

1 **RETIREMENT OFFICE AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Susan J. Koehn**

5 AN ACT RELATING TO PENSIONS; CLARIFYING DUTIES AND RESPONSIBILITIES OF
6 THE RETIREMENT BOARD AND OFFICE; CLARIFYING BENEFICIARY
7 DESIGNATIONS; SPECIFYING BENEFIT APPLICATION PROCEDURES;
8 AUTHORIZING EXCESS BENEFIT PLANS; PERMITTING INDEPENDENT REVIEW OF
9 DISABILITY RETIREMENT CLAIMS; CLARIFYING PSYCHOPATHY BENEFITS;
10 MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

12 AMENDS:

13 **49-1-301**, as last amended by Chapter 273, Laws of Utah 1990

14 **49-1-606**, as last amended by Chapter 81, Laws of Utah 1989

15 **49-1-611**, as last amended by Chapter 197, Laws of Utah 1995

16 **49-2-406**, as last amended by Chapter 90, Laws of Utah 1994

17 **49-3-406**, as last amended by Chapter 253, Laws of Utah 1997

18 **49-5-502**, as last amended by Chapter 231, Laws of Utah 1996

19 **49-5-702**, as last amended by Chapter 157, Laws of Utah 1992

20 **49-9-401**, as last amended by Chapter 197, Laws of Utah 1995

21 **49-9-406**, as last amended by Chapter 90, Laws of Utah 1994

22 ENACTS:

23 **49-6a-801**, Utah Code Annotated 1953

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

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

26 **49-1-301. Creation -- Board to act as trustees of the fund -- Commingling and**
27 **pooling of funds -- Interest earnings.**

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

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

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

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

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

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

22 [~~2~~] (4) (a) Interest and other earnings shall be credited to each participating fund on a pro
23 rata basis monthly, or otherwise as directed by the board.

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

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

29 **49-1-606. Beneficiary designations -- Revocation of beneficiary designation --**
30 **Procedure -- Beneficiary not designated -- Payment to survivors in order established under**
31 **the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's expenses.**

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

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

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

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

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

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

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

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

28 (5) If the location of the nominated beneficiary cannot be ascertained or if the nominated
29 beneficiary is the estate of the deceased person, the administrator may pay the costs of the
30 deceased's last illness, convalescent care, and funeral expenses directly to the undertaking
31 establishment, hospital, doctor, or convalescent home which provided the service. The

1 administrator shall require verified statements of the charges before making partial or full payment.
2 The payment shall discharge the obligation of the system and of the fund up to the amount paid.

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

4 **49-1-611. Additional plans authorized -- Subject to federal and state laws -- Rules**
5 **to implement this provision -- Costs of administration -- Limitations on eligibility --**
6 **Protection of tax status.**

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

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

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

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

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

22 (6) The board may take the actions necessary to protect the tax qualified status of the
23 plans, systems, and programs under its control, including the movement of members from defined
24 contribution to defined benefit plans or the creation of excess benefit plans authorized by federal
25 law, and shall report its actions to the Legislature at the subsequent legislative session.

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

27 **49-2-406. Death of married member -- Service retirement benefits to surviving**
28 **spouse.**

29 (1) (a) A member who has 25 or more years of credited service, age 60 with 20 or more
30 years of credited service, age 62 with ten or more years of credited service, or age 65 with four or
31 more years of credited service, respectively, and who dies leaving a spouse to whom the member

1 has been married at least six months prior to the death date, may, upon the request of the spouse,
2 be considered to have retired on the first day of the month following the month in which death
3 occurred under Plan Number Three.

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

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

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

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

15 **49-3-406. Death of married members -- Service retirement benefits to surviving**
16 **spouse.**

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

19 (2) (a) Beginning January 1, 1997, a member who has 15 or more years of credited service,
20 age 60 with 20 or more years of credited service, age 62 with ten or more years of credited service,
21 or age 65 with four or more years of credited service, respectively, and who dies leaving a spouse
22 to whom the member has been married at least six months prior to the death date, may, upon the
23 request of the spouse, be considered to have retired on the first day of the month following the
24 month in which death occurred and retired under Plan Three.

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

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

30 (a) if the member has 25 or more years of credited service at the time of death, the
31 surviving spouse shall receive the member's full allowance;

1 (b) if the member has between 20-24 years of credited service and is not age 60 or older
2 at the time of death, the surviving spouse shall receive two-thirds of the member's full allowance;

3 (c) if the member has between 15-19 years of credited service and is not age 62 or older
4 at the time of death, the surviving spouse shall receive one-third of the member's full allowance;

5 or

6 (d) if the member is age 60 or older with 20 or more years of credited service, age 62 or
7 older with 10 or more years of credited service, or age 65 or older with four or more years of
8 credited service at the time of death, the surviving spouse shall receive the benefit calculated using
9 the formula and the actuarial reduction under Subsections 49-3-402(2)(a) and (2)(b).

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

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

15 **49-5-502. Disability retirement -- Disability allowance eligibility -- Conversion to**
16 **service retirement -- Examinations -- Reemployment.**

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

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

20 (a) the date the member has accumulated 20 years of service credit, including years earned
21 while disabled; or

22 (b) the member has received disability benefits for the following time periods:

23 (i) if the member is under age 60, the disability allowance is payable until age 65;

24 (ii) if the member is 60-61, the disability allowance is payable for five years;

25 (iii) if the member is 62-63, the disability allowance is payable for four years;

26 (iv) if the member is 64-65, the disability allowance is payable for three years;

27 (v) if the member is 66-68, the disability allowance is payable for two years; and

28 (vi) if the member is age 69 or older, the disability benefit is payable for one year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (a) If the retirant has been gainfully employed, the retirant's benefit payments shall be
31 reduced in the year following employment so that the total payments, when added to the

1 compensation received for employment, do not exceed 125% of the retirant's final average salary.

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

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

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

8 **49-5-702. Death of active member in Division B -- Payment of benefits.**

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

11 (1) If death is classified as line-of-duty, the dependent spouse receives a lump sum of
12 \$1,500 and a monthly allowance equal to 37-1/2% of the deceased member's final average monthly
13 salary, subject to Section 49-5-503.

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

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

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

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

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

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

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

2 **49-6a-801. Judges' mandatory retirement age.**

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

5 (2) A justice or judge serving on July 1, 1996, who is 75 years of age or older on July 1,
6 1996, or who attains 75 years of age prior to the justice or judge's next retention election may not
7 be a candidate in that retention election and shall retire on or before December 31 of the year in
8 which the justice or judge would have been subject to a retention election.

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

10 **49-9-401. Disability benefits -- Proof required -- Eligibility.**

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

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

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

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

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

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

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

31 (b) If an employee fails to commence a claim for long-term disability benefits within the

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

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

6 Section 10. Section **49-9-406** is amended to read:

7 **49-9-406. Psychopathy benefit.**

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

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

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

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

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

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

20 Section 11. **Effective date.**

21 If approved by two-thirds of all the members elected to each house, this act takes effect
22 upon approval by the governor, or the day following the constitutional time limit of Utah

23 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
24 date of veto override.

Legislative Review Note
as of 11-26-97 7:55 AM

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

Office of Legislative Research and General Counsel

12-10-97 10:54 AM

H.B. 196

Committee Note

The Retirement Interim Committee recommended this bill.

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