (iv) has not had a break in service on or after July 1, 2015.
- (9) An employee of the Department of Health and Human Services who is transferred from the Department of Corrections' clinical services bureau to provide a clinical or health care service to an inmate as defined in Section 64-13-1 shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections or the Department of Health and Human Services;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.
- (10) An employee who is reassigned to the Division of Technology Services or to the Division of Human Resource Management, and who was a member of this system, is entitled to remain a member of this system.
- (11)
 - (a) To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:
 - (i) except for a dispatcher, place the employee's life or personal safety at risk; and
 - (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or 53-13-105.
 - (b) If a position satisfies the requirements of Subsection (11)(a), the office and the Peace Officer Standards and Training Council shall consider whether or not the position requires the employee to:
 - (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
 - (ii) perform duties that consist primarily of providing community protection; and
 - (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.
- (12) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (11) in making the subcommittee's recommendation.
- (13) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.
- (14) Except as provided under Subsection (15), if a participating employer's public safety service employees are not covered by this system or under Chapter 15, Public Safety Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.
- (15)
 - (a) A public safety service employee employed by an airport police department, which elects to cover the airport police department's public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (14), may elect to remain in the public safety service employee's current retirement system.
 - (b) The public safety service employee's election to remain in the current retirement system under Subsection (15)(a):

- (i) shall be made at the time the employer elects to move the employer's public safety service employees to a public safety retirement system;
 - (ii) documented by written notice to the participating employer; and
 - (iii) is irrevocable.
- (16)
- (a) Subject to Subsection (17), beginning July 1, 2015, a public safety service employee who is a dispatcher employed by:
 - (i) the state shall be eligible for service credit in this system; and
 - (ii) a participating employer other than the state shall be eligible for service credit in this system if the dispatcher's participating employer elects to cover the participating employer's dispatchers under this system.
 - (b) A participating employer's election to cover the participating employer's dispatchers under this system under Subsection (16)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.
 - (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution of a participating employer under Subsection (16)(b), is not eligible for service credit in this system.
- (17) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 37, 2023 General Session

Amended by Chapter 139, 2023 General Session

Amended by Chapter 290, 2023 General Session

49-14-202 Participation of employers -- Requirements -- Supplemental programs -- Full participation in system.

- (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 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 public safety service employees under Subsection (1)(c) is a participating employer in this system.
- (3) If a participating employer under Subsection (1) covers any of its 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 public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer on or after July 1, 2011.
- (4) A participating employer may not withdraw from this system.

- (5) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.
- (6) An employer may not elect to participate in this system after July 1, 1989.

Amended by Chapter 266, 2010 General Session

49-14-203 Exemption of certain employees from coverage.

- (1) A public safety service employee is excluded from coverage under this system if the employee:
 - (a) is serving:
 - (i) as the Commissioner of Public Safety;
 - (ii) as the executive director of the Department of Corrections; or
 - (iii) as the elected or appointed sheriff or chief of police of a public safety organization; and
 - (b) files a formal written request seeking the exemption.
- (2) Except as provided in Subsection (3), the public safety service employee may not continue employment with the same participating employer and receive an allowance from the office based on public safety service at the same time.
- (3)
 - (a) The Commissioner of Public Safety or an elected sheriff who is eligible to retire under Section 49-14-401 may until July 1, 2010:
 - (i) retire from this system and receive an allowance;
 - (ii) continue in the elected or appointed position; and
 - (iii) file for the exemption under Subsection (1).
 - (b) A person who makes an election under Subsection (3)(a) may continue under the terms of the election.
- (4) An employee's exclusion, exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

Part 3 Contributions

49-14-301 Contributions -- Two divisions -- Election by employer to pay employee contributions -- Accounting for and vesting of member contributions -- Deductions.

- (1) Participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two divisions according to Social Security coverage as follows:
 - (a) members of this system with on-the-job Social Security coverage are in Division A; and
 - (b) members of this system without on-the-job Social Security coverage are in Division B.
- (3) In addition to the divisions under Subsection (2) and for the purpose of determining contribution rates, each division under Subsection (2) is further divided as follows:
 - (a) members of this system with a maximum annual cost-of-living adjustment under Subsection 49-14-403(2)(b) are in Divisions A1 and B1; and

- (b) members of this system with a maximum annual cost-of-living adjustment under Subsection 49-14-403(2)(a) are in Divisions A2 and B2.
- (4)
 - (a) A participating employer may elect to pay all or part of the required member contributions, in addition to the required participating employer contributions.
 - (b) Any amount contributed by a participating employer under this section shall vest to the member's benefit as though the member had made the contribution.
 - (c) The required member contributions shall be reduced by the amount that is paid by the participating employer.
- (5)
 - (a) All member contributions are credited by the office to the account of the individual member.
 - (b) This amount, plus refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) All member contributions are vested and nonforfeitable.
- (6)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.
- (7) Contribution rates for a participating employer may be different than for other participating employers based on the participating employer's current funding status and actuarial experience.

Amended by Chapter 227, 2008 General Session

Part 4

Defined Benefit

49-14-401 Eligibility for service retirement -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least 20 years of service credit;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 60 years; or
 - (iii) the member has accrued at least four years of service credit and has attained an age of 65 years.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.

- (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
 - (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-14-402 Calculation of retirement allowance.

- (1) A retiree under this system shall receive an allowance equal to:
 - (a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus
 - (b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.
- (2)
 - (a) Except as modified by cost-of-living adjustments and except as provided under Subsection (2)(b), an allowance under this system may not exceed 70% of a retiree's final average monthly salary.
 - (b) The allowance limitation under Subsection (2)(a) does not apply to a member who initially retires on or after July 1, 2010.

Amended by Chapter 264, 2010 General Session

49-14-403 Annual cost-of-living adjustment -- Enhanced adjustment -- Eligibility.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-14-402 and Part 5, Death Benefit, of this chapter if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

- (2)
 - (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.
 - (b) If the participating employer has made an election under Subsection (5), and in lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (c) Annual increases in the Consumer Price Index in excess of the applicable maximum annual increase under this Subsection (2), shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than the applicable maximum annual increase under this Subsection (2).
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.
- (5)
 - (a) A participating employer may make a one-time election to provide the annual cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living adjustment under Subsection (2)(a), for the participating employer's current and future retirees.
 - (b) A participating employer shall make the election under this Subsection (5) prior to December 1, 2012.
 - (c) The participating employer shall indicate whether or not it elects to participate in this benefit by enacting a resolution or ordinance to that effect and making an application to the office.
 - (d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b) is January 1 of the year following an election under Subsection (5)(a).
 - (e) Notwithstanding the election provided under this section, the state, as a participating employer, shall provide the annual cost-of-living adjustment under Subsection (2)(b) to its eligible employees and retirees effective on January 1, 2009.
- (6)
 - (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b), a retiring employee shall earn the final 72 months of service credit prior to initial retirement:
 - (i) as an employee of a participating employer who:
 - (A) has made the election under Subsection (5)(a); or
 - (B) is included under Subsection (5)(e); and
 - (ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory Retirement Act or under Title 49, Chapter 15, Public Safety Noncontributory Retirement Act.
 - (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid to a retiree who is not eligible under this Subsection (6).
- (7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid prior to the effective date of the enhanced cost-of-living adjustment for the participating employer.
- (8) The board may adopt rules for:
 - (a) the administration of the election provided under Subsection (5); and
 - (b) the effective date of the enhanced cost-of-living adjustment for participating employers.

Amended by Chapter 101, 2009 General Session

Amended by Chapter 221, 2009 General Session

Part 5

Death Benefit

49-14-501 Death of active member in Division A -- Payment of benefits.

- (1) If an active member of this system enrolled in Division A under Section 49-14-301 dies, benefits are payable as follows:
 - (a) If the death is classified by the office as a line-of-duty death, the surviving spouse shall receive:
 - (i) a lump sum equal to six months of the active member's final average salary; and
 - (ii)
 - (A) an allowance equal to 30% of the deceased member's final average monthly salary; or
 - (B) if the member has accrued 20 or more years of public safety service credit, the death benefit payable to a surviving spouse under Section 49-14-504.
 - (b) If the death is not classified by the office as a line-of-duty death, benefits are payable as follows:
 - (i) If the member has accrued less than 10 years of public safety service credit, the surviving spouse shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever is greater.
 - (ii) If the member has accrued 10 or more years of public safety service credit but less than 20 years of public safety service credit at the time of death, the surviving spouse shall receive the sum of \$500, plus an allowance equal to 2% of the member's final average monthly salary for each year of service credit accrued by the member up to a maximum of 30% of the member's final average monthly salary.
 - (iii) If the member has accrued 20 or more years of public safety service credit:
 - (A) the member shall be considered to have retired with an allowance calculated under Section 49-14-402; and
 - (B) the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-14-504.
- (2) Except as provided under Subsection (1)(b)(i), benefits are not payable to minor children of members covered under Division A.
- (3) If a benefit is not distributed under this section, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.
- (4)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 10, 2018 General Session

Amended by Chapter 450, 2018 General Session

49-14-502 Death of active member in Division B -- Payment of benefits.

- (1) If an active member of this system enrolled in Division B under Section 49-14-301 dies, benefits are payable as follows:

- (a) If the death is classified by the office as a line-of-duty death, the surviving spouse shall receive:
 - (i) a lump sum equal to six months of the active member's final average salary; and
 - (ii)
 - (A) an allowance equal to 37.5% of the member's final average monthly salary; or
 - (B) if the member has accrued 20 or more years of public safety service credit, the greater of:
 - (I) an allowance equal to 37.5% of the member's final average monthly salary; or
 - (II) the death benefit payable to a surviving spouse under Section 49-14-504.
- (b) If the death is not classified by the office as a line-of-duty death, benefits are payable as follows:
 - (i) If the member has accrued two or more years of public safety service credit at the time of death, the death is considered a line-of-duty death and the surviving spouse shall receive:
 - (A) a lump sum of \$1,500; and
 - (B) an allowance as provided under Subsection (1)(a)(ii).
 - (ii) If the member has accrued less than two years of public safety service credit at the time of death, the surviving spouse shall receive a refund of the member's member contributions, plus 50% of the member's most recent 12 months' compensation.
- (c)
 - (i) If the member has accrued two or more years of public safety service credit at the time of death, each of the member's unmarried children to age 18 or dependent unmarried children with a mental or physical disability shall receive a monthly allowance of \$50.
 - (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or as otherwise provided under Sections 49-11-609 and 49-11-610.
- (2) If the member dies and there is no surviving spouse, any amounts that would have been the surviving spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.
- (3) If a benefit is not distributed under Subsection (1) or (2), and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.
- (4) The combined annual payments made to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.
- (5)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 450, 2018 General Session

49-14-503 Benefits payable upon death of inactive member.

- (1) If an inactive member who has less than 20 years of public safety service credit dies, the surviving spouse, or, if there is no surviving spouse, the member's minor children shall receive a refund of the member's member contributions or \$500, whichever is greater.
- (2)
 - (a) If an inactive member with 20 or more years of public safety service credit dies, the surviving spouse shall receive an allowance in an amount of 50% of the amount the member would

have received had retirement occurred on the first of the month following the month in which the death occurred.

- (b) This allowance shall be based on years of service credit and final average monthly salary under Section 49-14-402, reduced actuarially from age 50 to the age of the member at the time of death if the member is under age 50 at the time of death.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-14-504 Benefits payable upon death of retired member -- Enhanced benefit election -- Rulemaking.

- (1) If a retiree who retired under either Division A or Division B dies, the retiree's surviving spouse shall receive an allowance equal to 65% of the allowance that was being paid to the retiree at the time of death.
- (2)
 - (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the surviving spousal death benefit to 75% of an allowance computed in accordance with Section 49-14-402.
 - (b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased surviving spousal death benefit above 65%.
- (3)
 - (a) For a retiree whose retirement date is before July 1, 2009, the office shall provide an optional surviving spousal death benefit to bring the total surviving spousal death benefit up to 75% of an allowance computed in accordance with Section 49-14-402.
 - (b) A retiree may elect to purchase the optional surviving spousal death benefit until July 1, 2010.
 - (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased surviving spousal death benefit above 65%.
 - (d) The board shall make rules to administer the death benefit under this Subsection (3).
- (4) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 18 or dependent unmarried children with a mental or physical disability, the children shall qualify for a benefit as prescribed for children under Subsection 49-14-502(1)(c).
- (5)
 - (a) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 84, 2016 General Session

49-14-505 Benefits for surviving spouse under Division A or Division B.

The surviving spouse, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Amended by Chapter 84, 2016 General Session

49-14-506 Benefits payable upon death of active or inactive member without spouse or minor children.

If an active or inactive member dies and at the time of death the member does not have a surviving spouse or minor children, the benefit payable to a designated beneficiary is a refund of the member's member contributions or \$500, whichever is larger.

Amended by Chapter 84, 2016 General Session

49-14-507 Surviving spouse includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

Part 6 Disability

49-14-601 Long-term disability coverage.

Each participating employer shall cover its public safety employees under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program.

Enacted by Chapter 240, 2003 General Session

49-14-602 Benefit protection contract.

- (1) As used in this section:
 - (a) "Objective medical impairment" means the same as that term is defined in Section 49-21-102.
 - (b) "Qualifying injury or illness" means a physical or mental objective medical impairment resulting from external force or violence as a result of the performance of an employment duty.

- (2)
 - (a) A participating employer shall provide a benefit protection contract described in Section 49-11-404 for any public safety service employee who suffers a qualifying injury or illness as determined in accordance with this section.
 - (b) A participating employer may elect to provide a benefit protection contract for any other injury or illness of a public safety service employee in accordance with the requirements for providing a benefit protection contract, including the provisions of Section 49-11-404.
- (3)
 - (a) For purposes of Subsection (2)(a), the provider of long-term disability or workers' compensation indemnity benefits shall determine if a public safety service employee has suffered a qualifying injury or illness, including completing any appeals relating to that determination in accordance with the applicable appeals procedures.
 - (b) In addition to the annual report requirements under Section 49-11-404:
 - (i) if there is final determination that a public safety service employee has suffered a qualifying injury or illness and is awarded an ongoing monthly disability benefit based on that qualifying injury or illness, the participating employer shall immediately notify the office of the employee's award of that ongoing monthly disability benefit; and
 - (ii) if the public safety service employee's monthly disability benefit is terminated for any reason, the participating employer shall immediately notify the office of the termination of the monthly disability benefit.

Enacted by Chapter 122, 2022 General Session

Chapter 15

Public Safety Noncontributory Retirement Act

Part 1

General Provisions

49-15-101 Title.

This chapter is known as the "Public Safety Noncontributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-15-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:

- (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;
 - (v) a lump-sum payment or special payment covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
- (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).
- (2) "Dispatcher" means the same as that term is defined in Section 53-6-102.
- (3)
 - (a) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(b), (c), and (d).
 - (b) Except as provided in Subsection (3)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(b) may be exceeded if:
 - (i) the public safety service employee has transferred from another agency; or
 - (ii) the public safety service employee has been promoted to a new position.
 - (d) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (10).
- (4)
 - (a) "Line-of-duty death" means a death resulting from:
 - (i) external force, violence, or disease occasioned by an act of duty as a public safety service employee; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service employee.
 - (b) "Line-of-duty death" does not include a death that:
 - (i) occurs during an activity that is required as an act of duty as a public safety service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (iv) occurs in a manner other than as described in Subsection (4)(a).
- (5) "Participating employer" means an employer that meets the participation requirements of Section 49-15-201.
- (6)
 - (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a law enforcement officer in accordance with Section 53-13-103;
 - (ii) a correctional officer in accordance with Section 53-13-104;

- (iii) a special function officer approved in accordance with Sections 49-15-201 and 53-13-105;
 - (iv) a dispatcher who is certified in accordance with Section 53-6-303;
 - (v) a full-time member of the Board of Pardons and Parole created under Section 77-27-2;
 - (vi) the commissioner of the Department of Public Safety; or
 - (vii) the executive director of the Department of Corrections.
- (b) Except for a position described in Subsection (6)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the course of employment, the employee's life or personal safety is at risk.
- (7) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.
- (8)
- (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (9) "System" means the Public Safety Noncontributory Retirement System created under this chapter.
- (10) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a public safety service employee was employed by a participating employer, including time the public safety service employee was absent in the service of the United States government on military duty.

Amended by Chapter 171, 2022 General Session

49-15-103 Creation of system.

There is created for members performing public safety service and who are employed by a participating employer the "Public Safety Noncontributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-15-104 Creation of trust fund.

- (1) There is created the "Public Safety Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and the costs of administering this system.
- (2) The fund shall consist of a number of individual trust accounts created as needed to receive the money and assets transferred into them from the respective terminated systems, all money paid into them, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2 Membership Eligibility

49-15-201 System membership -- Eligibility.

- (1)
 - (a) A public safety service employee employed by the state after July 1, 1989, but before July 1, 2011, is eligible for service credit in this system.
 - (b) A public safety service employee employed by the state before July 1, 1989, may either elect to receive service credit in this system or continue to receive service credit under the system established under Chapter 14, Public Safety Contributory Retirement Act, by following the procedures established by the board under this chapter.
- (2)
 - (a) Public safety service employees of a participating employer other than the state that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement System shall be eligible only for service credit in that system.
 - (b)
 - (i) A participating employer other than the state that elected on or before July 1, 1989, to participate in this system shall, have allowed, before July 1, 1989, a public safety service employee to elect to participate in either this system or the Public Safety Contributory Retirement System.
 - (ii) Except as expressly allowed by this title, the election of the public safety service employee is final and may not be changed.
 - (c) A public safety service employee hired by a participating employer other than the state after July 1, 1989, but before July 1, 2011, shall become a member in this system.
 - (d) A public safety service employee of a participating employer other than the state who began participation in this system after July 1, 1989, but before July 1, 2011, is only eligible for service credit in this system.
 - (e) A person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.
- (3)
 - (a)
 - (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll those dual purpose employees in the system in which the greatest amount of time is actually worked.
 - (ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.
 - (b)
 - (i) Before transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.
 - (ii) The office may request documentation to verify the appropriateness of the transfer.
- (4) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.
- (5)
 - (a)
 - (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.
 - (ii) The office may require documentation to justify the inclusion of any position under this system.

- (b) If there is a dispute between the office and a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.
- (c)
 - (i) The Peace Officer Standards and Training Council's authority to decide eligibility for public safety service credit is limited to claims for coverage under this system for time periods after July 1, 1989.
 - (ii) A decision of the Peace Officer Standards and Training Council may not be applied to service credit earned in another system before July 1, 1989.
 - (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.
 - (iv) A decision of the Peace Officer Standards and Training Council granting a position coverage under this system may be applied retroactively only if:
 - (A) the participating employer covered other similarly situated positions under this system during the time period in question; and
 - (B) the position otherwise meets all eligibility requirements for receiving service credit in this system during the period for which service credit is to be granted.
- (6) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.
- (7) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.
- (8) A public safety service employee who is transferred or promoted to an administration position requiring the performance of duties that consist primarily of management or supervision of public safety service employees shall continue to earn public safety service credit in this system during the period in which the employee remains employed in the same department.
- (9) An employee of the Department of Corrections shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.
- (10) An employee of the Department of Health and Human Services who is transferred from the Department of Corrections' clinical services bureau to provide a clinical or health care service to an inmate as defined in Section 64-13-1 shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections or the Department of Health and Human Services;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.

- (11) Any employee who is reassigned to the Division of Technology Services or to the Division of Human Resource Management, and who was a member in this system, shall be entitled to remain a member in this system.
- (12)
- (a) To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:
 - (i) except for a dispatcher, place the employee's life or personal safety at risk; and
 - (ii) complete training as provided in Section 53-6-303, 53-13-103, 53-13-104, or 53-13-105.
 - (b) If a position satisfies the requirements of Subsection (12)(a), the office and Peace Officer Standards and Training Council shall consider whether the position requires the employee to:
 - (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
 - (ii) perform duties that consist primarily of providing community protection; and
 - (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.
- (13) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (12) in making the subcommittee's recommendation.
- (14) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.
- (15) Except as provided under Subsection (16), if a participating employer's public safety service employees are not covered by this system or under Chapter 14, Public Safety Contributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.
- (16)
- (a) A public safety service employee employed by an airport police department, which elects to cover the airport police department's public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (14), may elect to remain in the public safety service employee's current retirement system.
 - (b) The public safety service employee's election to remain in the current retirement system under Subsection (16)(a):
 - (i) shall be made at the time the employer elects to move the employer's public safety service employees to a public safety retirement system;
 - (ii) shall be documented by written notice to the participating employer; and
 - (iii) is irrevocable.
- (17)
- (a) Subject to Subsection (18), beginning July 1, 2015, a public safety service employee who is a dispatcher employed by:
 - (i) the state shall be eligible for service credit in this system; and
 - (ii) a participating employer other than the state shall be eligible for service credit in this system if the dispatcher's participating employer elects to cover the participating employer's dispatchers under this system.
 - (b) A participating employer's election to cover the participating employer's dispatchers under this system under Subsection (17)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.

- (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution of a participating employer under Subsection (17)(b), is not eligible for service credit in this system.
- (18) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 290, 2023 General Session

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 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 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 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 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 the employer's governing body apply for coverage of 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 an employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:
 - (i) purchase service credit 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 participation in the system, a participating employer may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for the public employer's employees.

Amended by Chapter 193, 2021 General Session

49-15-203 Exemption of certain employees from coverage.

- (1) A public safety service employee is excluded from coverage under this system if the employee:
 - (a) is serving:
 - (i) as the Commissioner of Public Safety;
 - (ii) as the executive director of the Department of Corrections; or
 - (iii) as the elected or appointed sheriff or chief of police of a public safety organization; and
 - (b) files a formal written request seeking the exemption.
- (2) Except as provided in Subsection (3), the public safety service employee may not continue employment with the same participating employer and receive an allowance from the office based on public safety service at the same time.
- (3)
 - (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of police who is eligible to retire under Section 49-15-401 may until July 1, 2010:
 - (i) retire from this system and receive an allowance;
 - (ii) continue in the elected or appointed position; and
 - (iii) file for the exemption under Subsection (1).
 - (b) A person who makes an election under Subsection (3)(a) may continue under the terms of the election.
- (4) An employee's exclusion, exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

49-15-204 Conversion to system -- Time schedule.

The following laws govern conversion to the Public Safety Noncontributory Retirement System:

- (1) For an employee governed by Subsection 49-15-201(1)(a), the election to participate in this system shall be made within six months of July 1, 1989.
- (2)
 - (a)
 - (i) For an employer governed by Subsection 49-15-201(2)(a), the election to participate in this system shall be made within six months of July 1, 1989.
 - (ii) The employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.
 - (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the employer, at which all public safety service employees of the employer shall be given an opportunity to be heard on the question of participating in this system.
 - (iv) Notice of the hearing shall be mailed to all public safety service employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.

- (b) A public safety service employee of an employer, prior to its election to participate, has six months from the date the employer elects to participate in which to elect to become eligible for service credit in this system.
- (3)
 - (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 1998, and ending December 31, 1998.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.
- (4) Subsections (1) and (2) shall be used to provide a time period for an appointed chief of police to convert to the Public Safety Noncontributory Retirement System beginning July 1, 2002, and ending December 31, 2002. A chief of police converting to the system during this time period shall be subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act, including an employer's election under Subsection (2).
- (5)
 - (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 2007, and ending December 31, 2007.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.
- (6)
 - (a) Subsections (1) and (2) shall be used to provide a time period of conversion to the Public Safety Noncontributory Retirement System beginning July 1, 2014, and ending December 31, 2014.
 - (b) A person converting to the system during this time period is subject to all the rights, limitations, terms, and conditions of Chapter 15, Public Safety Noncontributory Retirement Act.

Amended by Chapter 133, 2014 General Session

Part 3

Contributions

49-15-301 Contributions -- Two divisions -- Subdivisions.

- (1) Participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two divisions according to Social Security coverage:
 - (a) members of this system with on-the-job Social Security coverage are Division A; and
 - (b) members of this system without on-the-job Social Security coverage are in Division B.
- (3) In addition to the divisions under Subsection (2) and for the purposes of determining contribution rates, each division under Subsection (2) is further divided as follows:
 - (a) members of this system with an annual cost-of-living adjustment under Subsection 49-15-403(2)(b) are in Divisions A1 and B1; and

- (b) members of this system with an annual cost-of-living adjustment under Subsection 49-15-403(2)(a) are in Divisions A2 and B2.
- (4) Contribution rates for a participating employer may be different than for other participating employers based on the participating employer's current funding status and actuarial experience.

Amended by Chapter 227, 2008 General Session

Part 4

Defined Benefit

49-15-401 Eligibility for service retirement -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least 20 years of service credit;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 60 years; or
 - (iii) the member has accrued at least four years of service and has attained an age of 65 years.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
 - (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not

required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).

(4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:

- (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
- (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-15-402 Calculation of retirement benefit.

(1) A retiree under this system shall receive an allowance equal to:

- (a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus
- (b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.

(2)

- (a) Except as modified by cost-of-living adjustments and except as provided under Subsection (2)(b), an allowance under this system may not exceed 70% of a retiree's final average monthly salary.
- (b) The allowance limitation under Subsection (2)(a) does not apply to a member who initially retires on or after July 1, 2010.

Amended by Chapter 264, 2010 General Session

49-15-403 Annual cost-of-living adjustment.

(1) The office shall make an annual cost-of-living adjustment to:

- (a) an original allowance paid under Section 49-15-402 and Part 5, Death Benefit, of this chapter if the allowance has been paid for at least one year; and
- (b) an original payment made to an alternate payee under a domestic relations order if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2)

- (a) Unless Subsection (2)(b) applies, the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.
- (b) If the participating employer has made an election under Subsection (5), and in lieu of the annual increase under Subsection (2)(a), the original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
- (c) Annual increases in the Consumer Price Index in excess of the applicable maximum annual increase under this Subsection (2), shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than the applicable maximum annual increase under this Subsection (2).

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

(5)

- (a) A participating employer may make a one-time election to provide the annual cost-of-living adjustment under Subsection (2)(b), in lieu of the annual cost-of-living adjustment under Subsection (2)(a), for the participating employer's current and future retirees.

- (b) A participating employer shall make the election under this Subsection (5) prior to December 1, 2012.
 - (c) The participating employer shall indicate whether or not it elects to participate in this benefit by enacting a resolution or ordinance to that effect and making an application to the office.
 - (d) The effective date for the annual cost-of-living adjustment under Subsection (2)(b) is January 1 of the year following an election under Subsection (5)(a).
 - (e) Notwithstanding the election provided under this section, the state, as a participating employer, shall provide the annual cost-of-living adjustment under Subsection (2)(b) to its eligible employees and retirees effective on January 1, 2009.
- (6)
- (a) To be eligible for the annual cost-of-living adjustment under Subsection (2)(b), a retiring employee shall earn the final 72 months of service credit prior to initial retirement:
 - (i) as an employee of a participating employer who:
 - (A) has made the election under Subsection (5)(a); or
 - (B) is included under Subsection (5)(e); and
 - (ii) in a covered position under Title 49, Chapter 14, Public Safety Contributory Retirement Act or under Title 49, Chapter 15, Public Safety Noncontributory Retirement Act.
 - (b) The annual cost-of-living adjustment under Subsection (2)(b) may not be paid to a retiree who is not eligible under this Subsection (6).
- (7) An allowance adjustment made under Subsections (2)(b) and (5) may not be paid prior to the effective date of the enhanced cost-of-living adjustment for the participating employer.
- (8) The board may adopt rules for:
- (a) the administration of the election provided under Subsection (5); and
 - (b) the effective date of the enhanced cost-of-living adjustment for participating employers.

Amended by Chapter 101, 2009 General Session

Amended by Chapter 221, 2009 General Session

Part 5

Death Benefit

49-15-501 Death of active member in Division A -- Payment of benefits.

- (1) If an active member of this system enrolled in Division A under Section 49-15-301 dies, benefits are payable as follows:
 - (a) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:
 - (i) If the member has accrued less than 20 years of public safety service credit, the surviving spouse shall receive a lump sum equal to six months of the active member's final average salary and an allowance equal to 30% of the member's final average monthly salary.
 - (ii) If the member has accrued 20 or more years of public safety service credit, the member shall be considered to have retired with an allowance calculated under Section 49-15-402 and the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-15-504.
 - (b) If the death is not classified as a line-of-duty death by the office, benefits are payable as follows:

- (i) If the member has accrued less than 10 years of public safety service credit, the surviving spouse shall receive the sum of \$1,000 or a refund of the member's member contributions, whichever is greater.
 - (ii) If the member has accrued 10 or more years, but less than 20 years of public safety service credit at the time of death, the surviving spouse shall receive the sum of \$500, plus an allowance equal to 2% of the member's final average monthly salary for each year of service credit accrued by the member up to a maximum of 30% of the member's final average monthly salary.
 - (iii) If the member has accrued 20 or more years of public safety service credit, the benefit shall be calculated as provided in Subsection (1)(a)(ii).
- (2) Except as provided under Subsection (1)(b)(i), benefits are not payable to minor children under Division A.
- (3) If a benefit is not distributed under this section, and the member has designated a beneficiary, the member's member contribution shall be paid to the beneficiary.
- (4)
- (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 10, 2018 General Session

49-15-502 Death of active member in Division B -- Payment of benefits.

- (1) If an active member of this system enrolled in Division B under Section 49-15-301 dies, benefits are payable as follows:
- (a) If the death is classified by the office as a line-of-duty death, the surviving spouse shall receive:
 - (i) a lump sum equal to six months of the active member's final average salary; and
 - (ii)
 - (A) an allowance equal to 37.5% of the member's final average monthly salary; or
 - (B) if the member has accrued 20 or more years of public safety service credit, the greater of:
 - (I) an allowance equal to 37.5% of the member's final average monthly salary; or
 - (II) the death benefit payable to a surviving spouse under Section 49-15-504.
 - (b) If the death is not classified by the office as a line-of-duty death, and the member has accrued two or more years of public safety service credit at the time of death, the death is considered line-of-duty and the surviving spouse shall receive:
 - (i) a lump sum of \$1,500; and
 - (ii) an allowance as provided under Subsection (1)(a)(ii).
 - (c) If the death is not classified by the office as a line-of-duty death, and the member has accrued less than two years of public safety service credit at the time of death, the surviving spouse shall receive a refund of the member's member contributions, plus 50% of the member's most recent 12 months' compensation.
 - (d)

- (i) If the member has accrued two or more years of public safety service credit at the time of death, each of the member's unmarried children to age 18 or dependent unmarried children with a mental or physical disability shall receive an allowance of \$50.
 - (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or as otherwise provided under Section 49-11-609 or 49-11-610.
- (2) If the member dies and there is no surviving spouse, any amounts that would have been the surviving spouse's benefit shall be prorated and paid to each of the member's unmarried children to age 18.
- (3) If a benefit is not distributed under Subsection (1) or (2), and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.
- (4) The combined payments to beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.
- (5)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 450, 2018 General Session

49-15-503 Benefits payable upon death of inactive member.

- (1) If an inactive member who has less than 20 years of public safety service credit dies, the surviving spouse, or, if there is no surviving spouse, the member's minor children shall receive a refund of the member's member contributions or \$500, whichever is greater.
- (2)
 - (a) If an inactive member with 20 or more years of public safety service credit dies, the surviving spouse shall receive an allowance in an amount of 50% of the amount the member would have received had retirement occurred on the first of the month following the month in which the death occurred.
 - (b) This allowance shall be based on years of service credit and final average monthly salary under Section 49-15-402, reduced actuarially from age 50 to the age of the member at the time of death if the member is under 50 years of age at the time of death.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-15-504 Benefits payable upon death of retired member -- Enhanced benefit election -- Rulemaking.

- (1) If a retiree who retired under either Division A or Division B dies, the retiree's surviving spouse shall receive an allowance equal to 65% of the allowance that was being paid to the retiree at the time of death.
- (2)
 - (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance computed in accordance with Section 49-15-402.
 - (b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.
- (3)
 - (a) For a retiree whose retirement date is before July 1, 2009, the office shall provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of an allowance computed in accordance with Section 49-15-402.
 - (b) A retiree may elect to purchase the optional spousal death benefit until July 1, 2010.
 - (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.
 - (d) The board shall make rules to administer the death benefit under this Subsection (3).
- (4) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 18 or dependent unmarried children with a mental or physical disability, the children shall qualify for a benefit as prescribed under Subsection 49-15-502(1)(d).
- (5)
 - (a) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 84, 2016 General Session

49-15-505 Benefits for surviving spouse under Division A or Division B.

The surviving spouse, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Amended by Chapter 84, 2016 General Session

49-15-506 Benefits payable upon death of active or inactive member without spouse or minor children.

If an active or inactive member dies and at the time of death the member does not have a surviving spouse or minor children, the benefit payable to a designated beneficiary is a refund of the member's member contributions or \$500, whichever is larger.

Amended by Chapter 84, 2016 General Session

49-15-507 Surviving spouse includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

**Part 6
Disability**

49-15-601 Long-term disability coverage.

Each participating employer shall cover its public safety employees under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program.

Enacted by Chapter 240, 2003 General Session

49-15-602 Benefit protection contract.

- (1) As used in this section:
 - (a) "Objective medical impairment" means the same as that term is defined in Section 49-21-102.
 - (b) "Qualifying injury or illness" means a physical or mental objective medical impairment resulting from external force or violence as a result of the performance of an employment duty.
- (2)
 - (a) A participating employer shall provide a benefit protection contract described in Section 49-11-404 for any public safety service employee who suffers a qualifying injury or illness as determined in accordance with this section.
 - (b) A participating employer may elect to provide a benefit protection contract for any other injury or illness of a public safety service employee in accordance with the requirements for providing a benefit protection contract, including the provisions of Section 49-11-404.
- (3)
 - (a) For purposes of Subsection (2)(a), the provider of long-term disability or workers' compensation indemnity benefits shall determine if a public safety service employee has suffered a qualifying injury or illness, including completing any appeals relating to that determination in accordance with the applicable appeals procedures.
 - (b) In addition to the annual report requirements under Section 49-11-404:
 - (i) if there is final determination that a public safety service employee has suffered a qualifying injury or illness and is awarded an ongoing monthly disability benefit based on that qualifying injury or illness, the participating employer shall immediately notify the office of the employee's award of that ongoing monthly disability benefit; and

- (ii) if the public safety service employee's monthly disability benefit is terminated for any reason, the participating employer shall immediately notify the office of the termination of the monthly disability benefit.

Enacted by Chapter 122, 2022 General Session

Chapter 16

Firefighters' Retirement Act

Part 1

General Provisions

49-16-101 Title.

This chapter is known as the "Firefighters' Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

Superseded 7/1/2024

49-16-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable as gross income received by a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts the firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:
 - (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel, or similar payments;
 - (v) a lump-sum payment or special payments covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
 - (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.
- (2)
 - (a) "Disability" means the complete inability, due to objective medical impairment, whether physical or mental, to perform firefighter service.

- (b) "Disability" does not include the inability to meet an employer's required standards or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined under Subsection (2)(a).
- (3) "Emergency medical service personnel" means an individual who:
 - (a) is:
 - (i) a paramedic;
 - (ii) an advanced emergency medical services technician; or
 - (iii) an emergency medical services technician;
 - (b) is required to be licensed or certified under Section 26B-4-116; and
 - (c) has a primary job duty to provide emergency medical services as a first responder.
- (4)
 - (a) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (4)(b), (c), and (d).
 - (b) Except as provided in Subsection (4)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office the limitation in Subsection (4)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (14).
- (5)
 - (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department;
 - (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal; or
 - (iii) an emergency medical service personnel.
 - (b) "Firefighter service" does not include secretarial staff or other similar employees.
- (6)
 - (a) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter.
 - (b) "Firefighter service employee" does not include an employee of a regularly constituted fire department who does not perform firefighter service.
- (7)
 - (a) "Line-of-duty death or disability" means a death or disability resulting from:
 - (i) external force, violence, or disease directly resulting from firefighter service; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a firefighter service employee.
 - (b) "Line-of-duty death or disability" does not include a death or disability that:
 - (i) occurs during an activity that is required as an act of duty as a firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;

- (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death or disability; or
- (iv) occurs in a manner other than as described in Subsection (7)(a).
- (c) "Line-of-duty death or disability" includes the death or disability of a paid firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid firefighter has five years of firefighter service credit.
- (8) "Objective medical impairment" means an impairment resulting from an injury or illness that is diagnosed by a physician or physician assistant and that is based on accepted objective medical tests or findings rather than subjective complaints.
- (9) "Participating employer" means an employer that meets the participation requirements of Section 49-16-201.
- (10) "Regularly constituted fire department" means a fire department that employs a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid employment per year.
- (11)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (12) "System" means the Firefighters' Retirement System created under this chapter.
- (13)
 - (a) "Volunteer firefighter" means any individual who is not regularly employed as a firefighter service employee, but who:
 - (i) has been trained in firefighter techniques and skills;
 - (ii) continues to receive regular firefighter training; and
 - (iii) is on the rolls of a legally organized volunteer fire department that provides ongoing training and serves a political subdivision of the state.
 - (b) "Volunteer firefighter" does not include an individual who volunteers assistance but does not meet the requirements of Subsection (13)(a).
- (14) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a firefighter service employee was employed by a participating employer or received full-time pay while on sick leave, including any time the firefighter service employee was absent in the service of the United States on military duty.

Amended by Chapter 37, 2023 General Session

Amended by Chapter 59, 2023 General Session

Amended by Chapter 139, 2023 General Session

Effective 7/1/2024

49-16-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable as gross income received by a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts

the firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

- (i) overtime;
- (ii) sick pay incentives;
- (iii) retirement pay incentives;
- (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel, or similar payments;
- (v) a lump-sum payment or special payments covering accumulated leave; and
- (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.

(2)

(a) "Disability" means the complete inability, due to objective medical impairment, whether physical or mental, to perform firefighter service.

(b) "Disability" does not include the inability to meet an employer's required standards or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined under Subsection (2)(a).

(3) "Emergency medical service personnel" means an individual who:

(a) is:

- (i) a paramedic;
- (ii) an advanced emergency medical services technician; or
- (iii) an emergency medical services technician;

(b) is required to be licensed or certified under Section 53-2d-402; and

(c) has a primary job duty to provide emergency medical services as a first responder.

(4)

(a) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (4)(b), (c), and (d).

(b) Except as provided in Subsection (4)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(c) In cases where the participating employer provides acceptable documentation to the office the limitation in Subsection (4)(b) may be exceeded if:

- (i) the member has transferred from another agency; or
- (ii) the member has been promoted to a new position.

(d) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (14).

(5)

(a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:

- (i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department;

- (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal; or
- (iii) an emergency medical service personnel.
- (b) "Firefighter service" does not include secretarial staff or other similar employees.
- (6)
 - (a) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter.
 - (b) "Firefighter service employee" does not include an employee of a regularly constituted fire department who does not perform firefighter service.
- (7)
 - (a) "Line-of-duty death or disability" means a death or disability resulting from:
 - (i) external force, violence, or disease directly resulting from firefighter service; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a firefighter service employee.
 - (b) "Line-of-duty death or disability" does not include a death or disability that:
 - (i) occurs during an activity that is required as an act of duty as a firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death or disability; or
 - (iv) occurs in a manner other than as described in Subsection (7)(a).
 - (c) "Line-of-duty death or disability" includes the death or disability of a paid firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid firefighter has five years of firefighter service credit.
- (8) "Objective medical impairment" means an impairment resulting from an injury or illness that is diagnosed by a physician or physician assistant and that is based on accepted objective medical tests or findings rather than subjective complaints.
- (9) "Participating employer" means an employer that meets the participation requirements of Section 49-16-201.
- (10) "Regularly constituted fire department" means a fire department that employs a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid employment per year.
- (11)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (12) "System" means the Firefighters' Retirement System created under this chapter.
- (13)
 - (a) "Volunteer firefighter" means any individual who is not regularly employed as a firefighter service employee, but who:
 - (i) has been trained in firefighter techniques and skills;
 - (ii) continues to receive regular firefighter training; and
 - (iii) is on the rolls of a legally organized volunteer fire department that provides ongoing training and serves a political subdivision of the state.
 - (b) "Volunteer firefighter" does not include an individual who volunteers assistance but does not meet the requirements of Subsection (13)(a).

- (14) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a firefighter service employee was employed by a participating employer or received full-time pay while on sick leave, including any time the firefighter service employee was absent in the service of the United States on military duty.

Amended by Chapter 310, 2023 General Session

49-16-103 Creation of system.

There is created for members performing firefighter service and who are employed by a participating employer the "Firefighters' Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-16-104 Creation of trust fund.

- (1) There is created the "Firefighters' Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.
- (2) The fund shall consist of all money and assets transferred to it from any terminated system, all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) The custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2

Membership Eligibility

49-16-201 System membership -- Eligibility.

- (1) A firefighter service employee who performs firefighter service for an employer participating in this system is eligible for service credit in this system upon the earliest of:
 - (a) July 1, 1971, if the firefighter service employee was employed by the participating employer on July 1, 1971, and the participating employer was participating in this system on that date;
 - (b) the date the participating employer begins participating in this system if the firefighter service employee was employed by the participating employer on that date; or
 - (c) the date the firefighter service employee is hired to perform firefighter services for a participating employer, if the firefighter:
 - (i) initially enters employment before July 1, 2011; or
 - (ii) has service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board.
- (2)
 - (a)
 - (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll the dual purpose employees in the system in which the greatest amount of time is actually worked.

- (ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.
- (b)
 - (i) Before transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.
 - (ii) The office may request documentation to verify the appropriateness of the transfer.
- (3)
 - (a) A person hired by a regularly constituted fire department on or after July 1, 1971, who does not perform firefighter service is not eligible for service credit in this system.
 - (b) The nonfirefighter service employee shall become a member of the system for which the nonfirefighter service employee qualifies for service credit.
 - (c) The service credit exclusion under this Subsection (3) may not be interpreted to prohibit the assignment of a firefighter with a disability or partial disability to a nonfirefighter service position.
 - (d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for service credit in this system.
- (4) An allowance or other benefit may not be granted under this system that is based upon the same service for benefits received under some other system.
- (5) Service as a volunteer firefighter is not eligible for service credit in this system.
- (6) An employer is eligible to participate in this system if the employer:
 - (a) maintains a regularly constituted fire department;
 - (b) is the Department of Public Safety created in Section 53-1-103 that employs the state fire marshal appointed under Section 53-7-103; or
 - (c) employs emergency medical service personnel and meets the requirements of Subsections (7) and (8).
- (7)
 - (a) Subject to Subsection (9), beginning July 1, 2023, a firefighter service employee who is an emergency medical service personnel employed by a participating employer shall be eligible for service credit in this system if the emergency medical service personnel's participating employer chooses to cover the participating employer's emergency medical service personnel under this system.
 - (b)
 - (i) A participating employer's election under Subsection (7)(a) to cover the participating employer's emergency medical service personnel under this system is irrevocable.
 - (ii) A participating employer shall document an election under Subsection (7)(a) by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.
 - (c)
 - (i) An emergency medical service personnel's service before July 1, 2023, is not eligible for service credit in this system.
 - (ii) For an emergency medical service personnel employed by a participating employer, the emergency medical service personnel's service before the date the participating employer adopts a resolution described in Subsection (7)(b)(ii) is not eligible for service credit in this system.
- (8)
 - (a) The fire chief, or if there is not a fire chief for the participating employer, the emergency services director, shall verify that an individual meets the definition of emergency medical service personnel.

- (b) Each participating employer participating in this system that employs emergency medical service personnel shall submit annually to the office a schedule indicating which emergency medical service personnel positions are covered under this system under this chapter.
- (9) Beginning July 1, 2011, a person who is initially entering employment with a participating employer and who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board may not participate in this system.

Amended by Chapter 59, 2023 General Session

49-16-202 Participation of employers -- Full participation in system -- Supplemental programs authorized.

- (1) An employer that employs firefighter 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 of its firefighter 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 16, Firefighters' Retirement Act; or
 - (d) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.
- (2) Any employer that covers its firefighter service employees under Subsection (1)(c) is a participating employer in this system.
- (3) If a participating employer under Subsection (1) covers any of its firefighter service employees under the Firefighters' Retirement System, that participating employer shall cover all of its firefighter service employees under that system, except for a firefighter service employee initially entering employment with a participating employer 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 governing body submitted to the board, apply for coverage of its firefighter 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 participating employer may not withdraw from this system.
- (6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their firefighter service employees.

Amended by Chapter 266, 2010 General Session

49-16-203 Exemption of certain employees from coverage -- Exception.

- (1) A firefighter service employee serving as the chief of any fire department or district is excluded from coverage under this system if that firefighter service employee files a formal written request seeking exemption.
- (2) The chief of any fire department or district who retires from that position shall comply with the provisions of Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act, upon reemployment by the participating employer.
- (3) An employee's exclusion, exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

Part 3 Contributions

49-16-301 Contributions -- Two divisions -- Election by employer to pay employee contributions -- Accounting for and vesting of worker contributions -- Deductions.

- (1) In addition to the money paid to this system under Section 49-11-901.5, participating employers and firefighter service employees shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two divisions according to Social Security coverage as follows:
 - (a) members of this system with on-the-job Social Security coverage are in Division A; and
 - (b) members of this system without on-the-job Social Security coverage are in Division B.
- (3)
 - (a) A participating employer may elect to pay all or part of the required member contributions, in addition to the required participating employer contributions.
 - (b) Any amount contributed by a participating employer under this section shall vest to the member's benefit as though the member had made the contribution.
 - (c) The required member contributions shall be reduced by the amount that is paid by the participating employer.
- (4)
 - (a) All member contributions are credited by the office to the account of the individual member.
 - (b) This amount is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) All member contributions are vested and nonforfeitable.
- (5)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered to be full payment for services rendered by the member.

Amended by Chapter 290, 2011 General Session

Amended by Chapter 439, 2011 General Session

Part 4 Defined Benefit

49-16-401 Eligibility for service retirement -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and

- (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least 20 years of service credit;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 60 years; or
 - (iii) the member has accrued at least four years of service credit and has attained an age of 65 years.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the firefighter service employee;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
 - (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-16-402 Calculation of retirement allowance.

- (1) A retiree under this system shall receive an allowance equal to:
 - (a) 2.5% of final average monthly salary multiplied by the number of years of service credit, limited to 20 years; plus
 - (b) 2% of final average monthly salary, multiplied by the number of years of service credit in excess of 20 years.
- (2) The minimum allowance payable under this section is \$500.
- (3)

- (a) Except as modified by cost-of-living adjustments and except as provided under Subsection (3)(b), an allowance under this system may not exceed 70% of a firefighter service employee's final average monthly salary.
- (b) The allowance limitation under Subsection (3)(a) does not apply to a member who initially retires on or after July 1, 2010.

Amended by Chapter 264, 2010 General Session

49-16-403 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-16-402, Part 5, Death Benefit, and Part 6, Disability Benefit, of this chapter if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 5
Death Benefit

49-16-501 Death of active member in Division A -- Payment of benefits.

- (1) If an active member of this system enrolled in Division A under Section 49-16-301 dies, benefits are payable as follows:
 - (a) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:
 - (i) If the member has accrued less than 20 years of firefighter service credit, the surviving spouse shall receive a lump sum equal to six months of the active member's final average salary and an allowance equal to 30% of the member's final average monthly salary.
 - (ii) If the member has accrued 20 or more years of firefighter service credit, the member shall be considered to have retired with an allowance calculated under Section 49-16-402 and the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-16-504.
 - (b) If the death is not classified as a line-of-duty death by the office, benefits are payable as follows:
 - (i) If the member has accrued less than 10 years of firefighter service credit, the beneficiary shall receive a sum of \$1,000 or a refund of the member's member contributions, whichever is greater.

- (ii) If the member has accrued 10 or more years of firefighter service credit but less than 20 years of firefighter service credit, the surviving spouse shall receive a sum of \$500, plus an allowance equal to 2% of the member's final average monthly salary for each year of service credit accrued by the member up to a maximum of 30% of the member's final average monthly salary.
- (iii) If the member has accrued 20 or more years of firefighter service credit:
 - (A) the member shall be considered to have retired with an allowance calculated under Section 49-16-402; and
 - (B) the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-16-504.
- (2)
 - (a) If the member dies without a surviving spouse, the surviving spouse's allowance shall be equally divided and paid to each unmarried child until the child reaches age 21.
 - (b) The payment shall be made to a duly appointed guardian or as provided under Sections 49-11-609 and 49-11-610.
- (3) If the benefit is not distributed under this section, and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.
- (4)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 450, 2018 General Session

49-16-502 Death of active member in Division B -- Payment of benefits.

- (1) If an active member of this system enrolled in Division B under Section 49-16-301 dies, benefits are payable as follows:
 - (a) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:
 - (i) If the member has accrued less than 20 years of firefighter service credit, the surviving spouse shall receive:
 - (A) a lump sum equal to six months of the active member's final average salary; and
 - (B) an allowance equal to 37.5% of the member's final average monthly salary.
 - (ii) If the member has accrued 20 or more years of firefighter service credit, the member shall be considered to have retired with an allowance calculated under Section 49-16-402 and the surviving spouse shall receive the death benefit payable to a surviving spouse under Section 49-16-504.
 - (b) If the death is not classified by the office as a line-of-duty death, the benefits are payable as follows:
 - (i) If the member has accrued 20 or more years of firefighter service credit, the death is considered line-of-duty and the surviving spouse shall receive:
 - (A) a lump sum of \$1,500; and
 - (B) the greater of an allowance established under Subsection (1)(a)(i)(B) or Subsection (1)(a)(ii).

- (ii) If the member has accrued five or more years of firefighter service credit but less than 20 years of firefighter service credit, the death is considered line-of-duty and the surviving spouse shall receive:
 - (A) a lump sum of \$1,500; and
 - (B) an allowance as established under Subsection (1)(a)(i)(B).
- (iii) If the member has accrued less than five years of firefighter service credit, the surviving spouse shall receive a refund of the member's contributions, plus 50% of the member's most recent 12 months compensation.
- (c) If the member has accrued five or more years of firefighter service credit, the member's unmarried children until they reach age 21 or dependent unmarried children with a mental or physical disability, shall receive a monthly allowance of \$75.
- (2)
 - (a) If the member dies and there is no surviving spouse, any amounts that would have been the surviving spouse's benefits are equally divided and paid to each unmarried child until the child reaches age 21.
 - (b) The payments shall be made to the surviving parent or duly appointed guardian or as provided under Sections 49-11-609 and 49-11-610.
- (3) If a benefit is not distributed under Subsection (1) or (2), and the member has designated a beneficiary, the member's member contributions shall be paid to the beneficiary.
- (4) The combined monthly payments made to the beneficiaries of any member under this section may not exceed 75% of the member's final average monthly salary.
- (5)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 3, 2023 Special Session 1

49-16-503 Benefits payable upon death of inactive member.

- (1) If an inactive member who has less than 20 years of firefighter service credit dies, the surviving spouse, or, if there is no surviving spouse, the member's minor children shall receive a refund of the member's member contributions or \$500, whichever is greater.
- (2)
 - (a) If an inactive member with 20 or more years of firefighter service credit dies, the surviving spouse shall receive an allowance in the amount of 50% of the amount the member would have received had retirement occurred on the first of the month following the month in which the death occurred.
 - (b) This allowance shall be based on years of service credit and final average monthly salary under Section 49-16-402, reduced actuarially from age 50 to the age of the member at the time of death if the member is under 50 years of age at the time of death.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:

- (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
- (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-16-504 Benefits payable upon death of retired member.

- (1) If a retiree who retired under either Division A or Division B dies, the retiree's surviving spouse shall receive an allowance equal to 75% of the allowance that was being paid to the retiree at the time of death.
- (2) If the retiree retired solely under Division B and dies leaving unmarried children under the age of 21 or dependent unmarried children with a mental or physical disability, the children shall qualify for a benefit as prescribed under Subsection 49-16-502(1)(c).
- (3)
 - (a) A beneficiary who qualifies for a monthly benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 84, 2016 General Session

49-16-505 Benefits for surviving spouse under Division A or Division B.

The surviving spouse, if eligible, shall receive a benefit computed under either Division A or Division B, whichever provides the larger benefit, but may not receive a benefit under both divisions if it would result in a duplicate benefit.

Amended by Chapter 84, 2016 General Session

49-16-506 Minimum allowance for surviving spouse.

The minimum allowance payable to the surviving spouse who qualifies for an allowance under Section 49-16-501, 49-16-502, 49-16-503 or 49-16-504, shall be \$350 per month.

Amended by Chapter 84, 2016 General Session

49-16-507 Benefits payable upon death of active or inactive member without a surviving spouse or minor children.

If an active or inactive member dies and at the time of death the member does not have a surviving spouse or minor children, the benefit payable to a designated beneficiary is a refund of the member's member contributions or \$500, whichever is larger.

Amended by Chapter 84, 2016 General Session

49-16-508 Surviving spouse includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

Part 6

Disability Benefit

49-16-601 Disability benefit -- Nonline-of-duty disability -- Benefits -- Monthly allowance.

- (1) An active member of this system with a disability that was not incurred in the line-of-duty may apply to the office for a disability retirement benefit subject to the following provisions:
 - (a) if the member has less than five years of service credit in this system, disability benefits are not payable; and
 - (b) if the condition is classified by the office as a nonline-of-duty disability and if the member has five or more years of service credit in this system, the member shall be granted a disability retirement benefit subject to Section 49-16-602.
- (2) The monthly disability retirement benefit is 50% of the member's final average monthly salary.

Amended by Chapter 93, 2017 General Session

49-16-601.5 Line-of-duty disability benefit -- Benefits -- Monthly allowance.

- (1) An active member of this system with a disability incurred in the line-of-duty may apply to the office for a disability retirement benefit under this section.
- (2) If the condition is classified by the office as a line-of-duty disability, the member shall be granted a disability retirement benefit subject to Section 49-16-602.
- (3) A paid firefighter who has five years of firefighter service credit is eligible for a line-of-duty disability benefit resulting from heart disease, lung disease, or a respiratory tract condition.
- (4) A paid firefighter who receives a service connected disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty disability benefit due to heart disease, lung disease, or respiratory tract condition for two years after the firefighter returned to work unless clear and convincing evidence is presented that the heart disease, lung disease, or respiratory tract condition was directly a result of firefighter service.
- (5) The monthly disability retirement benefit is 50% of the member's final average salary.

Amended by Chapter 93, 2017 General Session

49-16-602 Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.

- (1) A member of this system who applies and is qualified for disability retirement shall receive a disability retirement benefit until the earlier of:
 - (a) the date the member of this system no longer has a disability;
 - (b) the date the member of this system has accumulated 20 years of firefighter service credit, including years earned while the member of this system had a disability; or
 - (c) the date the member of this system has received disability retirement benefits for the following time periods:
 - (i) if the member is under age 60 on the date of disability, the disability retirement benefit is payable until age 65;
 - (ii) if the member is 60 or 61 years of age on the date of disability, the disability retirement benefit is payable for five years;
 - (iii) if the member is 62 or 63 years of age on the date of disability, the disability retirement benefit is payable for four years;
 - (iv) if the member is 64 or 65 years of age on the date of disability, the disability retirement benefit is payable for three years;
 - (v) if the member is 66, 67, or 68 years of age on the date of disability, the disability retirement benefit is payable for two years; and
 - (vi) if the member is 69 years of age or older on the date of disability, the disability retirement benefit is payable for one year.
- (2)
 - (a)
 - (i) The retiree with a disability shall receive service credit in this system during the period of disability.
 - (ii) If the retiree with a disability is employed by a participating employer during the period of disability, the retiree with a disability may not receive service credit for that employment.
 - (b) The disability retirement shall be converted to a service retirement at the time the disability retirement benefits terminate.
- (3) The office shall approve or disapprove applications for disability retirement benefits based upon:
 - (a) the evaluation and recommendations of one or more treating physicians or physician assistants along with medical records relating to the condition;
 - (b) the evaluation and recommendations of one or more independent physicians or physician assistants selected by the office; and
 - (c) receipt of documentation by the office from the participating employer that the member is mentally or physically unable to perform firefighter service.
- (4)
 - (a) A retiree with a disability who receives benefits under this section shall, upon request of the executive director, submit to a medical examination by one or more physicians or physician assistants as directed by the office.
 - (b) If, after an examination, the examiners report that the retiree with a disability is physically and mentally able and capable of resuming firefighter service employment, the retiree with a disability shall be reinstated by the participating employer for which the retiree with a disability last worked at the former classification and rank of the retiree with a disability, and the disability retirement benefit shall terminate.
 - (c) A retiree with a disability may not be required to submit to an examination under this Subsection (4) more than once every year.

- (d) A retiree with a disability who returns to firefighter service employment with a participating employer in this system shall immediately begin accruing service credit that shall be added to that service credit that has been previously accrued, including service credit while disabled.
- (5) A retiree with a disability is not subject to medical examinations after reaching age 55.
- (6) Refusal or neglect of a member to submit to an examination as requested by the office either before or after a decision regarding disability benefits has been made is sufficient cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect continues for one year, the rights of the member or retiree with a disability to disability retirement benefits may be revoked by the office.
- (7)
 - (a) A retiree with a disability who receives benefits under this part shall file a sworn statement with the office on or before March 15 of each year for the first five years a retiree with a disability receives benefits.
 - (b) The sworn statement shall indicate whether or not the retiree with a disability engaged in any employment during the preceding year and, if so, the amount of earnings received during the calendar year.
 - (c) If the total amount received in one year by a retiree with a disability for disability retirement benefits and gross earnings from other employment exceeds 125% of the final average salary of the retiree with a disability, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the final average salary of the retiree with a disability.
 - (d)
 - (i) If a retiree with a disability refuses or neglects to file a sworn statement as required under this Subsection (7), the executive director may suspend payment of any and all benefits pending receipt of the statement.
 - (ii) Upon filing the statement, the payments of the retiree with a disability shall be resumed.
- (8) The disability retirement benefit shall be improved by the annual cost-of-living increase factor applied to retirees of the system that covered the firefighter service employee at the time of disability.
- (9) A line of duty disability allowance paid on or after January 1, 2002, under Section 49-16-601 is exempt from taxation to the extent permitted under federal law.
- (10)
 - (a) An active member of this system with five or more years of firefighter service credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease, lung disease, or respiratory tract disease.
 - (b) An active member of this system who receives a line-of-duty disability benefit for more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract disease, and then returns to paid firefighter service, is not eligible for a line-of-duty death or disability benefit due to those diseases for two years after the member returned to paid firefighter service unless clear and convincing evidence is presented that the heart, lung, or respiratory tract disease was directly a result of firefighter service.
- (11) Disability retirement benefits shall be considered an allowance for purposes of Section 49-11-701.

Amended by Chapter 349, 2019 General Session

49-16-603 Suspension of benefit upon settlement of workers' compensation claim.

- (1) Settlement of a claim for workers' compensation for injury or disability shall suspend disability retirement benefits granted under this part, except for the initial three months, to a member granted the benefits until workers' compensation payments terminate.
- (2) If there is a lump-sum settlement of the workers' compensation claim, the office shall suspend the disability retirement benefit until the total of suspended benefits is equal to 75% of the settlement received from workers' compensation.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 7

Volunteer Firefighters

49-16-701 Volunteer firefighters eligible for line-of-duty death and disability benefits in Division A -- Computation of benefit.

- (1) A volunteer firefighter is only eligible for line-of-duty death and line-of-duty disability benefits provided for firefighters enrolled in Division A, subject to Sections 49-16-602 and 49-16-603.
- (2) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death or disability shall be considered to be the final average monthly salary of a volunteer firefighter for purposes of computing these benefits.
- (3) Each volunteer fire department shall maintain a current roll of all volunteer firefighters that meet the requirements of Subsection 49-16-102(13) to determine eligibility for this benefit.

Amended by Chapter 37, 2023 General Session

Amended by Chapter 59, 2023 General Session

Amended by Chapter 139, 2023 General Session

Chapter 17

Judges' Contributory Retirement Act

Part 1

General Provisions

49-17-101 Title.

This chapter is known as the "Judges' Contributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-17-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments which are currently includable in gross income made by a participating employer to a member of this system for services rendered to the participating employer.
 - (b) "Compensation" includes:

- (i) performance-based bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) payments subject to Social Security deductions;
 - (iv) any payments in excess of the maximum amount subject to deduction under Social Security law;
 - (v) amounts which the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (vi) member contributions.
- (c) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).
- (d) "Compensation," does not include:
- (i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;
 - (ii) all contributions made by a participating employer under any system or plan for the benefit of a member or participant;
 - (iii) salary paid to a temporary or exempt employee;
 - (iv) payments upon termination or any other special payments including early retirement inducements; or
 - (v) uniform, travel, or similar payments.
- (2) "Final average salary" means the amount calculated by averaging the highest two years of annual compensation preceding retirement, subject to Subsections (2)(a), (b), and (c).
- (a) Except as provided in Subsection (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (b) In cases where the participating employer provides acceptable documentation to the board, the limitation in Subsection (2)(a) may be exceeded if:
- (i) the member has transferred from another participating employer; or
 - (ii) the member has been promoted to a new position.
- (c) The annual compensation used to calculate final average salary shall be based on the state's fiscal year.
- (3) "Judge" means a judge or justice of the courts of record as enumerated in Section 78A-1-101.
- (4) "Participating employer" means the state.
- (5) "System" means the Judges' Contributory Retirement System created under this chapter.
- (6) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a judge was employed by a participating employer.

Amended by Chapter 227, 2016 General Session

49-17-103 Creation of system.

There is created for judges the "Judges' Contributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-17-104 Creation of trust fund.

- (1) There is created the "Judges' Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

- (2) The fund shall consist of all money, including interest, and assets transferred to it under any terminated system, the money paid into it under this system, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2 Membership Eligibility

49-17-201 System membership -- Eligibility.

Except as provided in Section 49-18-201, judges are members of and are eligible for service credit in this system.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 3 Contributions

49-17-301 Contributions by members and participating employers -- Retirement fees -- Deductions.

- (1) In addition to the money paid to this system under Subsection (3), participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) The participating employer may make contributions on behalf of members of this system in addition to the contribution required of the participating employer, except that 2% of compensation shall be paid by the member.
- (3) Fees collected under Subsection 78A-2-301(1)(j)(i) shall be paid monthly to the office to maintain this system and the system established under Chapter 18, Judges' Noncontributory Retirement Act.
- (4)
 - (a) All member contributions are credited by the office to the account of the individual member.
 - (b) This amount, plus refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) All member contributions are vested and nonforfeitable.
- (5)
 - (a) Each member is considered to consent to payroll deductions of the member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

Amended by Chapter 3, 2008 General Session

Part 4

Defined Benefit

49-17-401 Eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance when:
 - (a) the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least six years of service credit and has attained an age of 70 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 55 years; or
 - (iv) the member has accrued at least 25 years of service credit.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) A member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

Amended by Chapter 15, 2014 General Session

49-17-402 Calculation of retirement allowance.

- (1) A retiree under this system shall receive an allowance equal to:
 - (a) 5% of the final average monthly salary multiplied by the number of years of service credit, limited to 10 years; plus
 - (b) 2.25% of the final average monthly salary multiplied by the number of years of service credit in excess of 10 years and up to and including 20 years; plus
 - (c) 1% of the final average monthly salary multiplied by the number of years of service credit in excess of 20 years.
- (2)
 - (a) Except as modified by cost-of-living adjustments and except as provided under Subsection (2)(b), an allowance under this system may not exceed 75% of the member's final average monthly salary.
 - (b) The allowance limitation under Subsection (2)(a) does not apply to a member who initially retires on or after July 1, 2010.
- (3) If the retiree has attained the age of 55 years and has 20 years or more but less than 25 years of service credit, the retiree shall receive an early retirement reduction to the allowance based on an actuarial calculation assuming a normal retirement age of 65 years.

Amended by Chapter 15, 2014 General Session

49-17-403 Minimum allowance.

Beginning July 1, 1990, all retirees or beneficiaries under this chapter who receive an allowance less than \$1,000 per month shall have the allowance increased 10%, but the increased allowance may not equal more than \$1,000.

Enacted by Chapter 250, 2002 General Session

49-17-404 Temporary retirement window for 20 years of service.

- (1) If a member qualified to retire under Section 49-17-401 or a member of this system of any age with at least 20 years of service credit or a member of this system with at least six years of service credit and has attained an age of 65 years or older retires on or after July 1, 1992, and on or before December 31, 1992, the retirement allowance shall be the same as calculated in Section 49-17-402, except that the final average monthly salary shall be calculated upon the member's final year of service.
- (2)
 - (a) Nominations for appointments resulting from this section shall be presented to the governor not later than October 15, 1992.
 - (b) To qualify, the member shall give notice of intent to retire under this section to the Administrative Office of the Courts no later than February 28, 1992.
 - (c) Notice of intent to retire under this section may not be revoked.
 - (d) The Administrative Office of the Courts shall provide the member's application to retire to the office as required by Section 49-17-401.

Renumbered and Amended by Chapter 250, 2002 General Session

49-17-405 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an allowance paid under Section 49-17-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year; and
 - (b) a payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 5
Death Benefit

49-17-501 Death benefit for members before retirement -- Computation.

- (1) Upon the receipt of acceptable proof of death of a member before the member's retirement date, the member's surviving spouse shall have the choice of the following death benefits:
 - (a) a refund of the member's member contributions, including refund interest, plus 65% of the member's most recent 12 months' compensation prior to death; or
 - (b) an allowance equal to 65% of the allowance computed in accordance with Section 49-17-402, but disregarding early retirement reductions.
- (2) If there is no surviving spouse, member contributions, including refund interest, shall be refunded to a beneficiary, in accordance with Sections 49-11-609 and 49-11-610.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-17-502 Benefits payable upon death of retired member.

- (1)
 - (a) The death benefit payable to a retiree's surviving spouse is an allowance equal to 65% of the allowance which was being paid to the retiree at the time of death.
 - (b) The effective date of the accrual of this allowance is the first day of the month following the month in which the retiree died.
- (2)
 - (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the spousal death benefit up to 75% of an allowance computed in accordance with Section 49-17-402.
 - (b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.
- (3)
 - (a) A surviving spouse who qualifies for a monthly benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 84, 2016 General Session

49-17-503 Surviving spouse includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is

calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.

- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

Part 6 Reserved

Part 7 Early Retirement Incentive

49-17-701 Judges' mandatory retirement age.

- (1) Except as provided in Subsection (2), a judge shall retire upon attaining the age of 75 years.
- (2) A judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age prior to the judge's next retention election may not be a candidate in that retention election and shall retire on or before December 31 of the year in which the judge would have been subject to a retention election.

Renumbered and Amended by Chapter 250, 2002 General Session

Chapter 18 Judges' Noncontributory Retirement Act

Part 1 General Provisions

49-18-101 Title.

This chapter is known as the "Judges' Noncontributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-18-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments which are currently includable in gross income made by a participating employer to a member of this system for services rendered to the participating employer.
 - (b) "Compensation" includes:
 - (i) performance-based bonuses;

- (ii) cost-of-living adjustments;
 - (iii) payments subject to Social Security deductions;
 - (iv) any payments in excess of the maximum amount subject to deduction under Social Security law; and
 - (v) amounts which the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law.
- (c) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code Section 401(a)(17).
- (d) "Compensation" does not include:
- (i) the monetary value of remuneration paid in kind, such as a residence or use of equipment;
 - (ii) all contributions made by a participating employer under a system or plan for the benefit of a member or participant;
 - (iii) salary paid to a temporary or exempt employee;
 - (iv) payments upon termination or any other special payments including early retirement inducements; or
 - (v) uniform, travel, or similar payments.
- (2) "Final average salary" means the amount calculated by averaging the highest two years of annual compensation preceding retirement, subject to Subsections (2)(a), (b), and (c).
- (a) Except as provided in Subsection (2)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (b) In cases where the participating employer provides acceptable documentation to the board, the limitation in Subsection (2)(a) may be exceeded if:
- (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
- (c) The annual compensation used to calculate final average salary shall be based on the state's fiscal year.
- (3) "Judge" means a judge or justice of the courts of record as enumerated in Section 78A-1-101.
- (4) "Participating employer" means the state.
- (5) "System" means the Judges' Noncontributory Retirement System created under this chapter.
- (6) "Years of service credit" means the number of periods, each to consist of 12 full months or as determined by the board, whether consecutive or not, during which a judge was employed by a participating employer.

Amended by Chapter 227, 2016 General Session

49-18-103 Creation of system.

There is created for judges the "Judges' Noncontributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

49-18-104 Creation of trust fund.

- (1) There is created the "Judges' Noncontributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.

- (2) The fund shall consist of all money, including interest, and assets transferred to it under any terminated system, the money paid into it under this system, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2

Membership Eligibility

49-18-201 System membership -- Eligibility.

- (1) Judges appointed after July 1, 1997, are members of and are eligible for service credit in this system.
- (2)
 - (a) Any judge appointed prior to July 1, 1997, may either become a member of the Judges' Noncontributory Retirement System or remain a member of the Judges' Contributory Retirement System established under Chapter 17, Judges' Contributory Retirement Act, by following the procedures established by the board pursuant to this chapter.
 - (b) Judges may only elect to participate in this system under Subsection (2) prior to January 1, 1998.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 3

Contributions

49-18-301 Contributions by employees and employers -- Retirement fees.

- (1) In addition to the money paid to this system under Subsection (2), participating employers shall pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) Fees collected under Subsection 78A-2-301(1)(j)(i) shall be paid monthly to the office to maintain this system and the system established under Chapter 17, Judges' Contributory Retirement Act.

Amended by Chapter 3, 2008 General Session

Part 4

Defined Benefit

49-18-401 Eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance when:
 - (a) the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

- (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
- (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least six years of service credit and has attained an age of 70 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 55 years; or
 - (iv) the member has accrued at least 25 years of service credit.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) A member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

Amended by Chapter 15, 2014 General Session

49-18-402 Calculation of retirement allowance.

- (1) A retiree under this system shall receive an allowance equal to:
 - (a) 5% of the final average monthly salary multiplied by the number of years of service credit, limited to 10 years; plus
 - (b) 2.25% of the final average monthly salary multiplied by the number of years of service credit in excess of 10 years and up to and including 20 years; plus
 - (c) 1% of the final average monthly salary multiplied by the number of years of service credit in excess of 20 years.
- (2)
 - (a) Except as modified by cost-of-living adjustments and except as provided under Subsection (2)(b), an allowance under this system may not exceed 75% of the member's final average monthly salary.
 - (b) The allowance limitation under Subsection (2)(a) does not apply to a member who initially retires on or after July 1, 2010.
- (3) If the retiree has attained the age of 55 years and has 20 years or more but less than 25 years of service credit, the retiree shall receive an early retirement reduction to the allowance based on an actuarial calculation assuming a normal retirement age of 65 years.

Amended by Chapter 15, 2014 General Session

49-18-403 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an allowance paid under Section 49-18-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year; and
 - (b) a payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)

- (a) The allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
- (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 5

Death Benefit

49-18-501 Death benefit for members before retirement -- Computation.

- (1) Upon the receipt of acceptable proof of death of a member before the member's retirement date, the member's surviving spouse shall have the choice of the following death benefits:
 - (a) a refund of the member's member contributions, if any, plus 65% of the member's most recent 12 months' compensation prior to death; or
 - (b) an allowance equal to 65% of the allowance computed in accordance with Section 49-18-402, but disregarding early retirement reductions.
- (2) If there is no surviving spouse, member contributions shall be refunded to a beneficiary, in accordance with Sections 49-11-609 and 49-11-610.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-18-502 Benefits payable upon death of retired member.

- (1) The death benefit payable to a retiree's surviving spouse is an allowance equal to 65% of the allowance which was being paid to the retiree at the time of death.
- (2)
 - (a) Notwithstanding the amount of the allowance under Subsection (1), at the time of retirement, a retiree may elect to increase the spousal death benefit up to 75% of an allowance computed in accordance with Section 49-18-402.
 - (b) If an election is made under Subsection (2)(a), the member's allowance shall be reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to pay for the increased spousal death benefit above 65%.
- (3)

- (a) A surviving spouse who qualifies for a monthly benefit under this section shall apply in writing to the office.
- (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 84, 2016 General Session

49-18-503 Surviving spouse includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

**Part 6
Reserved**

**Part 7
Early Retirement Incentive**

49-18-701 Judges' mandatory retirement age.

- (1) Except as provided in Subsection (2), a judge shall retire upon attaining the age of 75 years.
- (2) A judge serving on July 1, 1996, who is 75 years of age or older on July 1, 1996, or who attains 75 years of age prior to the judge's next retention election may not be a candidate in that retention election and shall retire on or before December 31 of the year in which the judge would have been subject to a retention election.

Renumbered and Amended by Chapter 250, 2002 General Session

**Chapter 19
Utah Governors' and Legislators' Retirement Act**

**Part 1
General Provisions**

49-19-101 Title.

This chapter is known as the "Utah Governors' and Legislators' Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-19-102 Definitions.

As used in this chapter:

- (1) "Governor" includes former governors.
- (2) "Legislator" includes former legislators.
- (3) "Plan" means the Utah Governors' and Legislators' Retirement Plan created under this chapter.

Enacted by Chapter 250, 2002 General Session

49-19-103 Creation of plan.

There is created for Utah governors and legislators the "Utah Governors' and Legislators' Retirement Plan."

Renumbered and Amended by Chapter 250, 2002 General Session

49-19-104 Creation of trust fund.

- (1) There is created the "Utah Governors' and Legislators' Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this plan.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 2 Membership Eligibility

49-19-201 Plan participation -- Eligibility.

- (1) A governor or legislator is eligible for service credit in this plan during their term of service in their elected position if the governor or legislator:
 - (a) entered office before July 1, 2011; or
 - (b) accrued service credit in a Tier I system or plan administered by the board before July 1, 2011.
- (2) A governor or legislator initially entering office on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board:
 - (a) may not participate in this system;
 - (b) is only eligible to participate in the Tier II Defined Contribution Plan established under Chapter 22, Part 4, Tier II Defined Contribution Plan; and

- (c) is not eligible to participate in the Tier II hybrid retirement system established under Chapter 22, Part 3, Tier II Hybrid Retirement System.

Amended by Chapter 15, 2014 General Session

Part 3 Contribution

49-19-301 Contribution rate -- Annual legislative appropriation.

- (1) The Legislature, by means of annual appropriations, shall maintain this plan on a financially and actuarially sound basis.
- (2) The Legislature shall cause the appropriate amount to be paid to the office.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 4 Defined Benefit

49-19-401 Eligibility for an allowance -- Governor -- Legislator.

- (1) A governor is qualified to receive an allowance when:
 - (a) the governor has submitted to the office a retirement application form that states the proposed retirement date; and
 - (b) one of the following conditions is met as of the retirement date:
 - (i) the governor has completed at least one full term in office and has attained an age of 65 years; or
 - (ii) the governor has served as governor of the state for at least 10 years and has attained an age of 62 years.
- (2) A legislator is qualified to receive an allowance when:
 - (a) the legislator has submitted to the office a retirement application form that states the proposed retirement date; and
 - (b) one of the following conditions is met as of the retirement date:
 - (i) the legislator has completed at least four years in the Legislature and has attained an age of 65 years; or
 - (ii) the legislator has completed at least 10 years in the Legislature and has attained an age of 62 years.
- (3)
 - (a) The retirement date shall be the 1st or the 16th day of the month as selected by the member.
 - (b) The retirement date may not be more than 90 days before or after the date the application is received by the office.
- (4) A member who withdraws member contributions shall forfeit all allowances based on those contributions.
- (5) If a retired legislator is elected to another term in the Legislature or continues to serve in the Legislature, the legislative allowance ceases at the beginning of each session under rules established by the board, but is restored at the same amount at the end of the session.

- (6) A member receiving an allowance while serving as a legislator is eligible for additional service credits and allowance adjustments at the end of each term of office if the legislator continues as a contributing member during the member's service as a legislator.

Amended by Chapter 15, 2014 General Session

49-19-402 Calculation of allowance -- Reduction for early retirement.

- (1)
- (a) The base retirement amount for a governor under this plan is \$500 per term, adjusted as provided in Section 49-19-404 since 1973.
 - (b) A governor's allowance shall be calculated by multiplying the base retirement amount at the retirement date by the number of terms the governor served, including fractions of terms.
- (2)
- (a) The base retirement amount for a legislator under this plan is \$10 per year of service in the Legislature, adjusted as provided in Section 49-19-404, since 1967.
 - (b) A legislator's allowance shall be calculated by multiplying the base retirement amount at the retirement date by the number of years the legislator served, including fractions of years.
- (3) If a governor or legislator retires prior to age 65, the allowance shall be reduced by 3% for each year of retirement between age 62 and age 65.

Amended by Chapter 118, 2004 General Session

49-19-403 Retirement option.

- (1) A governor or legislator may elect to forfeit the allowance provided by this chapter and in lieu thereof participate, on the same basis as other state elected and appointed officers under Title 67, Chapter 22, State Officer Compensation, in a defined contribution plan administered by the office, in accordance with Section 49-11-801 and in accordance with federal law.
- (2) A governor's or legislator's exclusion, exemption, participation, or election described in this section:
- (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 24, 2020 General Session

49-19-404 Annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
- (a) an original allowance paid under Section 49-19-402 and Part 5, Death Benefit, of this chapter if the benefit has been paid for at least one year;
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount; and
 - (c) the base retirement amount for governors and legislators under Section 49-19-402.
- (2)
- (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
 - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the increase in the Consumer Price Index is less than 4%.

- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Enacted by Chapter 250, 2002 General Session

Part 5 Death Benefit

49-19-501 Death of member or retiree -- Surviving spouse benefit.

- (1) Upon the death of a governor or legislator who has not yet retired and who has completed four or more years in the elected office, the member's surviving spouse shall receive an allowance equal to 50% of the allowance to which the governor or legislator would have been entitled upon reaching age 65, if the governor or legislator and surviving spouse had been married at least six months.
- (2) Upon the death of a governor or legislator receiving an allowance under this plan, the member's surviving spouse is entitled to an allowance equal to 50% of the allowance being paid to the member at the time of death.
- (3)
 - (a) A surviving spouse who requests a benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month:
 - (i) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (ii) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.

Amended by Chapter 84, 2016 General Session

49-19-502 Surviving spouse at the time of death includes certain former spouses -- Benefit calculation for former spouse.

- (1) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (2) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Enacted by Chapter 84, 2016 General Session

Chapter 20 Public Employees' Benefit and Insurance Program Act

Part 1

General Provisions

49-20-101 Title.

This chapter is known as the "Public Employees' Benefit and Insurance Program Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-20-102 Definitions.

As used in this chapter:

- (1) "Covered employer" means an employer that offers employee benefit plans under this chapter to its employees and their dependents.
- (2) "Covered individual" means an employee and the employee's dependents eligible for coverage under this chapter.
- (3) "Employee Benefit Plans" means any group health, dental, medical, disability, life insurance, medicare supplement, conversion coverage, cafeteria, flex plans, or other program for covered individuals administered by the Public Employees' Benefit and Insurance Program.
- (4) "Employer" means the state, its political subdivisions, and educational institutions.
- (5) "Program" means the Public Employees' Benefit and Insurance Program.

Renumbered and Amended by Chapter 250, 2002 General Session

49-20-103 Creation of insurance program.

- (1) There is created for the employees of the state, its educational institutions, and political subdivisions the "Public Employees' Benefit and Insurance Program" within the office.
- (2) The program may also be known and function as the Public Employees' Health Program, PEHP, or PEHP Health and Benefits.

Amended by Chapter 141, 2017 General Session

49-20-104 Creation of fund.

- (1) There is created the "Public Employees' Trust Fund" for the purpose of paying the benefits and the costs of administering this program.
- (2) The fund shall consist of all money and interest paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

49-20-105 Purpose -- Benefits are not a continuing obligation.

- (1) The purpose of this chapter is to provide a mechanism for covered employers to provide covered individuals with group health, dental, medical, disability, life insurance, medicare supplement, conversion coverage, cafeteria, flex plan, and other programs requested by the

state, its political subdivisions, or educational institutions in the most efficient and economical manner.

- (2) The benefits provided to a covered individual under this chapter do not constitute a continuing obligation of the state, its political subdivisions, or educational institutions.

Amended by Chapter 406, 2012 General Session

Part 2

Membership Eligibility

49-20-201 Program participation -- Eligibility -- Optional for certain groups.

- (1)
- (a) The state shall participate in the program on behalf of the state's employees.
 - (b) Other employers, including political subdivisions and educational institutions, are eligible, but are not required, to participate in the program on behalf of their employees.
- (2)
- (a) As provided in Subsection 26B-3-908(5), the Department of Health and Human Services may participate in the program for the purpose of providing health and dental benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance Program.
 - (b) If the Department of Health and Human Services participates in the program under the provisions of this Subsection (2), all insurance risk associated with the Utah Children's Health Insurance Program shall be the responsibility of the Department of Health and Human Services and not the program or the office.
- (3) Volunteer emergency medical service personnel are eligible to participate in the program in accordance with Section 26B-4-136.
- (4) A covered individual shall be eligible for coverage after termination of employment under rules adopted by the board.
- (5) Only the following are eligible for Medicare supplement coverage under this chapter upon becoming eligible for Medicare Part A and Part B coverage:
- (a) retirees;
 - (b) members;
 - (c) participants;
 - (d) employees who have medical employee benefit plan coverage at the time of their retirement; and
 - (e) current spouses of those who are eligible under Subsections (5)(a) through (d).

Amended by Chapter 328, 2023 General Session

49-20-202 Establishment of separate risk pools.

- (1) The program shall establish separate risk pools for:
- (a) state employees; and
 - (b) the Utah Children's Health Insurance Program.
- (2) In accordance with participation standards established by the program, the following entities may elect to participate in the risk pool established under Subsection (1)(a):

- (a) in accordance with Subsection (3)(b), an institution of higher education designated under Section 53B-1-102 with a total full-time equivalent enrollment of less than 18,000;
 - (b) an independent entity as defined in Section 63E-1-102; and
 - (c) a comprehensive regional college.
- (3)
- (a) The program shall create risk pools for other covered employers separate from those created in Subsection (1) as determined by the program.
 - (b)
 - (i) If an institution of higher education described in Subsection (2)(a) has 1,000 or more plan enrollees, the program shall establish a rate for the institution of higher education based 100% on experience; and
 - (ii) if the rate established under Subsection (3)(b)(i) is:
 - (A) less than the risk pool rate established for the state employees' risk pool, the program may include the institution of higher education in the state employees' risk pool described in Subsection (1)(a); or
 - (B) more than the risk pool rate established for the state employees' risk pool, the program shall create a risk pool for the institution of higher education that is separate from the state employees' risk pool under Subsection (1)(a).

Amended by Chapter 211, 2010 General Session

Amended by Chapter 318, 2010 General Session

Part 3

Premiums

49-20-301 Payments made by employer and employee.

The program shall be maintained on a financially and actuarially sound basis by payments from covered employers and covered individuals.

Amended by Chapter 240, 2003 General Session

Part 4

Insurance Program

49-20-401 Program -- Powers and duties.

- (1) The program shall:
 - (a) act as a self-insurer of employee benefit plans and administer those plans;
 - (b) enter into contracts with private insurers or carriers to underwrite employee benefit plans as considered appropriate by the program;
 - (c) indemnify employee benefit plans or purchase commercial reinsurance as considered appropriate by the program;
 - (d) provide descriptions of all employee benefit plans under this chapter in cooperation with covered employers;

- (e) process claims for all employee benefit plans under this chapter or enter into contracts, after competitive bids are taken, with other benefit administrators to provide for the administration of the claims process;
- (f) obtain an annual actuarial review of all health and dental benefit plans and a periodic review of all other employee benefit plans;
- (g) consult with the covered employers to evaluate employee benefit plans and develop recommendations for benefit changes;
- (h) annually submit a budget and audited financial statements to the governor and Legislature that includes total projected benefit costs and administrative costs;
- (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the employee benefit plans as certified by the program's consulting actuary;
- (j) submit, in advance, the program's recommended benefit and rate adjustments for state employees, which may include actuarially substantiated member premium differentials between networks to:
 - (i) the Legislature; and
 - (ii) the director of the state Division of Human Resource Management;
- (k) determine benefits and rates, upon approval of the board, for multi-employer risk pools, retiree coverage, and conversion coverage;
- (l) determine benefits and rates based on the total estimated costs and the employee premium share established by the Legislature, upon approval of the board, for state employees;
- (m) administer benefits and rates, upon ratification of the board, for single-employer risk pools;
- (n) request proposals for one or more out-of-state provider networks and a dental health plan administered by a third-party carrier at least once every three years for the purposes of:
 - (i) stimulating competition for the benefit of covered individuals;
 - (ii) establishing better geographical coverage of medical care services; and
 - (iii) providing coverage for both active and retired covered individuals;
- (o) for a proposal that meets the criteria specified in a request for proposals and is accepted by the program:
 - (i) offer the proposal to active and retired state-covered individuals; and
 - (ii) at the option of the covered employer, offer the proposal to active and retired covered individuals of other covered employers;
- (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for the Department of Health and Human Services if the program provides program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance Program;
- (q) establish rules and procedures governing the admission of political subdivisions or educational institutions and their employees to the program;
- (r)
 - (i) contract directly with medical providers to provide services for covered individuals at commercially competitive rates; and
 - (ii)
 - (A) discontinue the preferred network, which offers in-network access to all in-state hospitals, for the state risk pool created in Subsection 49-20-202(1)(a) for plan years starting on or after July 1, 2022; and
 - (B) for an employee in the state risk pool who fails to elect one of the remaining networks before July 1, 2022, enroll the employee and the employee's dependents into the network that best reflects the utilization pattern of that employee and the employee's dependents;
- (s)

- (i) require state employees and the state employees' dependents to participate in the electronic exchange of clinical health records in accordance with Section 26B-8-411 unless the enrollee opts out of participation; and
 - (ii) prior to enrolling the state employee, each time the state employee logs onto the program's website, and each time the enrollee receives written enrollment information from the program, provide notice to the enrollee of the enrollee's participation in the electronic exchange of clinical health records and the option to opt out of participation at any time;
 - (t) at the request of a procurement unit, as that term is defined in Section 63G-6a-103, that administers benefits to program recipients who are not covered by Title 26B, Utah Health and Human Services Code, provide services for:
 - (i) drugs;
 - (ii) medical devices; or
 - (iii) other types of medical care; and
 - (u) take additional actions necessary or appropriate to carry out the purposes of this chapter.
- (2)
- (a) Funds budgeted and expended shall accrue from rates paid by the covered employers and covered individuals.
 - (b) The board shall approve administrative costs and report the administrative costs to the governor and the Legislature.
- (3) The Division of Human Resource Management shall include the benefit and rate adjustments described in Subsection (1)(j) in the total compensation plan recommended to the governor required under Subsection 63A-17-307(5)(a).
- (4) The program may establish a partnership with a public entity in a different state to purchase or share services related to the administration of medical benefits if:
- (a) the program receives approval for the partnership from the board; and
 - (b) the partnership:
 - (i) creates cost savings for Utah;
 - (ii) does not commingle state funds with funds of the public entity in the other state; and
 - (iii) does not pose a greater actuarial risk to Utah than the program has already assumed.

Amended by Chapter 194, 2023 General Session

Amended by Chapter 328, 2023 General Session

49-20-402 Reserves to be held -- Refunds.

- (1) The reserves in a risk pool in a given fiscal year shall be maintained at the level recommended by the program's consulting actuary and approved or ratified by the board. If the reserves drop below that level, covered employers in the risk pool are required to cure any deficiency in the reserve.
- (2) If substantial excess reserves are accrued above those required by this chapter, and the board determines that a refund is appropriate, a refund shall be made:
 - (a) to covered employers which shall then make a refund to covered individuals on the basis of the contribution of each to the plan; or
 - (b) directly to covered individuals on the basis of the contribution of each to the plan.

Amended by Chapter 130, 2007 General Session

49-20-403 Assistance to members in purchase of life, health, dental, and medical insurance after retirement -- Employment of personnel to administer section.

- (1) The program may assist active and retired covered individuals and inactive covered individuals of the covered employers to purchase life, health, dental, and medical coverage on a group basis which can be continued after retirement under rules adopted by the board.
- (2) The executive director may employ any personnel, including consultants, to administer this section.

Enacted by Chapter 250, 2002 General Session

49-20-404 Governors' and legislative paid-up group health coverage benefit -- Limitations -- Medicare supplemental coverage -- Spouse coverage -- Limitations.

- (1)
 - (a) Except as provided under Subsection (1)(b), the state shall pay the percentage of the cost of providing paid-up group health coverage under Subsection (3) for members and their surviving spouses covered under Chapter 19, Utah Governors' and Legislators' Retirement Act, or governors and legislators, as defined in Section 49-19-102, and their surviving spouses covered under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, who:
 - (i) retire after January 1, 1998;
 - (ii) are at least 62 but less than 65 years of age;
 - (iii) elect to receive and apply for this benefit to the program; and
 - (iv) are active members at the time of retirement or have continued coverage with the program until the date of eligibility for the benefit under this Subsection (1).
 - (b) A governor or a legislator who begins service as a governor or legislator on or after January 1, 2012, and a surviving spouse of the governor or the legislator who begins service as a governor or legislator on or after January 1, 2012, is not eligible for the benefit provided under this Subsection (1).
- (2) The state shall pay the percentage of the cost of providing Medicare supplemental coverage under Subsection (3) for members and their surviving spouses covered under Chapter 19, Utah Governors' and Legislators' Retirement Act who:
 - (a) began service as a governor or legislator before July 1, 2013;
 - (b) retire after January 1, 1998;
 - (c) are at least 65 years of age; and
 - (d) elect to receive and apply for this benefit to the program.
- (3) The following percentages apply to the benefit described in Subsections (1)(a) and (2):
 - (a) 100% if the member has accrued 10 or more years of service credit;
 - (b) 80% if the member has accrued 8 or more years of service credit;
 - (c) 60% if the member has accrued 6 or more years of service credit; and
 - (d) 40% if the member has accrued 4 or more years of service credit.

Amended by Chapter 410, 2013 General Session

49-20-405 Audit required -- Report to governor and Legislature.

The Insurance Department shall biennially audit the Public Employees' Trust Fund 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 the programs under this chapter in lieu of the biennial audit requirement.

Renumbered and Amended by Chapter 250, 2002 General Session

49-20-406 Insurance benefits for employees' beneficiaries.

- (1) As used in this section:
 - (a) "Children" includes stepchildren and legally adopted children.
 - (b)
 - (i) "Line-of-duty death" means a death resulting from:
 - (A) external force or violence occasioned by an act of duty as an employee; or
 - (B) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as an employee.
 - (ii) "Line-of-duty death" does not include a death that:
 - (A) occurs during an activity that is required as an act of duty as an employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature contributes to the employee's death;
 - (B) occurs during the commission of a crime committed by the employee;
 - (C) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (D) occurs in a manner other than as described in Subsection (1)(b)(i).
 - (c)
 - (i) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (ii) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (2) The beneficiary of a covered individual who is employed by the state and who has a line-of-duty death shall receive:
 - (a) the proceeds of a \$50,000 group term life insurance policy paid for by the state and administered and provided as part of the group life insurance program under this chapter; and
 - (b) group health coverage paid for by the state that covers the covered individual's:
 - (i) surviving spouse until becoming eligible for Medicare as long as the surviving spouse continues coverage with the program; and
 - (ii) unmarried children up to the age of 26.
- (3) A covered employer not required to provide the benefits under Subsection (2) may provide either or both of the benefits under Subsection (2) by paying rates established by the program.
- (4) The benefit provided under Subsection (2)(a) is subject to the same terms and conditions as the group life insurance program provided under this chapter.

Amended by Chapter 210, 2018 General Session

49-20-407 Insurance mandates.

Notwithstanding the provisions of Subsection 31A-1-103(3)(f):

- (1) health coverage offered to the state employee risk pool under Subsection 49-20-202(1)(a) shall comply with the provisions of Sections 31A-22-605.5 and 31A-45-501; and
- (2) a health plan offered to public school districts, charter schools, and institutions of higher education under Subsection 49-20-201(1)(b) shall comply with the provisions of Section 31A-22-605.5.

Amended by Chapter 292, 2017 General Session

49-20-408 Prohibition against certain uses of Social Security numbers.

Notwithstanding the provisions of Subsection 31A-1-103(3)(f), health, dental, medical, Medicare supplement, or conversion coverage offered under Section 49-20-202 shall comply with the provisions of Section 31A-22-634.

Enacted by Chapter 188, 2003 General Session

49-20-409 Long-term disability -- Cost of health coverage benefit.

- (1) Under the direction of the board, the program shall provide for health insurance coverage for state employees who receive a monthly disability benefit under Title 49, Chapter 21, Public Employees' Long-Term Disability Act.
- (2) A risk pool, other than the state risk pool, may elect to provide a benefit for its employees similar to the benefit provided under Subsection (1).

Amended by Chapter 130, 2007 General Session

49-20-410 High deductible health plan -- Health savings account -- Contributions.

- (1)
 - (a) In addition to other employee benefit plans offered under Subsection 49-20-201(1), the office shall offer at least one federally qualified high deductible health plan with a health savings account as an optional health plan.
 - (b) The provisions and limitations of the plan shall be:
 - (i) determined by the office in accordance with federal requirements and limitations; and
 - (ii) designed to promote appropriate health care utilization by consumers, including preventive health care services.
 - (c) A state employee hired on or after July 1, 2011, who is offered a plan under Subsection 49-20-202(1)(a), shall be enrolled in a federally qualified high deductible health plan unless the employee chooses a different health benefit plan during the employee's open enrollment period.
- (2) The office shall:
 - (a) administer the high deductible health plan in coordination with a health savings account for medical expenses for each covered individual in the high deductible health plan;
 - (b) offer to all employees training regarding all health plans offered to employees;
 - (c) prepare online training as an option for the training required by Subsections (2)(b) and (4);
 - (d) ensure the training offered under Subsections (2)(b) and (c) includes information on changing coverages to the high deductible plan with a health savings account, including coordination of benefits with other insurances, restrictions on other insurance coverages, and general tax implications; and
 - (e) coordinate annual open enrollment with the Division of Human Resource Management to give state employees the opportunity to affirmatively select preferences from among insurance coverage options.
- (3)
 - (a) Contributions to the health savings account may be made by the employer.
 - (b) The amount of the employer contributions under Subsection (3)(a) shall be determined annually by the office, after consultation with the Division of Human Resource Management and the Governor's Office of Planning and Budget so that the annual employer contribution amount is not less than the difference in the actuarial value between the program's health

maintenance organization coverage and the federally qualified high deductible health plan coverage, after taking into account any difference in employee premium contribution.

- (c) The office shall distribute the annual amount determined under Subsection (3)(b) to employees in two equal amounts with a pay date in January and a pay date in July of each plan year.
 - (d) An employee may also make contributions to the health savings account.
 - (e) If an employee is ineligible for a contribution to a health savings account under federal law and would otherwise be eligible for the contribution under Subsection (3)(a), the contribution shall be distributed into a health reimbursement account or other tax-advantaged arrangement authorized under the Internal Revenue Code for the benefit of the employee.
- (4)
- (a) An employer participating in a plan offered under Subsection 49-20-202(1)(a) shall require each employee to complete training on the health plan options available to the employee.
 - (b) The training required by Subsection (4)(a):
 - (i) shall include materials prepared by the office under Subsection (2);
 - (ii) may be completed online; and
 - (iii) shall be completed:
 - (A) before the end of the 2012 open enrollment period for current enrollees in the program; and
 - (B) for employees hired on or after July 1, 2011, before the employee's selection of a plan in the program.

Amended by Chapter 344, 2021 General Session

Amended by Chapter 382, 2021 General Session

49-20-413 Pilot program for on-site employee clinic.

- (1) Within state premiums paid to the state risk pool from the Legislature, the program shall establish a primary care clinic:
 - (a) for state employees and their dependents;
 - (b) within a state building that is accessible to a large number of state employees; and
 - (c) in accordance with Subsection (2).
- (2) The program shall:
 - (a) affiliate with an existing clinic:
 - (i) located in a building accessible to a large number of state employees; and
 - (ii) managed by a physician licensed in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (b) request bids from private entities to establish the on-site primary care clinic in accordance with criteria established by the program, which shall include at least the following:
 - (i) the entity's ability to establish a primary care clinic that is designed to:
 - (A) be convenient for employees and their dependents;
 - (B) increase health of employees;
 - (C) increase compliance with health care screening and management of chronic health care conditions; and
 - (D) dispense commonly used, pre-packaged drugs in a cost effective manner;
 - (ii) the entity's organizational and financial independence from any particular hospital network, network of clinics, or network of health care providers; and
 - (iii) management of the clinic by a physician licensed in the state under Title 58, Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act.

Enacted by Chapter 68, 2015 General Session

49-20-414 Telemedicine services -- Reimbursement -- Reporting.

(1) As used in this section:

- (a) "Network provider" means a health care provider who has an agreement with the program to provide health care services to a patient with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly from the managed care organization.
- (b) "Telemedicine services" means the same as that term is defined in Section 26B-4-704.
- (2) This section applies to the risk pool established for the state under Subsection 49-20-201(1)(a).
- (3) The program shall, at the provider's request, reimburse a network provider for medically appropriate telemedicine services at a commercially reasonable rate.
- (4) Before November 1, 2019, the program shall report to the Legislature's Public Utilities, Energy, and Technology Interim Committee and Health Reform Task Force on:
 - (a) the result of the reimbursement requirement described in Subsection (3);
 - (b) existing and potential uses of telehealth and telemedicine services;
 - (c) issues of reimbursement to a provider offering telehealth and telemedicine services;
 - (d) potential rules or legislation related to:
 - (i) providers offering and insurers reimbursing for telehealth and telemedicine services; and
 - (ii) increasing access to health care, increasing the efficiency of health care, and decreasing the costs of health care; and
 - (e) telemedicine services that the program declined to cover because the telemedicine services that were requested were not medically appropriate.

Amended by Chapter 328, 2023 General Session

49-20-415 Prescribing policies for certain opioid prescriptions.

A plan offered to state employees under this chapter may implement a prescribing policy for certain opioid prescriptions in accordance with Section 31A-22-615.5.

Enacted by Chapter 53, 2017 General Session

49-20-416 Screening, Brief Intervention, and Referral to Treatment program reimbursement.

(1) As used in this section:

- (a) "Controlled substance prescriber" means a controlled substance prescriber, as that term is defined in Section 58-37-6.5, who:
 - (i) has a record of having completed SBIRT training, in accordance with Subsection 58-37-6.5(2), before providing the SBIRT services; and
 - (ii) is a program enrolled controlled substance prescriber.
- (b) "SBIRT" means the same as that term is defined in Section 58-37-6.5.
- (2) The health program offered to the state employee risk pool under Section 49-20-202 shall reimburse a controlled substance prescriber who provides SBIRT services to a covered individual who is 13 years of age or older for the SBIRT services.

Enacted by Chapter 180, 2017 General Session

49-20-417 Insurance coverage for amino acid-based formula.

(1) As used in this section:

- (a) "Amino acid-based elemental formula" means a nutrition formula:
 - (i) made from individual nonallergenic amino acids that are broken down to enhance absorption and digestion; and
 - (ii) designed for individuals who have a dysfunctional or shortened gastrointestinal tract and are unable to tolerate and absorb whole foods or formulas composed of whole proteins, fats, or carbohydrates.
 - (b) "Eosinophilic gastrointestinal disorder" means a disorder characterized by having above normal amounts of eosinophils in one or more specific places anywhere in the digestive system.
 - (c) "Food protein-induced enterocolitis syndrome" means a disorder characterized by an abnormal immune response to an ingested food, resulting in gastrointestinal inflammation.
 - (d) "Health insurer" means an insurer, as defined in Subsection 31A-22-634(1).
 - (e) "Order" means to communicate orally, in writing, or by electronic means.
 - (f) "Pharmacy" means a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act.
 - (g) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (h) "Program" means the eosinophilic gastrointestinal disorder program created in Subsection (2).
 - (i) "Severe protein allergic conditions" includes:
 - (i) eosinophilic esophagitis;
 - (ii) eosinophilic gastritis;
 - (iii) eosinophilic gastroenteritis;
 - (iv) eosinophilic enteritis;
 - (v) eosinophilic colitis; or
 - (vi) food protein-induced enterocolitis syndrome.
 - (j) "Short bowel syndrome" means malabsorption of nutrients resulting from anatomical or functional loss of a significant length of the small intestine.
- (2) Beginning plan year 2017-18 and ending plan year 2019-20, the Public Employees' Benefit and Insurance Program shall offer a 3-year pilot program within the state risk pool that provides coverage for the use of an amino acid-based elemental formula, regardless of the delivery method of the formula, for the diagnosis or treatment of an eosinophilic gastrointestinal disorder, food protein-induced enterocolitis syndrome, severe protein allergic condition, or short bowel syndrome in the traditional and Star plans.
- (3) Coverage offered under Subsection (2) applies to an amino acid-based elemental formula if:
- (a) the formula is ordered for the enrollee by a physician;
 - (b) the physician indicates in the order that the formula is medically necessary; and
 - (c) the insured obtains the formula from a pharmacy.
- (4) Coverage offered under Subsection (2) may not include cost-sharing provisions, including deductibles, copayments, co-insurance, and out-of-pocket limits, or a durational limit, that are less favorable to the insured than the cost-sharing provisions and durational limits applied by the health benefit plan to prescription drugs.
- (5) The purpose of the program is to study the efficacy of providing coverage for the use of an amino acid-based elemental formula and is not a mandate for coverage of an amino acid-based elemental formula within the health plans offered by the Public Employees' Benefit and Insurance Program.
- (6) Under Section 63J-1-603 of the Utah Code, the Legislature intends that the cost of the program shall be paid for from funds above the minimum recommended level in the public employees' state risk pool reserve.

Enacted by Chapter 349, 2017 General Session

49-20-418 Expanded infertility treatment coverage pilot program.

(1) As used in this section:

- (a) "Assisted reproductive technology" means the same as the term is defined in 42 U.S.C. Sec. 263a-7.
- (b) "Physician" means the same as the term is defined in Section 58-67-102.
- (c) "Pilot program" means the expanded infertility treatment coverage pilot program described in Subsection (2).
- (d) "Qualified assisted reproductive technology cycle" means the use of assisted reproductive technology to transfer a single embryo for implantation.
- (e) "Qualified individual" means a covered individual who is eligible for maternity benefits under the program.

(2)

- (a) Beginning plan year 2018-19, and ending plan year 2023-24, the program shall offer a pilot program within the state risk pool that provides coverage to a qualified individual for the use of an assisted reproductive technology.
- (b)
 - (i) For plan year 2018-19, 2019-20, or 2020-21, the pilot program shall offer a one-time benefit of \$4,000 toward the costs of using an assisted reproductive technology for each qualified individual.
 - (ii) For plan year 2021-22, 2022-23, or 2023-24, the pilot program shall offer a benefit of \$4,000 to a qualified individual toward the costs of each qualified assisted reproductive technology cycle.
- (c) The benefits described in Subsection (2)(b) are subject to the same cost sharing requirements as the covered individual's plan.

(3) Coverage offered under the pilot program applies if:

- (a) the patient who will use the assisted reproductive technology is a qualified individual;
- (b)
 - (i) the patient's physician verifies that the patient or the patient's spouse has a demonstrated condition recognized by a physician as a cause of infertility; or
 - (ii) the patient attests that the patient is unable to conceive a pregnancy or carry a pregnancy to a live birth after a year or more of regular sexual relations without contraception;
- (c) the patient attests that the patient has been unable to attain a successful pregnancy through any less-costly, potentially effective infertility treatments for which coverage is available under the health benefit plan; and
- (d) the use of the assisted reproductive technology procedure is performed at a medical facility that conforms to the minimal standards for programs of assisted reproductive technology procedures adopted by the American Society for Reproductive Medicine.

(4) Coverage offered under the pilot program:

- (a) shall satisfy, in accordance with Subsection 31A-22-610.1(1)(c)(ii), the requirement to provide an adoption indemnity benefit to a qualified individual under Section 31A-22-610.1;
- (b) does not apply to a qualified individual if the qualified individual has received the adoption indemnity benefit required under Section 31A-22-610.1; and
- (c) for plan year 2021-22, 2022-23, or 2023-24, shall apply to a qualified individual, even if the qualified individual received the benefit described in Subsection (2)(b)(i).

(5)

- (a) The purpose of the pilot program is to study the efficacy of providing coverage for the use of an assisted reproductive technology and is not a mandate for coverage of an assisted reproductive technology within all health plans offered by the program.
- (b) The program shall report to the Retirement and Independent Entities Interim Committee regarding the costs and benefits of the pilot program:
 - (i) on or before October 1; and
 - (ii) during calendar years 2022 and 2023.
- (6) Under Section 63J-1-603, the Legislature intends that the cost of the pilot program will be paid from money above the minimum recommended level in the public employees' state risk pool reserve.

Amended by Chapter 64, 2021 General Session

Amended by Chapter 195, 2021 General Session

49-20-419 Coverage of exome sequence testing.

- (1) As used in this section, "exome sequence testing" means a genomic technique for sequencing the genome of an individual for diagnostic purposes.
- (2) Beginning July 1, 2019, the program shall provide coverage for exome sequence testing:
 - (a) for a covered individual within the state risk pool who:
 - (i) is younger than 21 years of age; and
 - (ii) who remains undiagnosed after exhausting all other appropriate diagnostic-related tests;
 - (b) performed by a nationally recognized provider with significant experience in exome sequence testing;
 - (c) that is medically necessary; and
 - (d) at a rate set by the program.

Enacted by Chapter 320, 2019 General Session

49-20-420 Coverage for in vitro fertilization and genetic testing.

- (1) As used in this section:
 - (a) "Qualified condition" means:
 - (i) cystic fibrosis;
 - (ii) spinal muscular atrophy;
 - (iii) Morquio Syndrome;
 - (iv) myotonic dystrophy; or
 - (v) sickle cell anemia.
 - (b) "Qualified individual" means a covered individual who:
 - (i) has been diagnosed by a physician as having a genetic trait associated with a qualified condition; and
 - (ii) intends to get pregnant with a partner who is diagnosed by a physician as having a genetic trait associated with the same qualified condition as the covered individual.
- (2) For a plan year that begins on or after July 1, 2020, the program shall provide coverage for a qualified individual for:
 - (a) in vitro fertilization services; and
 - (b) genetic testing of a qualified individual who receives in vitro fertilization services under Subsection (2)(a).
- (3) Before November 1, 2022, and before November 1 of every third year thereafter, the program shall:

- (a) calculate the change in state spending attributable to the coverage under this section; and
- (b) report the amount described in Subsection (3)(a) to the Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee.

Enacted by Chapter 187, 2020 General Session

49-20-421 Prescription discount program.

- (1) As used in this section:
 - (a) "Discount program" means the prescription discount program created by this section.
 - (b) "Epinephrine auto-injector" means the same as that term is defined in Section 26B-4-401.
 - (c) "Insulin" means a prescription drug that contains insulin.
 - (d) "Participant" means a resident of Utah who:
 - (i) has a prescription or standing prescription for a qualified prescription;
 - (ii) does not receive health coverage under the program; and
 - (iii) enrolls in the discount program.
 - (e) "Prescription drug" means the same as that term is defined in Section 58-17b-102.
 - (f) "Qualified prescription" means a prescription drug, including insulin and epinephrine auto-injectors, that the program has determined:
 - (i) treats a serious, prevalent, and ongoing condition;
 - (ii) does not have a generic substitute;
 - (iii) qualifies for a substantial rebate; and
 - (iv) would not result in financial losses to the state risk pool if sold as part of the discount program.
 - (g) "Rebate" means the same as that term is defined in Section 31A-46-102.
- (2) The program shall create a prescription discount program for a participant to purchase a qualified prescription at a discounted, post-rebate price.
- (3) The program shall:
 - (a) provide a participant with a card or electronic document that identifies the participant as eligible for the discount on a qualified prescription;
 - (b) provide a participant with information about pharmacies that will honor the discount; and
 - (c) provide a participant with instructions to pursue a reimbursement of the purchase price from the participant's health insurer.
- (4) The program may not retain any amount of a rebate for a qualified prescription except for an amount necessary to make the state risk pool whole for providing the qualified prescription to participants.
- (5) For each drug added to the discount program, the program shall notify the Health and Human Services Interim Committee, providing:
 - (a) the name of the drug; and
 - (b) the primary condition the drug treats.

Amended by Chapter 267, 2023 General Session

Amended by Chapter 328, 2023 General Session

49-20-422 Coverage of pregnancy and childbirth services, including doula, direct-entry midwife, and birthing center services.

- (1) As used in this section:
 - (a) "Doula" means an individual who:
 - (i) provides information and physical and emotional support:

- (A) to a pregnant or postpartum individual; and
- (B) related to the pregnant or postpartum individual's pregnancy; and
- (ii) is certified by one or more organizations approved by the program.
- (b) "Pregnancy and childbirth services" means services provided to a pregnant individual before, during, or shortly after childbirth:
 - (i) by a doula for the services described in Subsections (1)(a)(i) and (ii); and
 - (ii) at a birthing center that:
 - (A) is licensed under Title 26B, Chapter 2, Licensing and Certifications, or accredited by the Commission for the Accreditation of Birth Centers; and
 - (B) may include services by a direct-entry midwife licensed under Title 58, Chapter 77, Direct-Entry Midwife Act, if the direct-entry midwife is engaged in the practice of direct-entry midwifery, as defined in Section 58-77-102.
- (c) "Qualified individual" means a covered individual who is:
 - (i) within the state employees' risk pool; and
 - (ii)
 - (A) is pregnant; or
 - (B) was pregnant within the past six months.
- (2) For a plan year that begins on or after July 1, 2023, and before July 1, 2026, the program shall cover pregnancy and childbirth services to a qualified individual.
- (3) The program may establish limits for coverage under Subsection (2), including limits based on:
 - (a) the type or number of services provided;
 - (b) a qualified individual's physical or emotional condition; and
 - (c) conditions for provider participation.
- (4) The program shall report to the Health and Human Services Interim Committee on or before October 1 of each year regarding coverage provided under Subsection (2), including:
 - (a) covered providers;
 - (b) covered services;
 - (c) provider payment rates;
 - (d) covered-individual cost sharing;
 - (e) total provider payments and covered-individual cost sharing; and
 - (f) any indicators of whether pregnancy and childbirth services covered under Subsection (2) have:
 - (i) reduced pregnancy or postpartum coverage costs; or
 - (ii) improved pregnancy or postpartum care.

Enacted by Chapter 292, 2023 General Session

Part 5

Pharmacy Benefits Manager Act

49-20-501 Title.

This part is known as the "Pharmacy Benefits Manager Act."

Enacted by Chapter 83, 2011 General Session

49-20-502 Definitions.

As used in this part:

- (1) "Health benefit plan" means:
 - (a) a health benefit plan as defined in Section 31A-1-301; or
 - (b) a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.
- (2) "Pharmacist" is as defined in Section 58-17b-102.
- (3) "Pharmacy" is as defined in Section 58-17b-102.
- (4) "Pharmacy benefits management service" means the same as that term is defined in Section 31A-46-102.
- (5) "Pharmacy benefits manager" means a person that provides a pharmacy benefits management service to the program.
- (6) "Pharmacy service" means a product, good, or service provided by a pharmacy or pharmacist to an individual.

Amended by Chapter 340, 2021 General Session

49-20-503 Request for proposals for pharmacy benefits manager for Public Employees' Benefit and Insurance Program.

- (1) When the board issues a request for proposals for a pharmacy benefits manager to provide pharmacy benefits management services for the program, the request for proposals shall:
 - (a) require each responder to comply with the pharmacy audit provisions of Section 58-17b-622; and
 - (b) provide each responder with the option to include, among the billing options proposed, a billing option that complies with the requirements described in this section.
- (2) The billing option described in Subsection (1) shall require the pharmacy benefits manager to, on at least a monthly basis, submit to the board an invoice for all pharmacy services paid by the pharmacy benefits manager on behalf of the program since the last request for payment or reimbursement.
- (3) The invoice described in Subsection (2) shall state, as a separate item from any other amount:
 - (a) the total amount due to the pharmacy benefits manager for all pharmacy services billed in the invoice; and
 - (b) the total amount paid by the pharmacy benefits manager for the same pharmacy services for which payment is sought in that invoice.

Amended by Chapter 265, 2012 General Session

Chapter 21
Public Employees' Long-Term Disability Act

Part 1
General Provisions

49-21-101 Title.

This chapter is known as the "Public Employees' Long-Term Disability Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-102 Definitions.

As used in this chapter:

- (1) "Date of disability" means the date on which a period of total disability begins, and may not begin on or before the last day of performing full-duty work in the eligible employee's regular occupation.
- (2)
 - (a) "Eligible employee" means any of the following employees whose employer provides coverage under this chapter:
 - (i)
 - (A) any regular full-time employee as defined under Section 49-12-102, 49-13-102, or 49-22-102;
 - (B) any public safety service employee as defined under Section 49-14-102, 49-15-102, or 49-23-102;
 - (C) any firefighter service employee or volunteer firefighter as defined under Section 49-23-102 who began firefighter service on or after July 1, 2011;
 - (D) any judge as defined under Section 49-17-102 or 49-18-102; or
 - (E) the governor of the state;
 - (ii) an employee who is exempt from participating in a retirement system under Subsection 49-12-203(4), 49-13-203(4), 49-14-203(1), or 49-15-203(1); and
 - (iii) an employee who is covered by a retirement program offered by a public or private system, organization, or company designated by the Utah Board of Higher Education.
 - (b) "Eligible employee" does not include:
 - (i) any employee that is exempt from coverage under Section 49-21-201; or
 - (ii) a retiree.
- (3) "Elimination period" means the three months at the beginning of each continuous period of total disability for which no benefit will be paid. The elimination period begins on the nearest first day of the month from the date of disability. The elimination period may include a one-time trial return to work period of less than 15 consecutive calendar days.
- (4)
 - (a) "Gainful employment" means any occupation or employment position in the state that:
 - (i) contemplates continued employment during a fiscal or calendar year; and
 - (ii) would pay an amount equal to or greater than 40 hours per week at the legally required minimum wage, regardless of the number of hours worked.
 - (b) "Gainful employment" does not mean that an occupation or employment position in the state is:
 - (i) available within any geographic boundaries of the state;
 - (ii) offered at a certain level of wages;
 - (iii) available at a particular number of hours per week; or
 - (iv) currently available.
- (5) "Maximum benefit period" means the maximum period of time the monthly disability income benefit will be paid under Section 49-21-403 for any continuous period of total disability.
- (6) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401.
- (7) "Objective medical impairment" means an impairment resulting from an injury or illness that is diagnosed by a physician and that is based on accepted objective medical tests or findings rather than subjective complaints.

- (8) "Ongoing disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability due to objective medical impairment, as determined under Subsection 49-21-401(9), to engage in any gainful employment which is reasonable, considering the eligible employee's education, training, and experience.
- (9) "Own occupation disability" means the complete inability, due to objective medical impairment, whether physical or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits.
- (10) "Physician" means a licensed physician.
- (11) "Pilot period" means the period beginning on July 1, 2023, and ending on June 30, 2026.
- (12) "Regular monthly salary" means the amount certified by the participating employer as the monthly salary of the eligible employee, unless there is a discrepancy between the certified amount and the amount actually paid, in which case the office shall determine the regular monthly salary.
- (13) "Regular occupation" means either:
 - (a) the primary duties performed by the eligible employee for the 12 months preceding the date of disability; or
 - (b) a permanent assignment of duty to the eligible employee, as long as the eligible employee has actually performed all the required duties of the permanent assignment of duty.
- (14) "Rehabilitative employment" means any occupation or employment for wage or profit, for which the eligible employee is reasonably qualified to perform based on education, training, or experience.
- (15) "Total disability" means:
 - (a) own occupation disability; or
 - (b) ongoing disability.
- (16)
 - (a) "Workers' compensation indemnity benefits" means benefits provided that are designed to replace wages under Title 34A, Chapter 2, Part 4, Compensation and Benefits, including wage replacement for a temporary disability, temporary partial disability, permanent partial disability, or permanent total disability.
 - (b) "Workers' compensation indemnity benefits" includes a settlement amount following a claim for indemnity benefits.

Amended by Chapter 274, 2023 General Session

49-21-103 Creation of program.

There is created for eligible employees the "Public Employees' Long-Term Disability Program."

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-104 Creation of trust fund.

- (1) There is created the "Public Employees' Long-Term Disability Trust Fund" for the purpose of paying the benefits and costs of administering this program.
- (2) The fund shall consist of all money and interest paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-105 Purpose -- Flexibility -- Administration.

- (1) The purpose of this chapter is to provide long-term disability benefits for an eligible employee.
- (2) Subject to the provisions of Section 49-21-201, the program may include one or more long-term disability benefit plans that differ from the benefit plan specified by this chapter for an eligible employee of a covered employer as defined under Section 49-20-102.
- (3) The program shall be administered by the office, under policies and rules adopted by the board.

Amended by Chapter 66, 2013 General Session

Part 2 Membership Eligibility

49-21-201 Program membership -- Eligibility.

- (1) The state shall cover all of its eligible employees under this chapter.
- (2) Public safety service employees, as defined in Sections 49-14-102, 49-15-102, and 49-23-102 shall be covered under this chapter or a substantially similar long-term disability program in accordance with the provisions of Section 49-14-601, 49-15-601, or 49-23-601.
- (3) Beginning on July 1, 2011, firefighter service employees, as defined in Section 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as defined in Section 49-23-102, shall be covered under this chapter in accordance with the provisions of Section 49-23-601.
- (4) Except as provided under Subsection (5), all other employers may provide coverage for their eligible employees under this chapter.
- (5) If an employer elects to cover any of its eligible employees under this chapter, all of its eligible employees shall be covered.
- (6) Except as provided under Subsections (1) and (2), nothing in this chapter requires any employer to cover its eligible employees under this chapter.
- (7) The following employees are not eligible for coverage under this chapter:
 - (a) firefighter service employees, as defined under Section 49-16-102, that initially entered employment prior to July 1, 2011; and
 - (b) legislators.

Amended by Chapter 298, 2012 General Session

Part 3 Contributions

49-21-301 Contributions to fund program -- Adjustment of premium rate.

- (1) During each legislative session, the board shall certify to the Legislature the employer paid premium rate expressed as a percentage of salary which is required to fund the Public Employees' Long-Term Disability Trust Fund.
- (2) Upon the board's recommendation, the Legislature shall adjust the premium rate to maintain adequate funding for the Public Employees' Long-Term Disability Trust Fund.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 4

Disability Benefits

49-21-401 Disability benefits -- Application -- Eligibility.

- (1) An eligible employee shall apply for long-term disability benefits under this chapter by:
 - (a) completing an application form prepared by the office;
 - (b) signing a consent form allowing the office access to the eligible employee's medical records; and
 - (c) providing any documentation or information reasonably requested by the office.
- (2)
 - (a) If an eligible employee is unable to apply on the employee's own behalf, the application may be made by a person who is:
 - (i) the attorney for an eligible employee; or
 - (ii) appointed as a conservator or guardian of the eligible employee.
 - (b) A person described in Subsection (2)(a), may not make an application for a deceased employee.
- (3) Upon request by the office, the participating employer of the eligible employee shall provide to the office documentation and information concerning the eligible employee.
- (4) The office:
 - (a) shall review all relevant information;
 - (b) may request additional information; and
 - (c) shall determine whether or not the eligible employee has a total disability.
- (5)
 - (a) If the office determines that the eligible employee has a total disability due to accidental bodily injury or illness that is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to:
 - (i) two-thirds of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period; minus
 - (ii) any required reductions or reimbursements under Section 49-21-402.
 - (b) For an eligible employee under an own occupation disability, the office shall, at the end of the two-year disability period or when a claim for total disability is made by an eligible employee:
 - (i) review and determine whether the eligible employee qualifies for ongoing disability benefits;
 - (ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible employee's own occupation disability benefits end;
 - (iii) consider only objective medical impairment that the office determines as a disabling condition on the date of disability; and
 - (iv) exclude any new intervening causes or new diagnoses during the own occupation disability period.
- (6)
 - (a) An eligible employee shall receive a monthly disability benefit equal to 100% of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period, but reduced by any required

reductions and reimbursements under Section 49-21-402, if the office determines that the employee meets all of the following:

- (i) the eligible employee has a total disability:
 - (A) during the pilot period, due to a physical objective medical impairment or a mental objective medical impairment; or
 - (B) except as provided in Subsection (6)(b), after the pilot period, due to a physical objective medical impairment;
 - (ii) the objective medical impairment described in Subsection (6)(a)(i) resulted from physical, external force or violence to the body of the eligible employee in the performance of an employment duty; and
 - (iii) the eligible employee received workers' compensation indemnity benefits for the objective medical impairment described in Subsection (6)(a)(i).
- (b) If an eligible employee qualifies for a total disability during the pilot period, the office shall determine whether the employee has a total disability after the pilot period due to a physical objective medical impairment or a mental objective medical impairment.
- (c) An eligible employee who receives workers' compensation indemnity benefits for an objective medical impairment is not guaranteed to receive the 100% monthly disability benefit described in Subsection (6)(a).
- (7)
- (a) Successive periods of disability are considered as a continuous period of disability if the period of disability:
 - (i) results from the same or related causes;
 - (ii) is separated by less than six months of continuous full-time work at the individual's usual place of employment; and
 - (iii) commences while the individual is an eligible employee covered by this chapter.
 - (b) The inability to work for a period of less than 15 consecutive calendar days is not considered as a period of disability.
 - (c) If Subsection (7)(a) or (b) does not apply, successive periods of disability are considered as separate periods of disability.
- (8) The office may, at any time, have any eligible employee claiming to have a disability examined by a physician chosen by the office to determine if the eligible employee has a total disability.
- (9)
- (a) For purposes of determining whether an eligible employee has an ongoing disability, inability is determined:
 - (i) during the pilot period, due to physical objective medical impairment or mental objective medical impairment; or
 - (ii) except as provided in Subsection (9)(b), after the pilot period, due to a physical objective medical impairment.
 - (b) If an eligible employee has a total disability during the pilot period, the office shall determine whether the employee has an ongoing disability after the pilot period due to a physical objective medical impairment or a mental objective medical impairment.
- (10) A claim brought by an eligible employee for long-term disability benefits under the Public Employee's Long-Term Disability Program is barred if it is not commenced within six months from the eligible employee's date of disability, unless the office determines that under the surrounding facts and circumstances, the eligible employee's failure to comply with the time limitations was reasonable.
- (11)

- (a) If the office denies or terminates a claim for long-term disability benefits, the eligible employee shall have the right to appeal the denial or termination:
 - (i) to the executive director of the office within 60 days after the day of the denial or termination of long-term disability benefits; and
 - (ii) in accordance with Section 49-11-613.
- (b) An appeal of a denial or termination of long-term disability benefits described in Subsection (11)(a) is barred if it is not commenced within the time limit described in Subsection (11)(a).
- (12) Medical or psychiatric conditions that existed before eligibility may not be a basis for disability benefits until the eligible employee has had one year of continuous eligibility in the Public Employees Long-Term Disability Program.
- (13) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is:
 - (a) exempted from a system;
 - (b) eligible to retire with an unreduced retirement allowance; or
 - (c) otherwise ineligible for service credit.
- (14) Regardless of any medical evidence provided by the employee to support the application for disability, an employee is not eligible for long-term disability benefits during any period in which the employee:
 - (a) makes a claim that the employee is able to work; or
 - (b) has a pending action in a court or before any federal, state, or local administrative body in which the employee has made a claim that the employee is able to work.
- (15) Notwithstanding the provisions of Section 49-11-618, upon written request by an employer, information obtained under this part may, upon an order of a court or an administrative law judge, be released to an employer who is a party in an action under Subsection (14).
- (16) On or after May 1, 2025, but on or before November 1, 2025, the office shall provide a written electronic report to the Retirement and Independent Entities Committee regarding the costs and benefits of the changes to the disability benefits during the pilot period.

Amended by Chapter 274, 2023 General Session

49-21-402 Reduction or reimbursement of benefit -- Circumstances -- Application for other benefits required.

- (1) A monthly disability benefit may be reduced, suspended, or terminated unless:
 - (a) the eligible employee participates in ongoing care and treatment in accordance with Subsection 49-21-406(3) or (4); and
 - (b) the eligible employee provides the information and documentation requested by the office.
- (2)
 - (a) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee for the same injury or illness that is the basis for the monthly disability benefit from the following sources:
 - (i) workers' compensation indemnity benefits, regardless of whether the amount is received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers' compensation indemnity carrier;
 - (ii) any money received by judgment, legal action, or settlement from a third party liable to the employee for the monthly disability benefit;
 - (iii) automobile no-fault, medical payments, or similar insurance payments;
 - (iv) any money received by a judgment, settlement, or other payment as a result of a claim against an employer; or

- (v) annual leave or similar lump-sum payments.
- (b) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit from the following sources:
 - (i) social security disability benefits, including all benefits received by the eligible employee, the eligible employee's spouse, and the eligible employee's children as determined by the Social Security Administration;
 - (ii) unemployment compensation benefits;
 - (iii) sick leave benefits; or
 - (iv) compensation received for employment, including self-employment, except for eligible amounts from approved rehabilitative employment in accordance with Section 49-21-406.
- (3) The monthly disability benefit shall be reduced by any amount in excess of one-third of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:
 - (a) any retirement payment earned through or provided by public or private employment; and
 - (b) any disability benefit, other than social security or workers' compensation indemnity benefits, resulting from the disability for which benefits are being received under this chapter.
- (4) After the date of disability, cost-of-living increases to any of the benefits listed in Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability benefit.
- (5) Any amounts payable to the eligible employee from one or more of the sources under Subsection (2) are considered as amounts received whether or not the amounts were actually received by the eligible employee.
- (6)
 - (a) An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.
 - (b) If the eligible employee fails to make application under this Subsection (6), the monthly disability benefit shall be suspended.
- (7) During a period of total disability, an eligible employee has an affirmative duty to keep the program informed regarding:
 - (a) the award or receipt of an amount from a source that could result in the monthly disability benefit being reduced or reimbursed under this section within 10 days after the day of the award or receipt of the amount; and
 - (b) any employment, including self-employment, of the eligible employee and the compensation for that employment within 10 days after beginning the employment or a material change in the compensation from that employment.
- (8) The program shall use commercially reasonable means to collect any amounts of overpayments and reimbursements.
- (9)
 - (a) If the program is unable to reduce or obtain reimbursement for the required amount from the monthly disability benefit for any reason, the employee will have received an overpayment of monthly disability benefits.
 - (b) If an eligible employee receives an overpayment of monthly disability benefits, the eligible employee shall repay to the office the amount of the overpayment, plus interest as determined by the program, within 30 days from the date the overpayment is received by:
 - (i) the eligible employee; or
 - (ii) a third party related to the eligible employee.

- (c) The executive director may waive the interest on an overpayment of monthly disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of the overpayment of monthly disability benefits.

Amended by Chapter 37, 2023 General Session

Amended by Chapter 274, 2023 General Session

49-21-403 Termination of disability benefits -- Calculation of retirement benefit.

- (1) An eligible employee covered by this chapter and eligible for service credit under a system or plan, including an eligible employee who relinquishes rights to retirement benefits under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly disability benefit until the earlier of:
 - (a) the date of the eligible employee's death;
 - (b) the date the eligible employee no longer has a disability;
 - (c) the date the eligible employee has accumulated or would have accumulated, if the employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan, Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or exempted from a retirement system or plan:
 - (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement Act;
 - (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;
 - (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory Retirement Act;
 - (iv) 35 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or
 - (v) 25 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan;
 - (d) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:
 - (i) if the eligible employee is under age 60, the monthly disability benefit is payable until age 65;
 - (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly disability benefit is payable for five years;
 - (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the monthly disability benefit is payable for four years;
 - (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the monthly disability benefit is payable for three years;
 - (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the monthly disability benefit is payable for two years; and
 - (vi) if the eligible employee is 69 years of age or older on the date of disability, the monthly disability benefit is payable for one year; or
 - (e) the eligible employee's retirement date, set when the eligible employee retires from a system or from the Utah Governors' and Legislators' Retirement Plan.
- (2)

- (a) Upon termination of a monthly disability benefit, an eligible employee eligible for service credit under a system may retire under the requirements of the system which covered the eligible employee on the date of disability.
- (b) The final average salary used in the calculation of the allowance shall be based on the annual rate of pay on the date of disability, improved by the annual cost-of-living increase factor applied to retirees of the system which covered the eligible employee on the date of disability.
- (3) An eligible employee who is eligible for service credit in a system, but has relinquished rights to an allowance under Section 49-11-619, may receive the benefits the eligible employee would have received by being eligible for service credit in the system covering the eligible employee on the date of disability, except for the accrual of service credit, in accordance with this title.
- (4) An eligible employee receiving a monthly disability benefit who has service credit from two or more systems may not combine service credits under Section 49-11-405 in qualifying for retirement, unless the eligible employee would receive a greater allowance by combining the service credits.
- (5) An eligible employee covered by this chapter who is a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a monthly disability benefit, shall receive a monthly disability benefit until the earlier of:
 - (a) the date of the eligible employee's death;
 - (b) the date the eligible employee no longer has a disability;
 - (c)
 - (i) 35 years from the date the eligible employee began participation in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or
 - (ii) 25 years from the date the eligible employee began participation in the Tier II Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or
 - (d) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:
 - (i) if the eligible employee is under age 60, the monthly disability benefit is payable until age 65;
 - (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly disability benefit is payable for five years;
 - (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the monthly disability benefit is payable for four years;
 - (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the monthly disability benefit is payable for three years;
 - (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the monthly disability benefit is payable for two years; and
 - (vi) if the eligible employee is 69 years of age or older on the date of disability, the monthly disability benefit is payable for one year.

Amended by Chapter 227, 2016 General Session

49-21-404 Annual adjustment to disability benefit.

- (1)
 - (a) An eligible employee receiving a monthly disability benefit shall receive an annual adjustment on the date following the end of the elimination period to reflect annual changes in the United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (b) This adjustment may not exceed adjustments made to retirees under the system which covered the eligible employee on the date of disability.

- (2) If an employee is not participating in a system, the annual adjustment may not exceed the adjustment paid in the system which would cover the employee if the employee were participating in a system.

Amended by Chapter 240, 2003 General Session

49-21-405 Disability benefit -- Exclusions.

A monthly disability benefit is not payable for the following:

- (1) self-inflicted injury;
- (2) alcoholism;
- (3) substance abuse;
- (4) disability arising from or caused by acts of aggression committed by the eligible employee; or
- (5) the eligible employee committing or attempting to commit a felony or other illegal act.

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-406 Rehabilitative employment -- Interview by disability specialist -- Maintaining eligibility -- Additional treatment and care.

- (1)
 - (a) If an eligible employee, during a period of total disability for which the monthly disability benefit is payable, engages in approved rehabilitative employment, the monthly disability benefit otherwise payable shall be reduced:
 - (i) by an amount equal to 50% of the income to which the eligible employee is entitled for the employment during the month; and
 - (ii) so that the combined amount received from the rehabilitative employment and the monthly disability payment does not exceed 100% of the eligible employee's monthly salary prior to the employee's disability.
 - (b) This rehabilitative benefit is payable for up to two years or to the end of the maximum benefit period, whichever occurs first.
- (2)
 - (a) The office shall review an eligible employee's total disability at least one time each year.
 - (b) The office shall interview each eligible employee receiving a monthly disability benefit.
 - (c) The office may refer the eligible employee to a rehabilitative or vocational specialist for a review of the eligible employee's condition and a written rehabilitation plan and return to work assistance.
- (3) If an eligible employee receiving a monthly disability benefit fails to participate in an office-approved rehabilitation program within the limitations set forth by a physician or physician assistant, the monthly disability benefit may be reduced, suspended, or terminated.
- (4) The office may, as a condition of paying a monthly disability benefit, require that the eligible employee receive medical care and treatment if that treatment is reasonable or usual according to current medical practices.

Amended by Chapter 37, 2023 General Session

Amended by Chapter 274, 2023 General Session

49-21-408 Limitation of service credit accrual -- Disability benefits from a long-term disability program other than under this chapter.

Beginning on July 1, 2014, an eligible employee who receives a monthly disability benefit from a long-term disability program other than under this chapter and who is eligible for service credit under a system or plan shall accrue service credit in that system or plan until the earlier of:

- (1) the date of the eligible employee's death;
- (2) the date the eligible employee retires from the system or plan; or
- (3) the date the eligible employee has accumulated or would have accumulated service credit in a defined benefit system or plan under this title, sufficient to be eligible to retire with an unreduced allowance, if the employee had not:
 - (a) chosen a defined contribution plan under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan, or under Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan;
 - (b) been a volunteer firefighter; or
 - (c) been exempted from a retirement system or plan under this title.

Enacted by Chapter 15, 2014 General Session

49-21-409 Violations -- Penalties.

In addition to other remedies provided in this title, if an eligible employee knowingly makes a material misrepresentation to the program or knowingly fails to disclose the award or receipt of amounts to the program as required under Section 49-21-402, the program may:

- (1) suspend the monthly disability benefits to the eligible employee;
- (2) terminate all monthly disability benefits to the eligible employee;
- (3) terminate or cancel any other benefits provided under this title during a period of total disability;
or
- (4) require the eligible employee to repay the amount of any overpayment resulting from the violation to the program.

Enacted by Chapter 34, 2017 General Session

Chapter 22 New Public Employees' Tier II Contributory Retirement Act

Part 1 General Provisions

49-22-101 Title.

This chapter is known as the "New Public Employees' Tier II Contributory Retirement Act."

Enacted by Chapter 266, 2010 General Session

49-22-102 Definitions.

As used in this chapter:

- (1) "Benefits normally provided" means the same as that term is defined in Section 49-12-102.
- (2)
 - (a) "Compensation" means the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

- (i) bonuses;
 - (ii) cost-of-living adjustments;
 - (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
 - (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
 - (v) member contributions.
- (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
- (c) "Compensation" does not include:
- (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
 - (ii) the cost of any employment benefits paid for by the participating employer;
 - (iii) compensation paid to a temporary employee or an employee otherwise ineligible for service credit;
 - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments;
 - (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs; or
 - (vi) a teacher salary bonus described in Section 53F-2-513.
- (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (4)
- (a) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (4)(b), (c), (d), (e), and (f).
 - (b) Except as provided in Subsection (4)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (4)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (e) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (f) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (8).
- (5) "Participating employer" means an employer that meets the participation requirements of:

- (a) Sections 49-12-201 and 49-12-202;
 - (b) Sections 49-13-201 and 49-13-202;
 - (c) Section 49-19-201; or
 - (d) Section 49-22-201 or 49-22-202.
- (6)
- (a) "Regular full-time employee" means an employee:
 - (i) whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year;
 - (ii) whose employment normally requires an average of 20 hours or more per week, except as modified by the board; and
 - (iii) who receives benefits normally provided by the participating employer.
 - (b) "Regular full-time employee" includes:
 - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half time or more;
 - (ii) a classified school employee:
 - (A) who is hired before July 1, 2013; and
 - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
 - (iii) an appointive officer whose appointed position is full time as certified by the participating employer;
 - (iv) the governor, the lieutenant governor, the state auditor, the state treasurer, the attorney general, and a state legislator;
 - (v) an elected official not included under Subsection (6)(b)(iv) whose elected position is full time as certified by the participating employer;
 - (vi) a faculty member or employee of an institution of higher education who is considered full time by that institution of higher education; and
 - (vii) an individual who otherwise meets the definition of this Subsection (6) who performs services for a participating employer through a professional employer organization or similar arrangement.
 - (c) "Regular full-time employee" does not include:
 - (i) a firefighter service employee as defined in Section 49-23-102;
 - (ii) a public safety service employee as defined in Section 49-23-102;
 - (iii) a classified school employee:
 - (A) who is hired on or after July 1, 2013; and
 - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
 - (iv) a classified school employee:
 - (A) who is hired before July 1, 2013;
 - (B) who did not qualify as a regular full-time employee before July 1, 2013;
 - (C) who does not receive benefits normally provided by the participating employer; and
 - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
 - (E) who is a person working on a contract:
 - (I) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
 - (II) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.

- (7) "System" means the New Public Employees' Tier II Contributory Retirement System created under this chapter.
- (8) "Years of service credit" means:
 - (a) a period consisting of 12 full months as determined by the board;
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
 - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 171, 2022 General Session

49-22-103 Creation of system.

- (1) There is created for members employed by a participating employer the "New Public Employees' Tier II Contributory Retirement System."
- (2) The New Public Employees' Tier II Contributory Retirement System includes:
 - (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and
 - (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.
- (3) The system may also be known and function as the Public Employees' Tier 2 Contributory Retirement System, the Tier 2 Hybrid Retirement System, and the Tier 2 Defined Contribution Plan.

Amended by Chapter 31, 2019 General Session

49-22-104 Creation of trust fund.

- (1) There is created the "New Public Employees' Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Enacted by Chapter 266, 2010 General Session

Part 2

Membership Eligibility

49-22-201 System membership -- Eligibility.

- (1) Beginning July 1, 2011, a participating employer shall participate in this system.
- (2)

- (a) A person initially entering regular full-time employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible:
 - (i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (ii) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan.
- (b) A person initially entering regular full-time employment with a participating employer on or after July 1, 2011, shall:
 - (i) make an election to participate in the system created under this chapter:
 - (A) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and
 - (ii) electronically submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.
- (c) An election made by a person initially entering regular full-time employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.
- (d) If no election is made under Subsection (2)(b)(i), the person shall become a member eligible for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System.
- (3) Notwithstanding the provisions of this section and except as provided in Subsection (4), an elected official initially entering office on or after July 1, 2011:
 - (a) is only eligible to participate in the Tier II defined contribution plan established under Part 4, Tier II Defined Contribution Plan;
 - (b) is not eligible to participate in the Tier II hybrid retirement system established under Part 3, Tier II Hybrid Retirement System; and
 - (c) is vested immediately in the elected official's benefit and the benefit is nonforfeitable, including the total amount contributed by the participating employer and the total amount contributed by the member in the Tier II defined contribution plan.
- (4) A legislator or full-time elected official initially entering office on or after July 1, 2011, who has previously accrued service credit:
 - (a) in a Tier I retirement system or plan administered by the board shall continue in the Tier I system or plan for which the legislator or full-time elected official is eligible; or
 - (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which the full-time elected official is eligible.

Amended by Chapter 171, 2022 General Session

49-22-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements.

- (1) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
- (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 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; or
 - (c) 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 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) If a participating employer purchases service credit on behalf of a regular full-time employee for service rendered prior to the participating employer's admission to this system, the participating employer:
- (a) shall purchase credit 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
 - (b) shall comply with the provisions of Section 49-11-403.

Amended by Chapter 415, 2018 General Session

49-22-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
- (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the Utah Board of Higher Education, or the technical college board of trustees for an employee of each technical college, during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;
 - (c) an employee serving as an exchange employee from outside the state for an employer who has not elected to make all of the employer's exchange employees eligible for service credit in this system;
 - (d) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (e) an employee who is employed with a withdrawing entity that has elected under Section 49-11-623, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b);

- (f) a person who files a written request for exemption with the office under Section 49-22-205;
- (g) an employee described in Subsection (1)(g)(i) or (ii) who is employed with a withdrawing entity that has elected under Section 49-11-624, before January 1, 2018, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-624(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-624(3)(b);
- (h) an employee who is employed with a withdrawing entity that has elected under Section 49-11-625, before July 1, 2022, to exclude all employees from participation in this system; or
- (i) an employee who is employed with a withdrawing entity that elects under Section 49-11-626 to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-626(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-626(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
 - (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.
- (4) An employee's exclusion, exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 512, 2023 General Session

49-22-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.

- (1)
 - (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or in a retirement annuity contract with a public or private system, organization, or company, designated as described in Subsection (1)(c) or (d), shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).
 - (b) The election is final, and no right exists to make any further election.
 - (c) Except as provided in Subsection (1)(d), the Utah Board of Higher Education shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of an institution of higher education is eligible to participate in under Subsection (1)(a).
 - (d) The technical college board of trustees of each technical college shall designate the public or private retirement systems, organizations, or companies that a regular full-time employee of each technical college is eligible to participate in under Subsection (1)(a).
- (2)

- (a) A regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan designated for the person's employment classification.
- (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Utah Board of Higher Education, or the technical college board of trustees of each technical college for each technical college, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by:
 - (A) except as provided under Subsection (2)(b)(ii)(B), the Utah Board of Higher Education; or
 - (B) the technical college board of trustees of each technical college for regular full-time employees of each technical college.
- (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education has a one-time irrevocable election to continue participation in this system if the employee:
 - (i) has service credit in this system before the date of employment with the institution of higher education; and
 - (ii) makes the election before participating in the system described in Subsection (2)(b)(ii).
- (3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification that requires participation in a public or private system, organization, or company designated by:
 - (a) except as provided in Subsection (3)(b), the Utah Board of Higher Education; or
 - (b) the technical college board of trustees of each technical college for regular full-time employees of each technical college.
- (4) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system shall participate in this system.
- (5) An employee's participation or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 171, 2022 General Session

49-22-205 Exemptions from participation in system.

- (1) Upon filing a written request for exemption with the office, the following employees are exempt from participation in the system as provided in this section:
 - (a) an executive department head of the state;
 - (b) a member of the State Tax Commission;
 - (c) a member of the Public Service Commission;
 - (d) a member of a full-time or part-time board or commission;
 - (e) an employee of the Governor's Office of Planning and Budget;
 - (f) an employee of the Governor's Office of Economic Opportunity;
 - (g) an employee of the Commission on Criminal and Juvenile Justice;
 - (h) an employee of the Governor's Office;
 - (i) an employee of the State Auditor's Office;
 - (j) an employee of the State Treasurer's Office;
 - (k) any other member who is permitted to make an election under Section 49-11-406;

- (l) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;
 - (m) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
 - (n) an employee serving as an exchange employee from outside the state for an employer who has elected to make all of the employer's exchange employees eligible for service credit in this system.
- (2)
- (a) A participating employer shall prepare and maintain a list designating those positions eligible for exemption under Subsection (1).
 - (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (1).
- (3)
- (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the eligible employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (4) Each participating employer shall:
- (a) maintain a list of employee exemptions; and
 - (b) update an employee exemption in the event of any change.
- (5) Beginning on the effective date of the exemption for an employee who elects to be exempt in accordance with Subsection (1):
- (a) for a member of the Tier II defined contribution plan:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the nonelective contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
 - (iii) the member is not eligible for additional service credit in the plan for the period of exempt employment; and
 - (b) for a member of the Tier II hybrid retirement system:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
 - (iii) the member is not eligible for additional service credit in the system for the period of exempt employment.
- (6) If an employee who is a member of the Tier II hybrid retirement system subsequently revokes the election of exemption made under Subsection (1), the provisions described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- (7)
- (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election period under Subsection 49-22-201(2)(c) is expired if the employee:

- (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) continues employment with the participating employer through the one-year election period under Subsection 49-22-201(2)(c).
- (b) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) terminates employment prior to the one-year election period under Subsection 49-22-201(2)(c).
- (8)
 - (a) The office shall make rules to implement this section.
 - (b) The rules made under this Subsection (8) shall include provisions to allow the exemption provided under Subsection (1) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.
- (9) An employee's exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 171, 2022 General Session

Part 3

Tier II Hybrid Retirement System

49-22-301 Contributions.

- (1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis.
- (2)
 - (a) A participating employer shall pay up to 10% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.
 - (b) A member shall only pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).
 - (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3) A participating employer may not elect to pay all or part of the required member contributions under Subsection (2)(b), in addition to the required participating employer contributions.
- (4)
 - (a) A member contribution is credited by the office to the account of the individual member.
 - (b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) A member contribution is vested and nonforfeitable.
- (5)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

- (6) Benefits provided under the defined benefit portion of the Tier II Hybrid Retirement System created under this part:
- (a) may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and
 - (b) may be decreased only in accordance with the provisions of Section 49-22-310.

Amended by Chapter 439, 2011 General Session

49-22-302 Purchase of service credit.

A member who works 20 or more hours per week for a participating employer participating in this system, but who does not meet other eligibility requirements for service credit, may purchase the service credit in accordance with Section 49-11-403.

Enacted by Chapter 266, 2010 General Session

49-22-303 Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.

- (1)
- (a) A participating employer shall make a nonelective contribution on behalf of each regular full-time employee who is a member of this system in an amount equal to 10% minus the contribution rate paid by the employer under Subsection 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (1); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
- (2)
- (a) The total amount contributed by the participating employer under Subsection (1)(a), including associated investment gains and losses, vests to the member upon accruing four years of service credit under this title.
 - (b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.
- (c)
- (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of service credit required for vesting.
- (3)
- (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

- (b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).
- (c) A member may direct the investment of contributions made by the member under Subsection (1)(b).
- (4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).
- (5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).
- (6)
 - (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions, including associated investment gains and losses, made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (7) The office may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (8) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 227, 2016 General Session

49-22-304 Defined benefit eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

- (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or
 - (iv) the member has accrued at least 35 years of service credit.
- (2)
- (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
- (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
 - (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
- (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-22-305 Defined benefit service retirement plans -- Calculation of retirement allowance -- Social security limitations.

- (1)
- (a) Except as provided under Subsection (6), the retirees of this system may choose from the six retirement options described in this section.
 - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an annual allowance calculated as follows:
- (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

- (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35 or more years of accrued credit in which event no reduction is made to the allowance.
- (c)
 - (i) Years of service includes any fractions of years of service to which the retiree may be entitled.
 - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within one-tenth of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
 - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to one-half of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
 - (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (4)
 - (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
 - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (5)

- (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.
- (b) A conversion to an Option One benefit under this Subsection (5) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.
- (6) A retiree may not choose payment of an allowance under a retirement option described in this section that is not applicable to that retiree, including because the retiree did not make member contributions or does not have a lawful spouse at the time of retirement.

Amended by Chapter 31, 2019 General Session

49-22-306 Allowance payable by lump-sum payment.

- (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Enacted by Chapter 266, 2010 General Session

49-22-307 Lump-sum death benefit for retiree and spouse.

- (1)
 - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
 - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
 - (c) The board may make rules for the administration of this lump-sum death benefit.
- (2)
 - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
 - (a) A retiree may elect to cancel the lump-sum death benefit under this section.
 - (b) The cancellation under this Subsection (3) is irrevocable.
 - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Enacted by Chapter 266, 2010 General Session

49-22-308 Defined benefit annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-22-305, if the allowance has been paid for at least one year; and

- (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.
 - (b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Enacted by Chapter 266, 2010 General Session

49-22-309 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Enacted by Chapter 266, 2010 General Session

49-22-310 Defined benefit adjustments -- Conditions -- Process -- Future years accrual.

- (1) In accordance with this section and except as provided in Subsection 49-23-301(6)(b), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if the member's contribution required under Subsection 49-22-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:
 - (a)
 - (i) the membership council created under Section 49-11-205 recommends an adjustment to the board in accordance with Subsection (2); and
 - (ii) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or

- (b) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:
 - (i) there is a significant likelihood that contribution rates will continue to rise; and
 - (ii) that participating employers are liable for system costs above the contribution rate established under Subsection 49-22-301(2)(a).
- (2) If the conditions under Subsection (1)(a) or (b) are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued or applied for future years of service including:
 - (a) the final average salary calculation provided under Section 49-22-102;
 - (b) the years of service required to be eligible to receive a retirement allowance under Section 49-22-304;
 - (c) the years of service credit multiplier established under Subsection 49-22-305(2)(a);
 - (d) the annual cost-of-living adjustment under Section 49-22-308; or
 - (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.
- (3)
 - (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:
 - (i) cannot reasonably be sustained under its current provisions;
 - (ii) is critically underfunded; and
 - (iii) has become unstable and is in risk of collapse.
 - (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
 - (i) conversion to a different type of retirement plan;
 - (ii) equitable distribution of system assets to retirees and members; and
 - (iii) a closure of the system.

Amended by Chapter 31, 2019 General Session

Amended by Chapter 484, 2019 General Session

Part 4

Tier II Defined Contribution Plan

49-22-401 Contributions -- Rates.

- (1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 10% of the participant's compensation to a defined contribution plan.
- (2)
 - (a) The participating employer shall contribute the 10% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code that:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:

- (i) the qualified 401(k) plan that receives the employer contribution described in this Subsection (2); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
- (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
 - (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of employment as a regular full-time employee under this title.
 - (b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.
 - (c)
 - (i) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-22-205.
 - (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for additional service credit in the plan for the period of exempt employment.
 - (d)
 - (i) Years of employment under Subsection (3)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of employment required for vesting.
- (4)
 - (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).
 - (b) A member may direct the investment of contributions including associated investment gains and losses made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).
 - (c) A member may direct the investment of contributions made by the member under Subsection (3)(b).
- (5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).
- (6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).
- (7)
 - (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member including associated investment gains and losses under Subsection (2)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:

- (i) all contributions made by the previous participating employer on behalf of the member including associated investment gains and losses shall be reinstated upon the member's employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (8) The office may request from any other plan under Subsection (2)(b)(ii) any relevant information pertaining to the maintenance of the plan's tax qualification under the Internal Revenue Code.
- (9) The office may take any action that in the office's judgment is necessary to maintain the tax-qualified status of the office's 401(k) defined contribution plan under federal law.

Amended by Chapter 171, 2022 General Session

49-22-402 Defined contribution distributions for members with a disability.

For a person with a disability who receives contributions under Subsection 49-11-404(4)(b), the member with a disability may begin receiving distributions from the defined contributions made by the participating employer on behalf of the member with a disability when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Amended by Chapter 366, 2011 General Session

49-22-403 Eligibility to receive a retirement allowance for a benefit tied to a retirement date for defined contribution members.

- (1) As used in this section, "eligible to receive a retirement allowance" means the date selected by the member who is a participant under this part on which the member has ceased employment and would be qualified to receive an allowance under Section 49-22-304 if the member had been under the Tier II Hybrid Retirement System for the same period of employment.
- (2) The office and a participating employer shall make an accounting of years of service credit accrued for a member who is a participant under this part in order to calculate when a member would be eligible to receive a retirement allowance for purposes of establishing when a member may be eligible for a benefit tied to a retirement date that may be provided under Section 63A-17-508, this title, another state statute, or by a participating employer.

Amended by Chapter 345, 2021 General Session

Part 5

Death Benefit

49-22-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:

- (a) benefit levels;
 - (b) classes of members; and
 - (c) a living benefit option.
- (3) This death benefit is payable when:
- (a) the member dies prior to the member's retirement date or dies under circumstances which Subsection 49-22-305(4) requires to be treated as the death of a member before retirement;
 - (b) the office receives acceptable proof of death; and
 - (c) benefits are not payable under Section 49-22-307.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:
- (a) the return of any member contributions under this chapter; plus
 - (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer in addition to the contribution rate established under Section 49-22-301 or 49-22-401.
- (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless the death of the member occurs either:
- (a) within a period of 120 days after the last day of work for which the person received compensation; or
 - (b) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.
- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Amended by Chapter 316, 2013 General Session

49-22-502 Death of married members -- Service retirement benefits to surviving spouse.

- (1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-22-305 without an actuarial reduction.
- (2) Upon the request of a deceased member's surviving spouse, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
- (a) the member has:
 - (i) 15 or more years of service credit;
 - (ii) attained age 62 with 10 or more years of service credit; or
 - (iii) attained age 65 with four or more years of service credit; and
 - (b) the member dies leaving a surviving spouse.

- (3) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:
 - (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (4) The allowance payable to a surviving spouse under Subsection (2) is as follows:
 - (a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;
 - (b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive 2/3 of the member's full allowance;
 - (c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive 1/3 of the member's full allowance; or
 - (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.
- (5) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (6) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-22-501 and shall constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing a claim for benefits under Section 49-22-501.
- (7) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

49-22-503 Death of members -- Exemption from vesting requirements for employer nonelective contributions to defined contribution plan.

- (1)
 - (a) If an active member dies, employer nonelective contributions made on behalf of the employee to a defined contribution plan under Section 49-22-303 or 49-22-401 are exempt from the vesting requirements of Subsections 49-22-303(2)(a) and 49-22-401(3)(a).
 - (b) The total amount of nonelective contributions made by the participating employer vests to the member upon death and the member's beneficiary is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses.
- (2) Employer contributions vested and distributed under this section are in addition to and separate from the benefits payable under Sections 49-22-501 and 49-22-502.

Enacted by Chapter 315, 2015 General Session

Part 6 Disability

49-22-601 Long-term disability coverage.

In accordance with Section 49-21-201, the state shall cover all of its eligible employees under Chapter 21, Public Employees' Long-Term Disability Act.

Enacted by Chapter 266, 2010 General Session

Chapter 23 New Public Safety and Firefighter Tier II Contributory Retirement Act

Part 1 General Provisions

49-23-101 Title.

This chapter is known as the "New Public Safety and Firefighter Tier II Contributory Retirement Act."

Enacted by Chapter 266, 2010 General Session

Superseded 7/1/2024

49-23-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:
 - (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;
 - (v) a lump-sum payment or special payment covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
 - (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.

- (2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.
- (4) "Emergency medical service personnel" means an individual who:
 - (a) is:
 - (i) a paramedic;
 - (ii) an advanced emergency medical services technician; or
 - (iii) an emergency medical services technician;
 - (b) is required to be licensed or certified under Section 26B-4-116; and
 - (c) has a primary job duty to provide emergency medical services as a first responder.
- (5)
 - (a) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (5)(b), (c), (d), (e), and (f).
 - (b) Except as provided in Subsection (5)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (5)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (e) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (f) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (15).
- (6)
 - (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department;
 - (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal;
 - (iii) a firefighter service employee who is:
 - (A) hired on or after July 1, 2021;
 - (B) trained in firefighter techniques;
 - (C) assigned to a position of hazardous duty; and
 - (D) employed by the state as a participating employer; or
 - (iv) an emergency medical service personnel.
 - (b) "Firefighter service" does not include secretarial staff or other similar employees.
- (7)
 - (a) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter.

- (b) "Firefighter service employee" does not include an employee of a regularly constituted fire department who does not perform firefighter service.
- (8)
 - (a) "Line-of-duty death" means a death resulting from:
 - (i) external force, violence, or disease occasioned by an act of duty as a public safety service or firefighter service employee; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service or firefighter service employee.
 - (b) "Line-of-duty death" does not include a death that:
 - (i) occurs during an activity that is required as an act of duty as a public safety service or firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (iv) occurs in a manner other than as described in Subsection (8)(a).
- (9) "Participating employer" means an employer that meets the participation requirements of:
 - (a) Sections 49-14-201 and 49-14-202;
 - (b) Sections 49-15-201 and 49-15-202;
 - (c) Sections 49-16-201 and 49-16-202; or
 - (d) Sections 49-23-201 and 49-23-202.
- (10)
 - (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a law enforcement officer in accordance with Section 53-13-103;
 - (ii) a correctional officer in accordance with Section 53-13-104;
 - (iii) a special function officer approved in accordance with Sections 49-15-201 and 53-13-105;
 - (iv) a dispatcher who is certified in accordance with Section 53-6-303;
 - (v) a full-time member of the Board of Pardons and Parole created under Section 77-27-2;
 - (vi) the commissioner of the Department of Public Safety; or
 - (vii) the executive director of the Department of Corrections.
 - (b) Except for a position described in Subsection (10)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the course of employment, the employee's life or personal safety is at risk.
- (11) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.
- (12)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (13) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.
- (14)
 - (a) "Volunteer firefighter" means any individual who is not regularly employed as a firefighter service employee, but who:

- (i) has been trained in firefighter techniques and skills;
 - (ii) continues to receive regular firefighter training; and
 - (iii) is on the rolls of a legally organized volunteer fire department that provides ongoing training and serves a political subdivision of the state.
- (b) An individual that volunteers assistance but does not meet the requirements of Subsection (14)(a) is not a volunteer firefighter for purposes of this chapter.
- (15) "Years of service credit" means:
- (a) a period, consisting of 12 full months as determined by the board; or
 - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

Amended by Chapter 59, 2023 General Session

Effective 7/1/2024

49-23-102 Definitions.

As used in this chapter:

- (1)
- (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.
 - (b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.
 - (c) "Compensation" does not include:
 - (i) overtime;
 - (ii) sick pay incentives;
 - (iii) retirement pay incentives;
 - (iv) the monetary value of remuneration paid in kind, as in a residence, use of equipment or uniform, travel, or similar payments;
 - (v) a lump-sum payment or special payment covering accumulated leave; and
 - (vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.
 - (d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.
- (2) "Corresponding Tier I system" means the system or plan that would have covered the member if the member had initially entered employment before July 1, 2011.
- (3) "Dispatcher" means the same as that term is defined in Section 53-6-102.
- (4) "Emergency medical service personnel" means an individual who:
- (a) is:
 - (i) a paramedic;
 - (ii) an advanced emergency medical services technician; or
 - (iii) an emergency medical services technician;
 - (b) is required to be licensed or certified under Section 53-2d-402; and

- (c) has a primary job duty to provide emergency medical services as a first responder.
- (5)
- (a) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (5)(b), (c), (d), (e), and (f).
 - (b) Except as provided in Subsection (5)(c), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (c) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (5)(b) may be exceeded if:
 - (i) the member has transferred from another agency; or
 - (ii) the member has been promoted to a new position.
 - (d) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
 - (e) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
 - (f) The annual compensation used to calculate final average salary shall be based on a period, as determined by the board, consistent with the period used to determine years of service credit in accordance with Subsection (15).
- (6)
- (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department;
 - (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal;
 - (iii) a firefighter service employee who is:
 - (A) hired on or after July 1, 2021;
 - (B) trained in firefighter techniques;
 - (C) assigned to a position of hazardous duty; and
 - (D) employed by the state as a participating employer; or
 - (iv) an emergency medical service personnel.
 - (b) "Firefighter service" does not include secretarial staff or other similar employees.
- (7)
- (a) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter.
 - (b) "Firefighter service employee" does not include an employee of a regularly constituted fire department who does not perform firefighter service.
- (8)
- (a) "Line-of-duty death" means a death resulting from:
 - (i) external force, violence, or disease occasioned by an act of duty as a public safety service or firefighter service employee; or
 - (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a public safety service or firefighter service employee.

- (b) "Line-of-duty death" does not include a death that:
 - (i) occurs during an activity that is required as an act of duty as a public safety service or firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;
 - (ii) occurs during the commission of a crime committed by the employee;
 - (iii) the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death; or
 - (iv) occurs in a manner other than as described in Subsection (8)(a).
- (9) "Participating employer" means an employer that meets the participation requirements of:
 - (a) Sections 49-14-201 and 49-14-202;
 - (b) Sections 49-15-201 and 49-15-202;
 - (c) Sections 49-16-201 and 49-16-202; or
 - (d) Sections 49-23-201 and 49-23-202.
- (10)
 - (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:
 - (i) a law enforcement officer in accordance with Section 53-13-103;
 - (ii) a correctional officer in accordance with Section 53-13-104;
 - (iii) a special function officer approved in accordance with Sections 49-15-201 and 53-13-105;
 - (iv) a dispatcher who is certified in accordance with Section 53-6-303;
 - (v) a full-time member of the Board of Pardons and Parole created under Section 77-27-2;
 - (vi) the commissioner of the Department of Public Safety; or
 - (vii) the executive director of the Department of Corrections.
 - (b) Except for a position described in Subsection (10)(a)(iv), (v), (vi), or (vii), "public safety service" also requires that, in the course of employment, the employee's life or personal safety is at risk.
- (11) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.
- (12)
 - (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.
 - (b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.
- (13) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.
- (14)
 - (a) "Volunteer firefighter" means any individual who is not regularly employed as a firefighter service employee, but who:
 - (i) has been trained in firefighter techniques and skills;
 - (ii) continues to receive regular firefighter training; and
 - (iii) is on the rolls of a legally organized volunteer fire department that provides ongoing training and serves a political subdivision of the state.
 - (b) An individual that volunteers assistance but does not meet the requirements of Subsection (14)(a) is not a volunteer firefighter for purposes of this chapter.
- (15) "Years of service credit" means:
 - (a) a period, consisting of 12 full months as determined by the board; or

- (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

Amended by Chapter 310, 2023 General Session

49-23-103 Creation of system.

- (1) There is created for members employed by a participating employer the "New Public Safety and Firefighter Tier II Contributory Retirement System."
- (2) The New Public Safety and Firefighter Tier II Contributory Retirement System includes:
 - (a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and
 - (b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.
- (3) The system may also be known and function as the Public Safety and Firefighter Tier 2 Contributory Retirement System, the Tier 2 Hybrid Retirement System, and the Tier 2 Defined Contribution Plan.

Amended by Chapter 31, 2019 General Session

49-23-104 Creation of trust fund.

- (1) There is created the "New Public Safety and Firefighter Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Enacted by Chapter 266, 2010 General Session

Part 2

Membership Eligibility

49-23-201 System membership -- Eligibility.

- (1) Except as provided in Subsections (3) and (4), beginning July 1, 2011, a participating employer that employs public safety service employees or firefighter service employees shall participate in this system.
- (2)
 - (a) A public safety service employee or a firefighter service employee initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible:
 - (i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or

- (ii) as a participant for defined contributions under the Tier II defined contributions plan established by Part 4, Tier II Defined Contribution Plan.
 - (b) A public safety service employee or a firefighter service employee initially entering employment with a participating employer on or after July 1, 2011, shall:
 - (i) make an election to participate in the system created under this chapter:
 - (A) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and
 - (ii) electronically submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.
 - (c) An election made by a public safety service employee or firefighter service employee initially entering employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.
 - (d) If no election is made under Subsection (2)(b)(i), the public safety service employee or firefighter service employee shall become a member eligible for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System.
- (3)
- (a) Beginning July 1, 2015, a public safety service employee who is a dispatcher employed by:
 - (i) the state shall be eligible for service credit in this system; and
 - (ii) a participating employer other than the state shall be eligible for service credit in this system if the dispatcher's participating employer elects to cover the participating employer's dispatchers under this system.
 - (b) A participating employer's election to cover the participating employer's dispatchers under this system under Subsection (3)(a)(ii) is irrevocable and shall be documented by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.
 - (c) A dispatcher's service before July 1, 2015, or before a date specified by resolution of a participating employer under Subsection (3)(b), is not eligible for service credit in this system.
- (4) An employer is eligible to participate in this system if the employer employs emergency medical service personnel and meets the requirements of Subsections (5) and (6).
- (5)
- (a) Beginning July 1, 2023, a firefighter service employee who is an emergency medical service personnel employed by a participating employer shall be eligible for service credit in this system if the emergency medical service personnel's participating employer elects to cover the participating employer's emergency service personnel under this system.
 - (b)
 - (i) A participating employer's election under Subsection (5)(a) to cover the participating employer's emergency medical service personnel under this system is irrevocable.
 - (ii) A participating employer shall document an election under Subsection (5)(a) by a resolution adopted by the governing body of the participating employer in accordance with rules made by the office.
 - (c)
 - (i) An emergency medical service personnel's service before July 1, 2023, is not eligible for service credit in this system.
 - (ii) For an emergency medical service personnel employed by a participating employer, the emergency medical service personnel's service before the date the participating employer

adopts a resolution described in Subsection (5)(b)(ii) is not eligible for service credit in this system.

- (6)
 - (a) The fire chief, or if there is not a fire chief for the participating employer, the emergency services director, shall verify that an individual meets the definition of emergency medical service personnel.
 - (b)
 - (i) Each participating employer participating in this system that employs emergency medical service personnel shall submit annually to the office a schedule indicating which emergency medical service personnel positions are covered under this system under this chapter.
 - (ii) The office may require documentation to justify the inclusion of any position under this section.
- (7) A public safety service employee who is transferred or promoted to an administration position requiring the performance of duties that consist primarily of management or supervision of public safety service employees shall continue to earn public safety service credit in this system during the period in which the employee remains employed in the same department.
- (8) An employee of the Department of Corrections shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.
- (9) An employee of the Department of Health and Human Services who is transferred from the Department of Corrections' clinical services bureau to provide a clinical or health care service to an inmate as defined in Section 64-13-1 shall continue to earn public safety service credit in this system if:
 - (a) the employee's position is no longer covered under this system for new employees hired on or after July 1, 2015; and
 - (b) the employee:
 - (i) remains employed by the Department of Corrections or the Department of Health and Human Services;
 - (ii) meets the eligibility requirements of this system;
 - (iii) was hired into a position covered by this system before July 1, 2015; and
 - (iv) has not had a break in service on or after July 1, 2015.

Amended by Chapter 59, 2023 General Session

Amended by Chapter 290, 2023 General Session

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 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 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 employee or a firefighter service employee for service rendered prior to the participating employer's admission to this system, the participating employer shall:
 - (a) purchase service credit 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.

Amended by Chapter 193, 2021 General Session

49-23-203 Exemptions from participation in system.

- (1) Upon filing a written request for exemption with the office, the following employees are exempt from participation in the system as provided in this section if the employee is a public safety service employee or firefighter service employee and is:
 - (a) an executive department head of the state;
 - (b) an elected or appointed sheriff of a county;
 - (c) an elected or appointed chief of police of a municipality; or
 - (d) the chief of any fire department or district.
- (2)
 - (a) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (1).
 - (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (1).
- (3) Each participating employer shall:
 - (a) file each employee exemption annually with the office; and
 - (b) update an employee exemption in the event of any change.
- (4) Beginning on the effective date of the exemption for an employee who elects to be exempt in accordance with Subsection (1):
 - (a) for a member of the Tier II defined contribution plan:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-23-401, except that the contribution is exempt from the vesting requirements of Subsection 49-23-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and
 - (iii) the member is not eligible for additional service credit in the plan for the period of exempt employment; and
 - (b) for a member of the Tier II hybrid retirement system:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-23-401, except that the contribution is exempt from the vesting requirements of Subsection 49-23-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and
 - (iii) the member is not eligible for additional service credit in the system for the period of exempt employment.

- (5) If an employee who is a member of the Tier II hybrid retirement system subsequently revokes the election of exemption made under Subsection (1), the provisions described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- (6)
 - (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election period under Subsection 49-23-201(2)(c) is expired if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) continues employment with the participating employer through the one-year election period under Subsection 49-23-201(2)(c).
 - (b) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) terminates employment prior to the one-year election period under Subsection 49-23-201(2)(c).
- (7)
 - (a) The office shall make rules to implement this section.
 - (b) The rules made under this Subsection (7) shall include provisions to allow the exemption provided under Subsection (1) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.
- (8) An employee's exemption, participation, or election described in this section:
 - (a) shall be made in accordance with this section; and
 - (b) is subject to requirements under federal law and rules made by the board.

Amended by Chapter 171, 2022 General Session

Part 3

Tier II Hybrid Retirement System

49-23-301 Contributions.

- (1) Participating employers and members shall pay the certified contribution rates to the office to maintain the defined benefit portion of this system on a financially and actuarially sound basis in accordance with Subsection (2).
- (2)
 - (a) A participating employer shall pay up to 14% of compensation toward the certified contribution rate to the office for the defined benefit portion of this system.
 - (b) Except as provided in Subsection (2)(c), a member shall pay to the office the amount, if any, of the certified contribution rate for the defined benefit portion of this system that exceeds the percent of compensation paid by the participating employer under Subsection (2)(a).
 - (c) A participating employer may elect to pay all or part of the required member contribution under Subsection (2)(b) on behalf of the member as an employer pick up under 26 U.S.C. Sec. 414(h)(2), in addition to the required participating employer contribution under Subsection (2)(a).

- (d) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
 - (a) A member contribution is credited by the office to the account of the individual member.
 - (b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
 - (c) A member contribution is vested and nonforfeitable.
- (4)
 - (a) Each member is considered to consent to payroll deductions of member contributions.
 - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.
- (5) Except as provided under Subsection (6), benefits provided under the defined benefit portion of the Tier II hybrid retirement system created under this part:
 - (a) may not be increased unless the actuarial funded ratios of all systems under this title reach 100%; and
 - (b) may be decreased only in accordance with the provisions of Section 49-23-309.
- (6)
 - (a) The Legislature authorizes increases to the death benefit provided to a Tier II public safety service employee or firefighter member's surviving spouse effective on May 12, 2015, and July 1, 2020, as provided in Section 49-23-503.
 - (b)
 - (i) The Legislature authorizes an increase to the multiplier for the calculation of the retirement allowance provided to a member of the New Public Safety and Firefighter Tier II hybrid retirement system effective July 1, 2020, as provided in Section 49-23-304.
 - (ii) The requirements of Section 49-23-309 do not apply to the benefit adjustment described in this Subsection (6)(b).

Amended by Chapter 37, 2023 General Session

49-23-302 Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.

- (1)
 - (a) A participating employer shall make a nonelective contribution on behalf of each public safety service employee or firefighter service employee who is a member of this system in an amount equal to 14% minus the contribution rate paid by the employer under Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (1); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
- (2)

- (a) The total amount contributed by the participating employer under Subsection (1)(a), including associated investment gains and losses, vests to the member upon accruing four years of service credit under this title.
- (b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.
- (c)
 - (i) Years of service credit under Subsection (2)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of service credit required for vesting.
- (3)
 - (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).
 - (b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).
 - (c) A member may direct the investment of contributions made by the member under Subsection (1)(b).
- (4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).
- (5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).
- (6)
 - (a) Except as provided in Subsection (6)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions, including associated investment gains and losses, made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon the member's employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (7) The office may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (8) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Amended by Chapter 484, 2019 General Session

49-23-303 Defined benefit eligibility for an allowance -- Date of retirement -- Qualifications.

- (1) A member is qualified to receive an allowance from this system when:
 - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;
 - (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
 - (c) one of the following conditions is met as of the member's retirement date:
 - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
 - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
 - (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or
 - (iv) the member has accrued at least 25 years of service credit.
- (2)
 - (a) The member's retirement date:
 - (i) shall be the 1st or the 16th day of the month, as selected by the member;
 - (ii) shall be on or after the date of termination; and
 - (iii) may not be more than 90 days before or after the date the application is received by the office.
 - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
 - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
 - (b) A member who is employed by a participating employer and who is also a part-time appointed board member, as described in Subsection 49-11-1203(2), is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
 - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).
 - (d) A member who is employed by a participating employer and who is also a part-time appointed or elected board member, as defined in Section 49-11-1202, for a different agency is not required to cease service as a part-time appointed or elected board member to be qualified to receive an allowance under Subsection (1).
- (4) An exemption from the requirement to cease service and remain qualified to receive an allowance as provided in Subsection (3) is available only for a member who, at the time of retirement, is at least:
 - (a) 50 years old, if the member is retiring from a public safety system or firefighter system; or
 - (b) 55 years old.

Amended by Chapter 449, 2020 General Session

49-23-304 Defined benefit service retirement plans -- Calculation of retirement allowance -- Social security limitations.

- (1)
 - (a) Except as provided under Subsection (6), the retirees of this system may choose from the six retirement options described in this section.
 - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an annual allowance calculated as follows:
 - (a) If the retiree is at least 65 years of age or has accrued at least 25 years of service credit, the allowance is an amount equal to:
 - (i) 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011, but before July 1, 2020; plus
 - (ii) 2% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2020.
 - (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25 or more years of accrued credit in which event no reduction is made to the allowance.
- (c)
 - (i) Years of service includes any fractions of years of service to which the retiree may be entitled.
 - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
 - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.
 - (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
 - (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
 - (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
 - (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the

time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:

- (i) spouse died, if notification and supporting documentation for the death are received by the office within 90 days of the spouse's death; or
 - (ii) notification and supporting documentation for the death are received by the office, if the notification and supporting documentation are received by the office more than 90 days after the spouse's death.
- (4)
- (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
 - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (5)
- (a) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.
 - (b) A conversion to an Option One benefit under this Subsection (5) begins on the first day of the month following the month in which the notification and supporting documentation for the divorce are received by the office.
- (6) A retiree may not choose payment of an allowance under a retirement option described in this section that is not applicable to that retiree, including because the retiree did not make member contributions or does not have a lawful spouse at the time of retirement.

Amended by Chapter 31, 2019 General Session

Amended by Chapter 484, 2019 General Session

49-23-305 Allowance payable by lump-sum payment.

- (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Enacted by Chapter 266, 2010 General Session

49-23-306 Lump-sum death benefit for retiree and spouse.

- (1)
 - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
 - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
 - (c) The board may make rules for the administration of this lump-sum death benefit.
- (2)
 - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

- (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
 - (a) A retiree may elect to cancel the lump-sum death benefit under this section.
 - (b) The cancellation under this Subsection (3) is irrevocable.
 - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Enacted by Chapter 266, 2010 General Session

49-23-307 Defined benefit annual cost-of-living adjustment.

- (1) The office shall make an annual cost-of-living adjustment to:
 - (a) an original allowance paid under Section 49-23-305, if the allowance has been paid for at least one year; and
 - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
 - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.
 - (b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Enacted by Chapter 266, 2010 General Session

49-23-308 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.

- (1)
 - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
 - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
 - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
 - (d) The member shall pay at least 5% of the cost of the purchase.
 - (e) To qualify for a purchase of service credit under this section, the member shall:
 - (i) have at least five years of service credit; and
 - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Enacted by Chapter 266, 2010 General Session

49-23-309 Defined benefit adjustments -- Conditions -- Process -- Future years accrual.

- (1) In accordance with this section, the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if the member's contribution required under Subsection 49-23-301(2)(b) to the certified contribution rate for the defined benefit portion of this system exceeds 2% of the member's salary and:
 - (a)
 - (i) the membership council created under Section 49-11-205 recommends an adjustment to the board in accordance with Subsection (2); and
 - (ii) the board recommends specific adjustments to the Legislature in accordance with Subsection (2); or
 - (b) an actuarial study that conforms with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board and requested or commissioned by the board or the Legislature concludes:
 - (i) there is a significant likelihood that contribution rates will continue to rise; and
 - (ii) that participating employers are liable for system costs above the contribution rate established under Subsection 49-23-301(2)(a).
- (2) If the conditions under Subsection (1)(a) or (b) are met, the Legislature may adjust benefits for the defined benefit portion of the Tier II Hybrid Retirement System accrued or applied for future years of service including:
 - (a) the final average salary calculation provided under Section 49-23-102;
 - (b) the years of service required to be eligible to receive a retirement allowance under Section 49-23-303;
 - (c) the years of service credit multiplier established under Subsection 49-23-304(2)(a);
 - (d) the annual cost-of-living adjustment under Section 49-23-307; or
 - (e) other provisions of the defined benefit portion of the Tier II Hybrid Retirement System.
- (3)
 - (a) Notwithstanding the provisions of Subsections (1) and (2), the Legislature may make adjustments to the benefits provided for the defined benefit portion of the Tier II Hybrid Retirement System created under this part if an actuarial study described under Subsection (1)(b) concludes, due to current and projected economic conditions, member participation levels, and system structure, that the system:
 - (i) cannot reasonably be sustained under its current provisions;
 - (ii) is critically underfunded; and
 - (iii) has become unstable and is in risk of collapse.
 - (b) Subject to federal law, the adjustments under Subsection (3)(a) may include:
 - (i) conversion to a different type of retirement plan;
 - (ii) equitable distribution of system assets to retirees and members; and
 - (iii) a closure of the system.

Amended by Chapter 31, 2019 General Session

Part 4
Tier II Defined Contribution Plan

49-23-401 Contributions -- Rates.

- (1)
 - (a) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 14% of the participant's compensation to a defined contribution plan.
 - (b) In addition to the nonelective contribution described in Subsection (1)(a), if a participating employer elects under Subsection 49-23-301(2)(c) to pay all or part of the required member contribution on behalf of the participating employer's employees that are members covered under Part 3, Tier II Hybrid Retirement System, the participating employer shall make an additional nonelective contribution to an employee that is a member covered under this part at the same percentage rate of the participant's compensation as the participating employer's election to pay required member contributions on behalf of the participating employer's employees that are members covered under Part 3, Tier II Hybrid Retirement System.
- (2)
 - (a) The participating employer shall contribute the contributions described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code that:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan that receives the employer contribution described in this Subsection (2); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
 - (c) In addition to the contributions specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
 - (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of service credit under this title.
 - (b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.
 - (c)
 - (i) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-23-203.
 - (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for additional service credit in the plan for the period of exempt employment.
 - (d)
 - (i) Years of service credit under Subsection (3)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of service credit required for vesting.
- (4)
 - (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).

- (b) A member may direct the investment of contributions, including associated investment gains and losses, made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).
- (c) A member may direct the investment of contributions made by the member under Subsection (3)(b).
- (5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).
- (6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).
- (7)
 - (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member under Subsection (2)(a), including associated investment gains and losses are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member, including associated investment gains and losses, shall be reinstated upon the member's employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs of employer contributions made under this section.
- (8) The office may request from any other plan under Subsection (2)(b)(ii) any relevant information pertaining to the maintenance of the plan's tax qualification under the Internal Revenue Code.
- (9) The office may take any action that in the office's judgment is necessary to maintain the tax-qualified status of the office's 401(k) defined contribution plan under federal law.

Amended by Chapter 171, 2022 General Session

49-23-402 Defined contribution distributions for disabled members.

For a person who is disabled and receives contributions under Subsection 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined contributions made by the participating employer on behalf of the disabled member when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Enacted by Chapter 266, 2010 General Session

49-23-403 Eligibility to receive a retirement allowance for a benefit tied to a retirement date for defined contribution members.

- (1) As used in this section, "eligible to receive a retirement allowance" means the date selected by the member who is a participant under this part on which the member has ceased employment and would be qualified to receive an allowance under Section 49-23-303 if the member had been under the Tier II Hybrid Retirement System for the same period of employment.

- (2) The office and a participating employer shall make an accounting of years of service credit accrued for a member who is a participant under this part in order to calculate when a member would be eligible to receive a retirement allowance for purposes of establishing when a member may be eligible for a benefit tied to a retirement date that may be provided under Section 63A-17-508, this title, another state statute, or by a participating employer.

Amended by Chapter 345, 2021 General Session

Part 5

Death Benefit

49-23-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:
 - (a) benefit levels;
 - (b) classes of members; and
 - (c) a living benefit option.
- (3) This death benefit is payable when:
 - (a) the member dies prior to the member's retirement date or dies under circumstances which Subsection 49-23-304(4) requires to be treated as the death of a member before retirement;
 - (b) the office receives acceptable proof of death; and
 - (c) benefits are not payable under Section 49-23-306.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:
 - (a) the return of any member contributions under this chapter; plus
 - (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer in addition to the contribution rate established under Section 49-23-301 or 49-23-401.
- (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless the death of the member occurs either:
 - (a) within a period of 120 days after the last day of work for which the person received compensation; or
 - (b) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.

- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid on behalf of a retiree under this system.
- (13) Except for the death benefit described in Subsection (4), a member of the Tier II defined contribution plan is not eligible for death benefits under this section or Section 49-23-502 or 49-23-503.

Amended by Chapter 24, 2020 General Session

49-23-502 Death of married members -- Service retirement benefits to surviving spouse.

- (1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-23-304 without an actuarial reduction.
- (2) Upon the request of a deceased member's surviving spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
 - (a) the member has:
 - (i) 15 or more years of service credit;
 - (ii) attained age 62 with 10 or more years of service credit; or
 - (iii) attained age 65 with four or more years of service credit; and
 - (b) the member dies leaving a surviving spouse.
- (3) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:
 - (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
 - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (4) The allowance payable to a surviving spouse under Subsection (2) is:
 - (a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;
 - (b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;
 - (c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive one-third of the member's full allowance; or
 - (d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.
- (5) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (6) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-23-501 and shall constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing a claim for benefits under Section 49-23-501.
- (7) If the death benefits under this section or Section 49-23-503 are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before

the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

49-23-503 Death of active member in line of duty -- Payment of benefits.

If an active member of this system dies, benefits are payable as follows:

- (1) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:
 - (a) If the member has accrued less than 20 years of public safety service or firefighter service credit, the surviving spouse shall receive:
 - (i) a lump sum equal to six months of the active member's final average salary; and
 - (ii) the greater of:
 - (A) an allowance equal to 30% of the member's final average monthly salary; or
 - (B) an allowance equal to 2% of the member's final average monthly salary multiplied by the years of service credit accrued by the member.
 - (b) If the member has accrued 20 or more years of public safety service or firefighter service credit, the member shall be considered to have retired with an Option One allowance calculated without an actuarial reduction under Section 49-23-304 and the surviving spouse shall receive the allowance that would have been payable to the member.
- (2)
 - (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this section if the death results from external force, violence, or disease directly resulting from firefighter service.
 - (b) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death shall be considered to be the final average monthly salary of a volunteer firefighter for purposes of computing these benefits.
 - (c) Each volunteer fire department shall maintain a current roll of all volunteer firefighters that meet the requirements of Subsection 49-23-102(14) to determine the eligibility for this benefit.
- (3)
 - (a) If the death is classified as a line-of-duty death by the office, death benefits are payable under this section and the surviving spouse is not eligible for benefits under Section 49-23-502.
 - (b) If the death is not classified as a line-of-duty death by the office, benefits are payable in accordance with Section 49-23-502.
- (4)
 - (a) A surviving spouse who qualifies for a monthly benefit under this section shall apply in writing to the office.
 - (b) The allowance shall begin on the first day of the month following the month in which the:
 - (i) member or participant died, if the application is received by the office within 90 days of the date of death of the member or participant; or
 - (ii) application is received by the office, if the application is received by the office more than 90 days after the date of death of the member or participant.

Amended by Chapter 59, 2023 General Session

49-23-504 Death of members -- Exemption from vesting requirements for employer nonelective contributions to defined contribution plan.

- (1)

- (a) If an active member dies, employer nonelective contributions made on behalf of the employee to a defined contribution plan under Section 49-23-302 or 49-23-401 are exempt from the vesting requirements of Subsections 49-23-302(2)(a) and 49-23-401(3)(a).
 - (b) The total amount of nonelective contributions made by the participating employer vests to the member upon death and the member's beneficiary is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses.
- (2) Employer contributions vested and distributed under this section are in addition to and separate from the benefits payable under Sections 49-23-501, 49-23-502, and 49-23-503.

Enacted by Chapter 315, 2015 General Session

Part 6

Disability Benefit

49-23-601 Long-term disability coverage.

- (1) A participating employer shall cover a public safety service employee who initially enters employment on or after July 1, 2011, under Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term disability program.
- (2)
- (a) A participating employer shall cover a firefighter service employee who initially enters employment on or after July 1, 2011, under Chapter 21, Public Employees' Long-Term Disability Act.
 - (b) In accordance with this section, a participating employer shall provide long-term disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.
 - (c) The office shall ensure that the cost of the long-term disability benefit coverage provided under Subsections (2)(a) and (b) is funded with revenue received under Section 49-11-901.5.

Amended by Chapter 37, 2023 General Session
Amended by Chapter 139, 2023 General Session

49-23-602 Benefit protection contract.

- (1) As used in this section:
- (a) "Objective medical impairment" means the same as that term is defined in Section 49-21-102.
 - (b) "Qualifying injury or illness" means a physical or mental objective medical impairment resulting from external force or violence as a result of the performance of an employment duty.
- (2)
- (a) A participating employer shall provide a benefit protection contract described in Section 49-11-404 for any public safety service employee or firefighter service employee who suffers a qualifying injury or illness as determined in accordance with this section.
 - (b) A participating employer may elect to provide a benefit protection contract for any other injury or illness of a public safety service employee or firefighter service employee in accordance with the requirements for providing a benefit protection contract, including the provisions of Section 49-11-404.
- (3)

- (a) For purposes of Subsection (2)(a), the provider of long-term disability or workers' compensation indemnity benefits shall determine if a public safety service employee or firefighter service employee has suffered a qualifying injury or illness, including completing any appeals relating to that determination in accordance with the applicable appeals procedures.
- (b) In addition to the annual report requirements under Section 49-11-404:
 - (i) if there is final determination that a public safety service employee or firefighter service employee has suffered a qualifying injury or illness and is awarded an ongoing monthly disability benefit based on that qualifying injury or illness, the participating employer shall immediately notify the office of the employee's award of that ongoing monthly disability benefit; and
 - (ii) if the public safety service employee's or firefighter service employee's monthly disability benefit is terminated for any reason, the participating employer shall immediately notify the office of the termination of the monthly disability benefit.

Enacted by Chapter 122, 2022 General Session