

**NONCONTRIBUTORY RETIREMENT DEFERRED
COMPENSATION - MEMBER/EMPLOYER
MATCH PLAN**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John B. Arrington

AN ACT RELATING TO RETIREMENT; AUTHORIZING AND AMENDING EMPLOYER
CONTRIBUTIONS TO CERTAIN EMPLOYEES' SUPPLEMENTAL BENEFITS; AND
PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

49-3-302, as last amended by Chapter 157, Laws of Utah 1992

ENACTS:

49-4a-302, Utah Code Annotated 1953

49-6a-302, Utah Code Annotated 1953

49-7-302, Utah Code Annotated 1953

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

Section 1. Section **49-3-302** is amended to read:

**49-3-302. Supplemental benefit established -- Deferred compensation plan options
-- Contribution by employer and employee -- Immediate vesting of contributions -- Plans to
be separate -- Tax-qualified status of plans.**

(1) There is established a supplemental deferred compensation benefit for members of this system.

(a) (i) For members of level A under Section 49-3-301, which are participating educational institutions or participating employers whose activities are associated with participating educational institutions, the employer shall contribute on behalf of each of its employees [1.5%] .67% of the employee's salary for each 1% of the employee's salary contributed by the employee

1 to a deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code
2 which is selected by the employee and which is sponsored by the board, by that level A employer,
3 or by a group of similar level A employers and which has been grandfathered under Section 1116
4 of the Federal Tax Reform Act of 1986.

5 (ii) For all other members of level A under Section 49-3-301, the employer shall contribute
6 on behalf of each of its employees 1.5% of the employee's salary to the deferred compensation
7 plan qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

8 (iii) The employee may also make elective contributions to either the qualified 401(k) plan
9 which receives the 1.5% employer contribution described in Subsection (1)(a)(i), or to any other
10 deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which
11 is selected by the employee and sponsored by the board, that level A employer, or a group of
12 similar level A employers, and which has been grandfathered under Section 1116 of the Federal
13 Tax Reform Act of 1986, but only up to an amount permitted by federal law.

14 (b) (i) For members of level B under Section 49-3-301, the participating employer may
15 contribute on behalf of each of its employees any amount to the deferred compensation plan
16 qualified under Section 401(k) of the Internal Revenue Code which is sponsored by the board.

17 (ii) The employee may also contribute to the same qualified 401(k) plan which the
18 employee selected to receive the employer contribution described in Subsection (1)(b)(i), but only
19 up to an amount permitted by federal law.

20 (c) The employee may not make elective contributions to any other qualified 401(k) plan
21 sponsored by a state or local government.

22 (2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to
23 the employee's benefit immediately and is nonforfeitable.

24 (3) Each qualified deferred compensation 401(k) plan is separate and distinct from any
25 other qualified deferred compensation 401(k) plan for all purposes including, but not limited to,
26 purposes of fiduciary liability and plan administration. The board may request from any other
27 qualified 401(k) plan under Subsection (1)(a)(iii) any relevant information pertaining to the
28 maintenance of its tax qualification under the Internal Revenue Code and may request
29 indemnification from such other plan to the extent it performs testing functions for that plan.

30 (4) Prior to January 1 of each calendar year, each employee of an employing unit specified
31 in Subsection (1)(a)(i) shall notify the employing unit which qualified deferred compensation

1 401(k) plan the employee has selected to receive the employer and employee contributions
2 described in Subsections (1)(a) and (b) for that calendar year. This election may be changed only
3 in accordance with procedures established by the employing unit. Notwithstanding this section,
4 the board may take any action which in its judgment is necessary to maintain the tax-qualified
5 status of its 401(k) deferred compensation plan pursuant to federal law. The board shall submit
6 findings of fact and its conclusions prior to taking any such action.

7 Section 2. Section **49-4a-302** is enacted to read:

8 **49-4a-302. Supplemental benefit established -- Deferred compensation plan --**
9 **Contribution by employer and employee -- Immediate vesting of contributions.**

10 (1) There is established a supplemental deferred compensation benefit for members of this
11 system.

12 (a) (i) (A) For public safety employees of the state and state institutions of higher
13 education, the employer shall contribute on behalf of each of its employees .67% of the employee's
14 salary for each 1% of the employee's salary contributed by the employee to the deferred
15 compensation plan qualified under Section 401(k) of the Internal Revenue Code which is
16 sponsored by the board.

17 (B) The employer's maximum participation under this Subsection (1)(a)(i) shall be 4% of
18 the employee's salary.

19 (ii) The employee may also make elective contributions to the qualified 401(k) plan which
20 receives the employer contribution described in Subsection (1)(a)(i), but only up to an amount
21 permitted by federal law.

22 (b) (i) For all other members of this system not described under Subsection (1)(a), the
23 participating employer may contribute on behalf of each of its employees any amount to the
24 deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which
25 is sponsored by the board.

26 (ii) The employee may also make elective contributions to the qualified 401(k) plan which
27 receives the employer contribution described in Subsection (1)(b)(i), but only up to an amount
28 permitted by federal law.

29 (c) The employee may not make elective contributions to any other qualified 401(k) plan
30 sponsored by a state or local government.

31 (2) The total amount contributed by the employer under Subsection (1)(a) or (b) vests to

1 the employee's benefit immediately and is nonforfeitable.

2 Section 3. Section **49-6a-302** is enacted to read:

3 **49-6a-302. Supplemental benefit established -- Deferred compensation plan --**
4 **Contribution by employer and employee -- Immediate vesting of contributions.**

5 (1) There is established a supplemental deferred compensation benefit for all members of
6 this system.

7 (a) The employer shall contribute on behalf of each of its member employees .67% of the
8 employee's salary for each 1% of the employee's salary contributed by the employee to the
9 deferred compensation plan qualified under Section 401(k) of the Internal Revenue Code which
10 is sponsored by the board.

11 (b) The employer's maximum participation under Subsection (1)(a) shall be 4% of the
12 employee's salary.

13 (c) The employee may also make elective contributions to the qualified 401(k) plan which
14 receives the employer contribution described in Subsection (1)(a), but only up to an amount
15 permitted by federal law.

16 (d) The employee may not make elective contributions to any other qualified 401(k) plan
17 sponsored by a state or local government.

18 (2) The total amount contributed by the employer under Subsection (1) vests to the
19 employee's benefit immediately and is nonforfeitable.

20 Section 4. Section **49-7-302** is enacted to read:

21 **49-7-302. Supplemental benefit established -- Deferred compensation plan --**
22 **Contribution by state and member -- Immediate vesting of contributions.**

23 (1) As used in this section, "salary" has the same meaning as provided in Section
24 49-3-103.

25 (2) There is established a supplemental deferred compensation benefit for all members of
26 this system.

27 (a) The state shall contribute on behalf of each of the members of this system .67% of the
28 member's salary for each 1% of the member's salary contributed by the member to the deferred
29 compensation plan qualified under Section 401(k) of the Internal Revenue Code which is
30 sponsored by the board.

31 (b) The state's maximum participation under Subsection (2)(a) shall be 4% of the member's

1 salary.

2 (c) The member may also make elective contributions to the qualified 401(k) plan which
3 receives the state's contribution described in Subsection (2)(a), but only up to an amount permitted
4 by federal law.

5 (3) The total amount contributed by the employer under Subsection (2) vests to the
6 member's benefit immediately and is nonforfeitable.

7 Section 5. **Effective date.**

8 This act takes effect on July 1, 1998.

Legislative Review Note
as of 1-26-98 9:54 AM

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

Office of Legislative Research and General Counsel