

**RETIREMENT OFFICE AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Susan J. Koehn**

AN ACT RELATING TO PENSIONS; CLARIFYING DUTIES AND RESPONSIBILITIES OF THE RETIREMENT BOARD AND OFFICE; CLARIFYING BENEFICIARY DESIGNATIONS; SPECIFYING BENEFIT APPLICATION PROCEDURES; AUTHORIZING EXCESS BENEFIT PLANS; PERMITTING INDEPENDENT REVIEW OF DISABILITY RETIREMENT CLAIMS; PROVIDING A CERTAIN HEALTH INSURANCE BENEFIT; CLARIFYING PSYCHOPATHY BENEFITS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

**49-1-301**, as last amended by Chapter 273, Laws of Utah 1990

**49-1-606**, as last amended by Chapter 81, Laws of Utah 1989

**49-1-611**, as last amended by Chapter 197, Laws of Utah 1995

**49-2-406**, as last amended by Chapter 90, Laws of Utah 1994

**49-3-406**, as last amended by Chapter 253, Laws of Utah 1997

**49-5-502**, as last amended by Chapter 231, Laws of Utah 1996

**49-5-702**, as last amended by Chapter 157, Laws of Utah 1992

**49-8-403**, as enacted by Chapter 1, Laws of Utah 1987

**49-9-401**, as last amended by Chapter 197, Laws of Utah 1995

**49-9-406**, as last amended by Chapter 90, Laws of Utah 1994

ENACTS:

**49-6a-801**, Utah Code Annotated 1953

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

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

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

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

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

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

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

(d) Funds may be withdrawn or transferred out of the Utah State Retirement Investment Fund and credited back to a participating fund, but at no time may the income or principal or equity credit belonging to one participating fund be transferred to another.

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

~~[(2)]~~ (4) (a) Interest and other earnings shall be credited to each participating fund on a pro rata basis monthly, or otherwise as directed by the board.

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

Section 2. Section **49-1-606** is amended to read:

**49-1-606. Beneficiary designations -- Revocation of beneficiary designation --**

**Procedure -- Beneficiary not designated -- Payment to survivors in order established under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.**

~~[(1) If a member marries or remarries, all beneficiary designations dated prior to the most recent marriage and filed with the retirement office shall be canceled and the spouse shall be the beneficiary unless a different beneficiary designation is executed on or after the date of the marriage and filed with the retirement office, in which case the designation of beneficiary shall be binding in the payment of any benefits which may be due under this title.]~~

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

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

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

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

- (a) there are no living individuals in the group preceding it;
- (b) that the probate of the estate of the deceased has not been commenced; and
- (c) that more than three months have elapsed since the date of death of the decedent, shall be in full satisfaction and discharge of all claims for benefits under this title and payable by reason

of the death of the decedent.

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

Section 3. Section **49-1-611** is amended to read:

**49-1-611. Additional plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.**

(1) The board may establish and administer additional benefit plans under Sections 401(k) and 457 of the Internal Revenue Code. Employee and employer contributions shall be permitted according to the provisions of these plans as established by the board. The amount of these accumulated contributions, together with dividend or interest credits, are vested in the member, and are nonforfeitable.

(2) Earnings credited to accounts established as a result of this action shall be at a rate fixed by the board.

(3) Contributions shall be invested as provided by contract in accordance with federal and state law.

(4) The board may establish rules to implement and administer this section. Costs of administration may be paid from the interest earnings of the funds accrued as a result of deposits or as an assessment against each account, to be decided by the board. All funds and deposits may be invested as a separate account or accounts in the Utah State Retirement Investment Fund.

(5) This supplemental program shall be limited to members who contract to participate in the program a minimum of one year.

(6) The board may take the actions necessary to protect the tax qualified status of the plans, systems, and programs under its control, including the movement of members from defined

contribution to defined benefit plans or the creation of excess benefit plans authorized by federal law, and shall report its actions to the Legislature at the subsequent legislative session.

Section 4. Section **49-2-406** is amended to read:

**49-2-406. Death of married member -- Service retirement benefits to surviving spouse.**

(1) (a) A member who has 25 or more years of credited service, age 60 with 20 or more years of credited service, age 62 with ten or more years of credited service, or age 65 with four or more years of credited service, respectively, and who dies leaving a spouse to whom the member has been married at least six months prior to the death date, may, upon the request of the spouse, be considered to have retired on the first day of the month following the month in which death occurred under Plan Number Three.

(b) The spouse who requests a benefit pursuant to Subsection (1)(a) shall apply in writing to the retirement office stating the proposed effective date to begin receiving a monthly retirement allowance, which may not be more than 90 days before or after the date of application, and which shall be effective on the 1st or 16th day of the month, as selected by the spouse.

(2) The benefit calculation, when there are 25 or more years of service credit, shall be calculated without an actuarial reduction.

(3) Benefits payable under this section are service retirement benefits and shall be paid in addition to any payments made under Section 49-2-701, except for a return of accumulated contributions, and constitute a full and final settlement of the claim of the spouse or any other beneficiary filing claim for benefits under Section 49-2-701.

Section 5. Section **49-3-406** is amended to read:

**49-3-406. Death of married members -- Service retirement benefits to surviving spouse.**

(1) As used in this section, "member's full allowance" means the benefit calculated using the formula under Subsection 49-3-402(2)(a) without an actuarial reduction.

(2) (a) Beginning January 1, 1997, a member who has 15 or more years of credited service, age 60 with 20 or more years of credited service, age 62 with ten or more years of credited service, or age 65 with four or more years of credited service, respectively, and who dies leaving a spouse to whom the member has been married at least six months prior to the death date, may, upon the

request of the spouse, be considered to have retired on the first day of the month following the month in which death occurred and retired under Plan Three.

(b) The spouse who requests a benefit pursuant to Subsection (2)(a) shall apply in writing to the retirement office stating the proposed effective date to begin receiving a monthly retirement allowance, which may not be more than 90 days before or after the date of application, and which shall be effective on the 1st or 16th day of the month, as selected by the spouse.

(3) The retirement benefit payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of credited service 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 credited service 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 credited service 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 credited service, age 62 or older with 10 or more years of credited service, or age 65 or older with four or more years of credited service at the time of death, the surviving spouse shall receive the benefit calculated using the formula and the actuarial reduction under Subsections 49-3-402(2)(a) and (2)(b).

(4) Benefits payable under this section are service retirement benefits and shall be paid in addition to any other payments made under Section 49-3-701, except for a return of accumulated contributions, and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-3-701.

Section 6. Section **49-5-502** is amended to read:

**49-5-502. Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.**

The following rules apply to all members applying for disability retirement under this part:

(1) Any member who applies and is qualified for disability retirement shall receive a disability allowance until the earlier of:

(a) the date the member has accumulated 20 years of service credit, including years earned

while disabled; or

- (b) the member has received disability benefits for the following time periods:
  - (i) if the member is under age 60, the disability allowance is payable until age 65;
  - (ii) if the member is 60-61, the disability allowance is payable for five years;
  - (iii) if the member is 62-63, the disability allowance is payable for four years;
  - (iv) if the member is 64-65, the disability allowance is payable for three years;
  - (v) if the member is 66-68, the disability allowance is payable for two years; and
  - (vi) if the member is age 69 or older, the disability benefit is payable for one year.

(2) (a) The member shall receive service credit during the period of disability.

(b) The disability retirement shall be converted to a service retirement at the time the disability benefits terminate.

(3) The board shall approve or disapprove applications for disability retirement based upon both:

(a) the evaluation and recommendations of one or more physicians along with medical records relating to the disability which may, at the board's option, be reviewed by an independent medical examiner selected by the board, to the effect that the member is mentally or physically totally disabled; and

(b) receipt of proof by the board from the employer that the member has become totally disabled.

(4) Any disability retirant who regains health and is regularly employed shall have the disability allowance reduced or suspended as the retirant's earnings justify.

(5) (a) Members receiving benefits under this section shall, upon request of the administrator, submit to a medical examination by one or more physicians as directed by the board.

(b) If the member resides outside the state and is requested to submit to an examination, the member shall be examined under the same rules in the area in which the member resides.

(c) If, after an examination, the examiners report that the retirant is physically able and capable of resuming employment, the retirant shall be reinstated at the retirant's former classification and rank, and disability benefits terminate.

(d) Examinations may not be required more than once every year.

(e) A retirant who returns to employment of a participating employer shall immediately commence accruing service credit that shall be added to that credit that has been accrued by virtue of previous service, including service credited while disabled.

(6) Retired members are not subject to medical examinations after reaching age 55.

(7) Refusal or neglect to submit to an examination is sufficient cause for suspension or discontinuance of benefits and if the refusal or neglect continues for one year, the member's rights to all benefits may be revoked by the board.

(8) Retirants who receive benefits under this part shall file a sworn statement with the retirement office on or before January 15 of each year for the first five years a retirant receives benefits. The sworn statement shall indicate whether or not the retirant engaged in any gainful employment during the preceding year and, if so, the amount of earnings received during the calendar year.

(a) If the retirant has been gainfully employed, the retirant's benefit payments shall be reduced in the year following employment so that the total payments, when added to the compensation received for employment, do not exceed 125% of the retirant's final average salary.

(b) If any retirant refuses or neglects to file a sworn statement as required, the administrator may suspend payment of any and all benefits pending receipt of the statement. Upon filing the statement, the retirant's payments shall be resumed.

(9) The disability allowance shall be improved by the annual cost-of-living increase factor applied to retired members of the system that covered the employee at the time of disability.

Section 7. Section **49-5-702** is amended to read:

**49-5-702. Death of active member in Division B -- Payment of benefits.**

If an active member of the system enrolled in Division B dies, the following benefits are payable:

(1) If death is classified as line-of-duty, the dependent spouse receives a lump sum of \$1,500 and a monthly allowance equal to 37-1/2% of the deceased member's final average monthly salary, subject to Section 49-5-503.



(2) If death is classified as line-of-duty, and the member has 20 or more years of service credit, the member shall be considered to have retired and the dependent spouse shall receive the death benefit payable to a retired member under Section 49-5-704.

(3) If death is not classified as line-of-duty and the deceased member has five or more years of service credit, the death is considered line-of-duty and the same benefits are payable as established under Subsection (1) or (2).

(4) If death is not classified as line-of-duty and the deceased member has less than five years of service credit, the benefit is a refund of the deceased member's contributions, plus 50% of the member's most recent 12 months regular salary.

(5) If the deceased member has five or more years of service credit, the member's unmarried children, until they reach age 21, receive a monthly allowance of \$75. In the event of the death of the member and spouse, the spouse's benefits are equally divided and paid to each unmarried child until the child reaches age 21. The payments shall be made to the surviving parent or duly appointed guardian or pursuant to Section 49-1-607.

(6) If the benefit is not distributed under this section, and there is a beneficiary, the vested contribution shall be paid to the beneficiary.

(7) The total monthly payments made on behalf of any one deceased member's account may not exceed 75% of the member's final average salary.

Section 8. Section **49-6a-801** is enacted to read:

**49-6a-801. Judges' mandatory retirement age.**

(1) Except as provided in Subsection (2), a justice or judge who qualifies as a member of this system under Section 49-6a-203 shall retire upon attaining the age of 75 years.

(2) A justice or 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 justice or 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 justice or judge would have been subject to a retention election.

Section 9. Section **49-8-403** is amended to read:

**49-8-403. Assistance to members in purchase of life, health, and medical insurance**

**after retirement -- Employment of personnel to administer section -- Governor's and legislative benefit.**

(1) (a) The board may assist active and retired members and beneficiaries and inactive members of the various retirement systems administered under its direction, to purchase life, health, and medical insurance on a group basis which can be continued after retirement under rules adopted by the board.

(b) The executive director may employ any personnel, including consultants, to administer this section.

(2) (a) The board shall annually report and the state shall pay the percentage described in Subsection (2)(c) of the cost of providing a paid-up group health insurance policy for members covered under Title 49, Chapter 7, Governor's and Legislative Service Pension 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 group insurance division; and

(iv) are active members at the time of retirement or have retired and continued insurance coverage with the group insurance division until the date of eligibility for the benefit under this Subsection (2).

(b) The board shall annually report and the state shall pay the percentage described in Subsection (2)(c) of the cost of providing Medicare supplemental insurance for members covered under Title 49, Chapter 7, Governor's and Legislative Service Pension Act who:

(i) retire after January 1, 1998;

(ii) are at least 65 years of age; and

(iii) elect to receive and apply for this benefit to the group insurance division.

(c) The following percentages apply to the benefit described in Subsections (2)(a) and (b):

(i) 100% if the member has 10 or more years of service;

(ii) 80% if the member has 8 or more years of service;

(iii) 60% if the member has 6 or more years of service; and

(iv) 40% if the member has 4 or more years of service.

Section 10. Section **49-9-401** is amended to read:

**49-9-401. Disability benefits -- Proof required -- Eligibility.**

(1) Upon receipt of proof by the board from the employer that an employee has become totally disabled as a result of:

(a) accidental bodily injury which is the sole cause of disability and is sustained while this chapter is in force;

(b) disease or illness causing total disability commencing while this chapter is in force; or

(c) physical injury resulting from external force or violence as a result of the performance of duty, the fund will pay to the employee a monthly disability benefit for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period.

(2) Successive periods of disability which: (a) result from the same or related causes, (b) are separated by less than six months of continuous full-time work at the individual's usual place of employment, and (c) commence while the individual is an employee covered by this chapter, shall be considered as a single period of disability. The inability to work for a period less than 15 consecutive days may not be considered as a period of disability. Otherwise, successive periods of disability shall be considered as separate periods of disability.

(3) The board may, at any time, have any employee claiming disability examined by a physician chosen by the board to determine if the employee is disabled, and if so, the extent of the disability.

(4) (a) Except as provided in Subsection (b), any claim brought by an employee for long-term disability benefits under the Public Employee's Disability Program is barred if it is not commenced within one year from the employee's date of disability.

(b) If an employee fails to commence a claim for long-term disability benefits within the time limitations prescribed by Subsection (a), the board may permit an employee to commence a claim for long-term disability benefits if the employee demonstrates that under the surrounding facts and circumstances the employee's failure to comply with the time limitations was reasonable.

(5) Benefits for disability based primarily on psychopathy shall be determined in accordance with Section 49-9-406.

Section 11. Section **49-9-406** is amended to read:

**49-9-406. Psychopathy benefit.**

~~[(1) The disability trust fund does not provide monthly disability benefits for disability which is primarily due to psychopathy.]~~

~~[(2) In the place of monthly disability benefits for psychopathy, the following benefits are provided:]~~

Notwithstanding any other provision in this chapter, the benefits payable for a disability based primarily on psychopathy shall consist of the following:

~~[(a)]~~ (1) a maximum of two years of disability benefits calculated under this chapter;

~~[(b)]~~ (2) during the period of monthly disability benefits not to exceed two years, payment of a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses approved by the board's consultants; and

~~[(c)]~~ (3) if the employee is institutionalized, payment of disability benefits according to contractual provisions for a period not to exceed five years.