

RETIREMENT OFFICE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

This act modifies the Utah State Retirement and Insurance Benefit Act, including many technical or conforming amendments. This act amends definitions. This act modifies the penalties against a participating employer for delinquent contributions. This act allows recalculations of retirement benefits to be ignored if the change to the benefit is less than \$1. This act modifies death benefit and beneficiary provisions, including survivor and notice provisions. This act requires a member of the retirement system to have five years of service credit and meet federal eligibility requirements prior to purchasing service credit. This act requires participating employers to cover their public safety employees with long-term disability insurance. This act amends the retirement allowance provisions for members of the Governors' and Legislators' Retirement System. This act modifies provisions of the Public Employees' Long-Term Disability Act. This act makes technical corrections.

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

AMENDS:

49-11-102, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-202, as last amended by Chapter 176 and renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-501, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-503, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-504, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-601, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-602, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-603, as enacted by Chapter 250, Laws of Utah 2002

49-11-604, as enacted by Chapter 250, Laws of Utah 2002

49-11-607, as renumbered and amended by Chapter 250, Laws of Utah 2002

49-11-609, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-11-612, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-12-102, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-12-405, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-13-102, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-13-202, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-13-405, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-13-408, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-14-102, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-14-401, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-14-502, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-14-503, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-15-102, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-15-502, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-15-503, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-15-504, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-102, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-401, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-402, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-501, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-503, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-504, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-16-602, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-17-401, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-18-401, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-18-501, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-19-401, as renumbered and amended by Chapter 250, Laws of Utah 2002
49-20-301, as renumbered and amended by Chapter 250, Laws of Utah 2002

- 49-20-401**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-20-406**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-102**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-401**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-402**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-403**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-404**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 49-21-406**, as renumbered and amended by Chapter 250, Laws of Utah 2002

ENACTS:

- 49-14-506**, Utah Code Annotated 1953
- 49-14-601**, Utah Code Annotated 1953
- 49-15-506**, Utah Code Annotated 1953
- 49-15-601**, Utah Code Annotated 1953
- 49-16-507**, Utah Code Annotated 1953

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

Section 1. Section **49-11-102** is amended to read:

49-11-102. Definitions.

As used in this title:

(1) (a) "Active member" means a member who is employed or who has been employed by a participating employer within the previous 120 days.

(b) "Active member" does not include retirees.

(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) "Agency" means:

(a) a department, division, agency, office, authority, commission, board, institution, or

hospital of the state;

(b) a county, municipality, school district, or special district;

(c) a state college or university; or

(d) any other participating employer.

(5) "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) "Annuity" means monthly payments derived from member contributions.

(8) "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 who earns during the first full month of the term of office \$500 or more, indexed as of January 1, [~~1989~~] 1990, as provided in Section 49-12-407.

(9) "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.

(10) "Board" means the Utah State Retirement Board established under Section 49-11-202.

(11) "Board member" means a person serving on the Utah State Retirement Board as established under Section 49-11-202.

(12) "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 Governor's and Legislators' Retirement Act.

(13) "Council member" means a person serving on the Membership Council established under Section 49-11-202.

(14) "Covered individual" means any individual covered under Chapter 20, Public Employees' Benefit and Insurance Program Act.

(15) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16, 17, 18, and 19.

(16) "Defined contribution" or "defined contribution plan" means any defined contribution plan authorized under the Internal Revenue Code and administered by the board.

(17) "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 (17).

(18) (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 [~~as allowed under Chapter 12 or 13~~].

(19) "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.

(20) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.

(21) (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.

(22) (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, 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.

(23) "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.

(24) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

(25) "Office" means the Utah State Retirement Office.

(26) "Participant" means an individual with voluntary deferrals or nonelective contributions on deposit with the defined contribution plans administered under this title.

(27) "Participating employer" means a participating employer, as defined by Chapters 12, 13, 14, 15, 16, 17, and 18, 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.

(28) "Pension" means monthly payments derived from participating employer contributions.

(29) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19 or the defined contribution plans created under Section 49-11-801.

(30) (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 or the state.

(b) "Political subdivision" includes special 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.

(31) "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.

(32) "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.

(33) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.

(34) "Retiree" means an individual who has qualified for an allowance under this title.

(35) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

(36) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

(37) "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.

(38) "System" means the individual retirement systems created by Chapters 12, 13, 14, 15, 16, 17, and 18.

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

Section 2. Section **49-11-202** is amended to read:

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

(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 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 approximately half of the board is 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) Each board member shall receive a per diem plus expenses for attending regularly constituted meetings and conferences as provided by board action.

(6) (a) There is established a Membership Council to perform the duties under Subsection (10).

(b) The board may pay the travel expenses of council members who attend council meetings.

(7) The Membership Council shall be composed of 13 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 ~~[Utah Association of Retired Public Employees]~~ governing board of the association representing the largest number of retirees, who are not public education retirees, from the Public Employees' Contributory and Public Employees' Noncontributory Retirement Systems.

(j) One council member shall be a retiree selected by the ~~[Utah Retired School Employees' Association]~~ governing board of the association representing the largest number of public education retirees.

(8) (a) Each entity granted authority to select council members under Subsection (7) 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 (8)(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.

(9) The council shall annually designate one council member as chair.

(10) 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.

Section 3. Section **49-11-501** is amended to read:

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 ~~[plan-to-plan]~~ direct transfer of member contributions to a qualified ~~[defined contribution plan administered by the~~

board] 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.

Section 4. Section **49-11-503** is amended to read:

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

The rate of interest charged on redeposits of refunds, [~~purchases~~] 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.

Section 5. Section **49-11-504** is amended to read:

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

(1) A person who retires from a nonparticipating employer is not subject to any postretirement restrictions under this title.

(2) A retiree of an agency who returns to work at a different agency is not subject to any postretirement restrictions under this section and may not earn additional service credit.

(3) For the purposes of Subsections (4) and (5), "full-time" employment means employment requiring [~~compensation for~~] 20 hours of work per week or more or at least a half-time teaching contract.

(4) 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 [~~calculations~~] 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).

(5) 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 (5) shall be applied on a calendar year basis.

(6) For six months immediately following retirement, the retiree and participating employer 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 (4); and

(d) immediately notify the office in writing whether postretirement earnings equal or exceed the exempt earnings under Subsection (5).

(7) A retiree of an agency who is reemployed by the same agency after six months from the retirement date is not subject to any postretirement penalties under this title and may not earn additional service credit.

(8) If a participating employer hires a retiree that may not earn additional service credit under this section, the participating employer shall contribute the same percentage of a retiree's salary that the participating employer would have been required to contribute if the retiree were an active member, up to the amount allowed by federal law, to a retiree designated:

(a) defined contribution plan administered by the board, if the participating employer participates in the defined contribution plan administered by the board; or

(b) defined contribution plan offered by the participating employer if the participating employer does not participate in a defined contribution plan administered by the board.

(9) Notwithstanding any other provision of this section, 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) This section does not apply to elected positions.

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

Section 6. Section **49-11-601** is amended to read:

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) If a participating employer does not make the contributions required by this title within 60 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) [~~refund~~] interest on the delinquent contributions as calculated under Section

49-11-503; and

- (c) a 12% per annum penalty on delinquent 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) Contributions made in error will be refunded to the participating employer or member that made the contributions.

Section 7. Section **49-11-602** is amended to read:

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

(1) A participating employer shall maintain records necessary to calculate benefits under this title and other records necessary for proper administration of this title as required by the office.

(2) A participating employer shall maintain the records required under Subsection (1) until [~~three years after~~] the latest of:

- (a) three years after the date of retirement of the employee from a system or plan; [~~or~~]
- (b) three years after the date of death of the employee[~~;~~]; or
- (c) 65 years from the date the employee terminates 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) [~~12% per annum~~] a penalty [of those liabilities and expenses] 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 executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

Section 8. Section **49-11-603** is amended to read:

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 60 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) all current members;

(ii) each new member as they begin employment; and

(iii) any changes to eligibility for service credit accrual of each member.

(b) the compensation of each current member eligible for service credit; and

(c) other factors relating to the proper administration of this title as required by the executive director.

(2) Each participating employer shall submit the reports required under Subsection (1) in a ~~[form]~~ format approved by the office.

(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 correctly report and certify records under this section;

(b) ~~[12% per annum]~~ a penalty [of those liabilities and expenses] equal to 1% of the participating employer's last month's contributions; and

(c) attorneys' 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 executive director may estimate the length of service, compensation, or age of any member, if that information is not contained in the records.

Section 9. Section **49-11-604** is amended to read:

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

(1) (a) The office may perform on-site compliance audits of participating employers to determine compliance with reporting, contribution, and certification requirements under this title.

(b) The office may request records to be provided by the participating employer at the time of the audit.

(c) Audits shall be conducted at the sole discretion of the office after reasonable notice to the participating employer of at least five working days.

(d) The participating employer shall extract and provide records as requested by the office in an appropriate, organized, and usable format.

(e) 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% [~~penalty~~] 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.

Section 10. Section **49-11-607** is amended to read:

**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 \$1 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 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.

Section 11. Section **49-11-609** is amended to read:

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

(2) The most recent beneficiary designations contained in office records, including electronic records, at the time of the member's death are binding in the payment of any benefits due under this title.

(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 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 surviving next of kin of the deceased 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 cannot be ascertained by the office within 12 months

of the date beneficiaries are provided with the forms; or

(iii) the beneficiary has not completed the forms necessary to pay the benefits within six months of the date [~~beneficiaries are provided the forms~~] 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 [~~(3)~~] (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 based upon receipt from the person 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 three months 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.

Section 12. Section **49-11-612** is amended to read:

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

(1) Except as provided in Subsections (2), (3), and (4), the right of any member, retiree, participant, or beneficiary to any benefit, payment, or any other 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.

(2) 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.

(3) (a) The office shall provide for the division of an allowance, defined contribution account, continuing monthly death benefit, or refund of member contributions upon termination

to 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 allowance, defined contribution account, continuing monthly death benefit, or refund of member contributions shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

(c) Allowances, continuing monthly death benefits, and refunds of member contributions 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;

(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 payments received by the member or beneficiary.

(4) 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 of a system, plan, or program under this title to offset any amount that member owes to a system, plan, or program administered by the board.

(5) The board shall make rules to implement this section.

Section 13. Section **49-12-102** is amended to read:

49-12-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(c), "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; or

(v) any [~~costs incurred by the member and reimbursed~~] 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.

(d) The executive director may determine if a payment not listed under this Subsection (1) falls within the definition of compensation.

(2) "Final average salary" means the amount computed by averaging the highest five years of annual compensation preceding retirement subject to Subsections (2)(a), (b), (c), and (d).

(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

office, 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) 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.

(d) 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.

(3) "Participating employer" means an employer which meets the participation requirements of ~~[Section]~~ Sections 49-12-201 and 49-12-202.

(4) (a) "Regular full-time employee" means an 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 or more per week, except as modified by the board, and 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 or a classified school employee ~~[who works]~~ whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(ii) an officer, elective or appointive, who earns during the first full month of the term of office \$500 or more, indexed as of January 1, ~~[1989]~~ 1990, as provided in Section 49-12-407;

(iii) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

(iv) an individual who otherwise meets the definition of this Subsection (4) who performs services for a participating employer through an employee leasing or similar

arrangement.

(5) "System" means the Public Employees' Contributory Retirement System created under this chapter.

(6) "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.

Section 14. Section **49-12-405** is amended to read:

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

(1) Upon the request of ~~[the]~~ a deceased member's lawful spouse at the time of the member's death, ~~[a]~~ the deceased member is considered to ~~[be eligible to retire]~~ 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 ten 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 spouse to whom the member has been married at least six months prior to the death date.

(2) The spouse who requests a benefit under this section shall apply in writing to the office ~~[stating the proposed effective date to begin receiving an allowance, which may not be~~

~~more than 90 days after the date of application].~~ 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) in which the application is received by the office.

(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) 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 spouse or any other beneficiary filing claim for benefits under Section 49-12-501.

Section 15. Section **49-13-102** is amended to read:

49-13-102. Definitions.

As used in this chapter:

(1) (a) Except as provided in Subsection (1)(c), "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; or

(v) any ~~[costs incurred by the member and reimbursed]~~ 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.

(d) The executive director may determine if a payment not listed under this Subsection (1) falls within the definition of compensation.

(2) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to the following:

(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 office, 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) 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 his last rate of pay from the date of the termination of employment to the effective date of retirement.

(3) "Participating employer" means an employer which meets the participation

requirements of ~~[Section]~~ Sections 49-13-201 and 49-13-202.

(4) (a) "Regular full-time employee" means an 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 or more per week, except as modified by the board, and 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 or a classified school employee ~~[who works]~~ whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;

(ii) an officer, elective or appointive, who earns during the first full month of the term of office \$500 or more, indexed as of January 1, ~~[1989]~~ 1990, as provided in Section 49-13-407;

(iii) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and

(iv) an individual who otherwise meets the definition of this Subsection (4) who performs services for a participating employer through an employee leasing or similar arrangement.

(5) "System" means the Public Employees' Noncontributory Retirement System.

(6) "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.

Section 16. Section **49-13-202** is amended to read:

49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements.

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

(b) In addition to their participation in this system, 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.

(2) An employer not initially admitted or included as a participating employer in this system prior to January 1, 1982, may be excluded from participation in this system if:

(a) 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

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

(3) If an employer, except an employer that maintains a collectively bargained plan under Subsection (2)(b), 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.

(4) (a) Any employer may by resolution of its governing body apply for admission to this system.

(b) Upon approval of 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 regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.

Section 17. Section **49-13-405** is amended to read:

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 ~~[Subsection]~~ Section 49-13-402~~(2)(a)~~ without an actuarial reduction.

(2) Upon the request of ~~[the]~~ a deceased member's lawful spouse at the time of the member's death, ~~[a]~~ the deceased member is considered to ~~[be eligible to retire]~~ 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 ten 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 spouse to whom the member has been married at least six months prior to the death date.

(3) The spouse who requests a benefit under this section shall apply in writing to the office ~~[stating the proposed effective date to begin receiving an allowance, which may not be more than 90 days after the date of application].~~ 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) in which the application is received by the office.

(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) 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 spouse or any other beneficiary filing a claim for benefits under Section 49-13-501.

Section 18. Section **49-13-408** is amended to read:

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 ~~chapter~~ 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.

Section 19. Section **49-14-102** is amended to read:

49-14-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income which are 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) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement, subject to Subsections (2)(a) and (b).

(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 office, the limitation in Subsection (2)(a) 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.

(3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a public safety service employee.

(4) "Participating employer" means an employer which meets the participation requirements of Section 49-14-201.

(5) (a) "Public safety service" means [~~at least 2,080 hours of regularly scheduled compensated~~] employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

- (i) law enforcement officer in accordance with Section 53-13-103;
- (ii) correctional officer in accordance with Section 53-13-104; and
- (iii) special function officer approved in accordance with Sections 49-14-201 and 53-13-105.

(b) "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 (5)(a) and (b) do not apply to any person who was eligible for service credit in this system prior to January 1, 1984.

(6) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(7) "System" means the Public Safety Contributory Retirement System created under this chapter.

(8) "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.

Section 20. Section **49-14-401** is amended to read:

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) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized 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 ten 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 shall be the 1st or the 16th day of the month, as selected by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 21. Section **49-14-502** is amended to read:

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 member has accrued less than 20 years of public safety service credit and if~~] the death is classified by the office as a line-of-duty death, the spouse at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's final average monthly salary.

(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 benefit shall be paid as provided under Subsection (1)(a).

(ii) If the member has accrued less than two years of public safety service credit at the time of death, the spouse at the time of death 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 mentally or physically disabled children 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) In the event of the death of both parents, the 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 the previous subsections, 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.

Section 22. Section **49-14-503** is amended to read:

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 ~~[designated beneficiary]~~ spouse at the time of death, or, if there is no spouse at the time of death, 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 spouse at the time of death 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.

Section 23. Section **49-14-506** is enacted to read:

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 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.

Section 24. Section **49-14-601** is enacted to read:

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.

Section 25. Section **49-15-102** is amended to read:

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) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (2)(a) and (b).

(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 office, the limitation in Subsection [~~(3)~~] (2)(a) 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.

(3) "Line-of-duty death" means a death resulting from external force, violence, or disease occasioned by an act of duty as a public safety service employee.

(4) "Participating employer" means an employer which meets the participation requirements of Section 49-15-201.

(5) (a) "Public safety service" means [~~at least~~] employment normally requiring an average of 2,080 hours of regularly scheduled [compensated] employment per year rendered by a member who is a:

- (i) law enforcement officer in accordance with Section 53-13-103;
- (ii) correctional officer in accordance with Section 53-13-104; and
- (iii) special function officer approved in accordance with [~~Section 49-4a-203~~] Sections

49-15-201 and [Section] 53-13-105.

(b) "Public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(6) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(7) "System" means the Public Safety Noncontributory Retirement System created under this chapter.

(8) "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.

Section 26. Section **49-15-502** is amended to read:

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 member has accrued less than 20 years of public safety service credit and if~~] the death is classified by the office as a line-of-duty death, the spouse at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's final average monthly salary.

(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 benefit shall be paid as provided under Subsection (1)(a).

(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 spouse at the time of death 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

mentally or physically disabled children 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) In the event of the death of both parents, the 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 the previous subsections, 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.

Section 27. Section **49-15-503** is amended to read:

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 [designated beneficiary] spouse at the time of death, or, if there is no spouse at the time of death, 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 spouse at the time of death 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.

Section 28. Section **49-15-504** is amended to read:

49-15-504. Benefits payable upon death of retired member.

(1) If a retiree who retired under either Division A or Division B dies, the retiree's spouse at the time of death shall receive an allowance equal to 65% 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 18 or dependent unmarried mentally or physically disabled children, the children shall qualify for a benefit as prescribed under Subsection [~~49-15-502(1)(c)~~] 49-15-502(1)(d) which is payable on the first day of the month following the month in which the retiree died.

Section 29. Section **49-15-506** is enacted to read:

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 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.

Section 30. Section **49-15-601** is enacted to read:

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.

Section 31. Section **49-16-102** is amended to read:

49-16-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable as gross income which are 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 Internal Revenue Code Section 401(a)(17).

(2) (a) "Disability" means a physical or mental condition that, in the judgment of the office, is total and presumably permanent, and prevents a member from performing firefighter service. ~~and prevents a member from performing satisfactorily in some other position of the same general class]~~ ~~fulfilling the responsibilities of the member's position, and prevents the member from performing~~

(b) The determination of disability is based upon medical and other evidence satisfactory to the office.

(3) "Final average salary" means the amount computed by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(a) and (b).

(a) Except as provided in Subsection (3)(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 office the limitation in Subsection (3)(a) may be exceeded if:

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

(4) "Firefighter service" means at least employment normally requiring an average of 2,080 hours of regularly scheduled ~~compensated~~ employment per year rendered by a member

who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) "Line-of-duty death or disability" means a death or any physical or mental disability resulting from external force, violence, or disease directly resulting from firefighter service.

(a) A paid firefighter who has five years of firefighter service credit is eligible for a line-of-duty death or disability resulting from heart disease, lung disease, or respiratory tract condition.

(b) 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 death or 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.

(7) "Participating employer" means an employer which meets the participation requirements of Section 49-16-201.

(8) "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.

(9) "System" means the Firefighters' Retirement System created under this chapter.

(10) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who is on the rolls of a regularly constituted fire department.

(b) An individual that volunteers assistance but is not a regularly enrolled firefighter is not a volunteer firefighter.

(11) "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.

Section 32. Section **49-16-401** is amended to read:

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) the member ceases actual work for a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized 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 ten 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 shall be the 1st or the 16th day of the month, as selected by the firefighter service employee, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 33. Section **49-16-402** is amended to read:

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 [~~annual~~] allowance payable under this section is \$500.

(3) Except as modified by cost-of-living adjustments, an allowance under this system may not exceed 70% of a firefighter service employee's final average monthly salary.

Section 34. Section **49-16-501** is amended to read:

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 spouse at the time of death shall receive a lump sum of \$1,500 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 spouse at the time of death shall receive the death benefit payable to a 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 ten 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 ten or more years of firefighter service credit the spouse at the time of death 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.

(2) (a) If the member dies without a current spouse, the spouse's [~~benefit~~] 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.

Section 35. Section **49-16-503** is amended to read:

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 ~~[designated beneficiary]~~ spouse at the time of death, or, if there is no spouse at the time of death, 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 spouse at the time of death 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.

Section 36. Section **49-16-504** is amended to read:

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 spouse at the time of death 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 ~~[18]~~ 21 or dependent unmarried mentally or physically disabled children, the children shall qualify for a benefit as prescribed under Subsection 49-16-502(1)(c) which is payable on the first day of the month following the month in which the retiree died.

Section 37. Section **49-16-507** is enacted to read:

49-16-507. 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 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.

Section 38. Section **49-16-602** is amended to read:

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 is no longer disabled;
- (b) the date the member of this system has accumulated 20 years of firefighter service credit, including years earned while disabled; 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 [~~or~~] 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 disability retiree shall receive service credit in this system during the

period of disability.

(ii) If the disability retiree is employed by a participating employer during the period of disability, the disability retiree 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 along with medical records relating to the condition;

(b) the evaluation and recommendations of one or more independent physicians 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 disability retiree who receives benefits under this section shall, upon request of the executive director, submit to a medical examination by one or more physicians as directed by the office.

(b) If, after an examination, the examiners report that the disability retiree is physically able and capable of resuming firefighter service employment, the disability retiree shall be reinstated by the participating employer for which the disability retiree last worked at the disability retiree's former classification and rank, and the disability retirement benefit shall terminate.

(c) A disability retiree may not be required to submit to an examination under this Subsection (4) more than once every year.

(d) A disability retiree 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 disability retiree 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 member's or disability retiree's rights to disability retirement benefits may be revoked by the office.

(7) (a) A disability retiree who receives benefits under this part shall file a sworn statement with the office on or before [~~January~~] March 15 of each year for the first five years a disability retiree receives benefits.

(b) The sworn statement shall indicate whether or not the disability retiree 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 disability retiree for disability retirement benefits and gross earnings from other employment exceeds 125% of the disability retiree's final average salary, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the disability retiree's final average salary.

(d) (i) If a disability retiree 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 disability retiree's payments 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.

Section 39. Section **49-17-401** is amended to read:

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 a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized 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 ten 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 shall be the 1st or the 16th day of the month, as selected by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 40. Section **49-18-401** is amended to read:

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 a participating employer in this system before the member's retirement date and provides evidence of the termination;

(b) the member has submitted to the office a notarized 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 ten 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 shall be the 1st or the 16th day of the month, as selected by the member, but the retirement date must be on or after the date of termination.

(b) The retirement date may not be more than 90 days before or after the date the application is received by the office.

Section 41. Section **49-18-501** is amended to read:

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 spouse at the time of death shall have the choice of the following death benefits:

~~[(1)]~~ (a) a refund of the member's member contributions, if any, ~~[including refund interest,]~~ plus 65% of the member's most recent 12 months' compensation prior to death; or

~~[(2)]~~ (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 spouse to whom the member is married at the time of death, member contributions shall be refunded to a beneficiary, in accordance with Sections 49-11-609 and 49-11-610.

Section 42. Section **49-19-401** is amended to read:

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 notarized 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 ten 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 notarized 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 ten 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 retires and continues to serve in office may not receive an additional increase to the allowance from that service.]~~

~~[(5)]~~ (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 after reaching age 65, 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.

Section 43. Section **49-20-301** is amended to read:

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

The program shall be maintained on a financially and actuarially sound basis by [~~means of~~] payments from covered employers and covered individuals.

Section 44. Section **49-20-401** is amended to read:

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 which 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 [~~estimated~~] certified by the program's consulting actuary;

(j) submit its recommended benefit adjustments for state employees to the director of the state Department of Human Resource Management;

(k) determine benefits and rates, upon approval of the board, for multiemployer risk pools, retiree coverage, and conversion coverage;

(l) determine benefits and rates, upon approval of the board and the Legislature, for state employees;

(m) administer benefits and rates, upon ratification of the board, for single employer risk pools;

(n) request proposals for provider networks or benefit plans administered by third party carriers at least once every three years for the purposes of:

(i) stimulating competition for the benefit of covered individuals;

(ii) establishing better geographical distribution of medical care services; and

(iii) providing coverage for both active and retired covered individuals;

(o) offer proposals which meet the criteria specified in a request for proposals and accepted by the program to active and retired state covered individuals and which may be offered to active and retired covered individuals of other covered employers at the option of the covered employer;

(p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for the Department of Health if the program provides program benefits to children enrolled in the Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's Health Insurance Act;

(q) establish rules and procedures governing the admission of political subdivisions or educational institutions and their employees to the program; [~~and~~]

(r) contract directly with medical providers to provide services for covered individuals[~~;~~];
and

(s) 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) Administrative costs shall be approved by the board and reported to the governor and the Legislature.

(3) The Department of Human Resource Management shall include the benefit adjustments described in Subsection (1)(j) in the total compensation plan recommended to the governor required under Subsection 67-19-12(6)(a).

Section 45. Section **49-20-406** is amended to read:

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

(1) As used in this section:

(a) "Children" includes stepchildren and legally adopted children.

(b) "Line-of-duty death" means a death resulting from external force or violence occasioned by an act of duty as an employee.

(2) The beneficiary of a covered individual who is employed by the state and who dies in the line of duty shall receive:

(a) the proceeds of a group term life insurance policy in the amount of \$50,000 to be purchased by the program and paid for by the state; and

(b) group health coverage paid for by the state that covers the covered individual's:

(i) surviving spouse until remarriage or becoming eligible for Medicare, whichever comes first; and

(ii) unmarried children up to the age of 26.

(3) ~~[Any]~~ A covered employer not required to provide the benefits under Subsection (2) may provide either or both of the [benefit] benefits under Subsection (2) by paying rates established by the program.

Section 46. Section **49-21-102** is amended to read:

49-21-102. Definitions.

As used in this chapter:

(1) "Date of disability" means the date on which a period of continuous disability commences, and may not commence on or before the last day of actual work.

(2) "Elimination period" means the three months at the beginning of each continuous period of total disability for which no benefit will be paid [~~and commences with the date of disability~~]. 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.

(3) (a) "Eligible employee" means:

(i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102, public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this chapter, or the governor of the state; and

(ii) an employee who is covered by a retirement program offered by the Teachers' Insurance and Annuity Association of America, if the employee's employer provides coverage under this chapter; and

(b) "Eligible employee" does not include any employee that is exempt from coverage under Section 49-21-201.

(4) "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.

(5) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401 and health insurance reimbursements paid under Section ~~[49-21-408]~~ 49-21-407, or any combination of them.

(6) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.

(7) "Physician" means a licensed physician.

(8) "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.

(9) "Regular occupation" means either the primary duties performed by the eligible employee for the twelve months preceding the date of disability, or a permanent assignment of duty to the eligible employee.

(10) "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 while unable to perform the employee's regular occupation.

(11) (a) "Total disability" or "totally disabled" 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.

(b) "Total disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability, based solely on physical objective medical impairment, to engage in any gainful occupation which is reasonable, considering the eligible employee's education, training, and experience.

Section 47. Section **49-21-401** is amended to read:

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) Upon request by the office, the participating employer of the eligible employee shall provide to the office documentation and information concerning the eligible employee.

(3) The office shall review all relevant information and determine whether or not the eligible employee is totally disabled.

(4) If the office determines that the eligible employee is totally disabled due to accidental bodily injury or physical illness which is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 2/3 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.

(5) If the office determines that the eligible employee is totally disabled due to psychiatric illness, the eligible employee shall receive:

(a) a maximum of two years of monthly disability benefits equal to 2/3 of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period;

(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses [approved] preauthorized by the office's consultants, paid during the period of monthly disability benefits; and

(c) payment of monthly disability benefits according to contractual provisions for a period not to exceed five years if the eligible employee is institutionalized due to psychiatric illness.

(6) If the office determines that the eligible employee is totally disabled due to a physical injury resulting from external force or violence as a result of the performance of an employment duty, the 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.

(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 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 disability examined by a physician chosen by the office to determine if the eligible employee is totally disabled.

(9) 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 one year 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.

(10) Medical or psychiatric conditions which existed prior to enrollment may not be a basis for disability benefits until the eligible employee has had one year of continuous enrollment in the Public Employees Long-Term Disability Program.

(11) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is exempted from a system, or is otherwise ineligible for service credit.

Section 48. Section **49-21-402** is amended to read:

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

(1) A monthly disability benefit may not be paid for any period of total disability unless the eligible employee is under the ongoing care and treatment of a physician other than the eligible employee.

(2) The monthly disability benefit shall be reduced by any amount 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) Social Security disability benefits, including all benefits received by the eligible employee, the eligible employee's spouse, and the eligible employee's dependent children;

(b) workers' compensation indemnity benefits;

(c) any monies received by judgment, legal action, or settlement from a third party liable to the employee for the disability;

(d) unemployment compensation benefits; and

(e) automobile no-fault, medical payments, or similar insurance payments[~~;~~and].

~~[(f) any other disability benefits resulting from the disability for which benefits are being received under this chapter.]~~

(3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 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 employer-sponsored retirement programs; and

(b) any disability benefit resulting from the disability for which benefits are being received under this chapter.

(4) Cost-of-living increases to any of the benefits listed in Subsection (2) 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) The eligible employee shall also first apply at the earliest eligible age for all unreduced retirement benefits to which the eligible employee is or may be entitled, and provide to the office evidence of the application.

(c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the monthly disability benefit shall be suspended.

Section 49. Section **49-21-403** is amended to read:

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, 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 the eligible employee has accumulated:

(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; or

(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; or

(b) 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.

(2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible for

service credit under a system may retire under 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) A monthly disability benefit payable to an eligible employee who is not eligible for service credit under a system shall terminate at the earliest of:

(a) the date the eligible employee [~~is~~] would be eligible for an unreduced retirement benefit; or

(b) the date the eligible employee has received a monthly disability benefit for the applicable time period as set forth in Subsection (1)(b).

Section 50. Section **49-21-404** is amended to read:

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 ~~[eligible for service credit under]~~ participating in a system, the annual adjustment ~~[shall be equal to]~~ may not exceed the adjustment ~~[calculated under Section 49-13-407]~~ paid in the system which would cover the employee if the employee were participating in a system.

Section 51. Section **49-21-406** is amended to read:

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

(1) (a) If an eligible employee, ~~[following]~~ 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 by an amount equal to 50% of the income to which the eligible employee is entitled for the employment during the month.

(b) This benefit is payable for up to two years or to the end of the maximum benefit period, whichever occurs first.

(2) (a) Each eligible employee receiving a monthly disability benefit shall be interviewed by the office.

(b) The office may refer the eligible employee to a disability specialist for a review of the eligible employee's condition and a written rehabilitation plan.

(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, the monthly disability benefit may be 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.