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RETIREMENT OFFICE AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carlene M. Walker

House Sponsor: John Dougall

LONG TITLE

General Description:

This bill modifies the Utah State Retirement and Insurance Benefit Act by amending provisions related to the retirement systems and certain insurance provisions.

Highlighted Provisions:

This bill:

- ▶ changes the period after which the retirement systems' executive director is required to make actuarial investigations of the retirement systems from every two years to every three years;
- ▶ adds a requirement for participating employers to submit an annual report identifying those employees that are on a benefit protection contract with the Utah Retirement Systems;
- ▶ changes the penalty amount for a participating employer's failure to correctly report certain records from 1% of the participating employer's last month's contributions to \$250 or 50% of the total contributions for the member for the period of the reporting error, whichever is greater;
- ▶ allows the retirement executive director to request a hearing officer review of a dispute over any benefit under rules adopted by the board;
- ▶ allows any member of the Utah Retirement Systems to relinquish a benefit of the retirement systems instead of only retirees or beneficiaries;
- ▶ repeals a requirement that a member of the governor or legislator's retirement system retire in order to be eligible for paid-up group health coverage;
- ▶ clarifies long-term disability coverage requirements for public safety employees;

30 ▶ replaces the term "enrollment" with the term "eligibility" to clarify dates related to
31 preexisting conditions;

32 ▶ clarifies that a person who recovers from a disability is no longer disabled; and

33 ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35 None

36 **Other Special Clauses:**

37 None

38 **Utah Code Sections Affected:**

39 AMENDS:

40 **49-11-204**, as renumbered and amended by Laws of Utah 2002, Chapter 250

41 **49-11-404**, as renumbered and amended by Laws of Utah 2002, Chapter 250

42 **49-11-603**, as last amended by Laws of Utah 2003, Chapter 240

43 **49-11-613**, as last amended by Laws of Utah 2007, Chapter 130

44 **49-11-619**, as renumbered and amended by Laws of Utah 2002, Chapter 250

45 **49-20-404**, as renumbered and amended by Laws of Utah 2002, Chapter 250

46 **49-21-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250

47 **49-21-401**, as last amended by Laws of Utah 2007, Chapters 93 and 130

48 **49-21-403**, as last amended by Laws of Utah 2005, Chapter 116



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

51 Section 1. Section **49-11-204** is amended to read:

52 **49-11-204. Powers and duties of executive director.**

53 The executive director shall:

54 (1) act as the executive officer of the board and the office;

55 (2) administer the various systems, plans, programs, and functions assigned to the board
56 or office;

57 (3) subject to board review, develop and implement internal policies and procedures

- 58 which administer and govern the day-to-day operations of the systems, plans, and programs;
- 59 (4) transmit orders of a hearing officer made under Section 49-11-613 to the board;
- 60 (5) provide information concerning the operation of the office to the board, the
61 governor, the Legislature, participating employers, and employer and employee associations,
62 unless otherwise restricted under Section 49-11-618;
- 63 (6) inform the Legislature of any recommendations from the board regarding any
64 necessary or desirable changes to this title;
- 65 (7) consult with the Legislature on all legislation under this title;
- 66 (8) (a) recommend to the board an annual administrative budget covering the
67 operations of the office and, upon approval, submit the budget along with the actuarial status of
68 the funds to the governor and the Legislature for review and comment; and
- 69 (b) direct and control the subsequent expenditures of the budget;
- 70 (9) employ, within the limitations of the budget, personnel to administer the systems,
71 plans, programs, and funds assigned to the office, including consultants, actuaries, attorneys,
72 medical examiners, investment counselors, and accountants to accomplish the purposes of this
73 title;
- 74 (10) establish independent financial records for each of the systems, plans, and
75 programs or combine all financial records using acceptable principles of accounting to identify
76 the assets and vested interests of each system, plan, or program;
- 77 (11) maintain individual records necessary to provide benefits under this title;
- 78 (12) keep in convenient form all records, accounts, and data necessary for the
79 administration and actuarial valuation of the systems, plans, and programs;
- 80 (13) adopt fees, charges, and upon the recommendation of the actuary, interest rates
81 and tables for the administration of the systems, plans, and programs;
- 82 (14) consolidate into one payment all monthly allowances and any defined contribution
83 distributions if the integrity of the various funds is maintained through appropriate accounting
84 records;
- 85 (15) at least [~~biennially~~] every three years:

86 (a) make an actuarial investigation into the mortality, service, and other experience of
87 the members, participants, beneficiaries, and covered individuals of the systems, plans, and
88 programs;

89 (b) actuarially value the assets and liabilities of the administered funds and accounts;
90 and

91 (c) determine the rate of interest being earned by the funds;

92 (16) report to the board findings under Subsection (15), with recommendations,
93 including proposed changes in the rates of contribution or benefits that are necessary to
94 maintain the actuarial soundness of the systems, plans, or programs;

95 (17) regulate participating employers by:

96 (a) educating them on their duties imposed by this title;

97 (b) specifying the time, place, and manner in which contributions shall be withheld and
98 paid; and

99 (c) requiring any reports necessary for the administration of this title; and

100 (18) otherwise exercise the powers and perform the duties conferred on the executive
101 director by this title.

102 Section 2. Section **49-11-404** is amended to read:

103 **49-11-404. Benefit protection contract authorized -- Annual report required.**

104 (1) (a) A participating employer may establish a salary protection program under which
105 its employees are paid during periods of disability.

106 (b) If a salary protection program is established, a participating employer may enter into
107 benefit protection contracts with the office.

108 (c) A salary protection program shall:

109 (i) pay benefits based on the disabled member's rate of compensation at the time of
110 disability;

111 (ii) be substantially equivalent to the long-term disability programs offered under
112 Chapter 21, Public Employees' Long-Term Disability Act; and

113 (iii) comply with requirements adopted by the board.

114 (2) A benefit protection contract shall allow:

115 (a) the disabled member to be considered an active member in a system and continue to
116 accrue service credit and salary credit based on the member's rate of pay in effect at the time
117 disability commences;

118 (b) the office to require participating employer contributions to be paid before granting
119 service credit and salary credit to the member;

120 (c) the disabled member to remain eligible during the contract period for any benefits
121 provided by the system that covers the member; and

122 (d) the benefit for the disabled member to be improved by the annual cost-of-living
123 increase factor applied to retired members of the system that covered the member on the date
124 the member is eligible to receive benefits under a benefit protection contract.

125 (3) (a) The office shall establish the manner and times when employer contributions are
126 paid.

127 (b) A failure to make the required payments is cause for the office to cancel a contract.

128 (c) Service credit and salary credit granted and accrued up to the time of cancellation
129 may not be forfeited.

130 (4) A participating employer that has entered into a benefit protection contract under
131 this section shall submit an annual report to the office which identifies:

132 (a) the employees receiving long-term disability benefits under policies initiated by the
133 participating employer and approved under the benefit protection contract;

134 (b) the employees that have applied for long-term disability benefits and who are
135 waiting approval; and

136 (c) the insurance carriers that are actively providing long-term disability benefits.

137 (5) If an employer fails to provide the annual report required under Subsection (4), the
138 benefits that would have accrued under the benefit protection contract shall be forfeited.

139 [~~4~~] (6) The board may adopt rules to implement and administer this section.

140 Section 3. Section **49-11-603** is amended to read:

141 **49-11-603. Participating employer to report and certify -- Time limit -- Penalties**

142 **for failure to comply.**

143 (1) As soon as administratively possible, but in no event later than 60 days after the end
144 of each pay period, a participating employer shall report and certify to the office:

145 (a) the eligibility for service credit accrual of:

146 (i) all current members;

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

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

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

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

152 (2) Each participating employer shall submit the reports required under Subsection (1)
153 in a format approved by the office.

154 (3) A participating employer shall be liable to the office for:

155 (a) any liabilities and expenses, including administrative expenses and the cost of
156 increased benefits to members, resulting from the participating employer's failure to correctly
157 report and certify records under this section;

158 (b) a penalty equal to ~~[1% of the participating employer's last month's contributions]~~
159 \$250 or 50% of the total contributions for the member for the period of the reporting error,
160 whichever is greater; and

161 (c) ~~[attorneys']~~ attorney fees.

162 (4) The executive director may waive all or any part of the interest, penalties, expenses,
163 and fees if the executive director finds there were extenuating circumstances surrounding the
164 participating employer's failure to comply with this section.

165 (5) The executive director may estimate the length of service, compensation, or age of
166 any member, if that information is not contained in the records.

167 Section 4. Section **49-11-613** is amended to read:

168 **49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board**
169 **reconsideration -- Judicial review.**

170 (1) (a) All members, retirees, participants, alternative payees, or covered individuals of
171 a system, plan, or program under this title shall acquaint themselves with their rights and
172 obligations under this title.

173 (b) Any dispute regarding a benefit, right, obligation, or employment right under this
174 title is subject to the procedures provided under this section.

175 (c) A person who disputes a benefit, right, obligation, or employment right under this
176 title shall request a ruling by the executive director who may delegate the decision to the deputy
177 director.

178 (d) A person who is dissatisfied by a ruling of the executive director or deputy director
179 with respect to any benefit, right, obligation, or employment right under this title shall request a
180 review of that claim by a hearing officer.

181 (e) The executive director, on behalf of the board, may request that the hearing officer
182 review a dispute regarding any benefit, right, obligation, or employment right under this title by
183 filing a notice of board action and providing notice to all affected parties in accordance with
184 rules adopted by the board.

185 (2) The hearing officer shall:

186 (a) be hired by the executive director after consultation with the board;

187 (b) follow the procedures and requirements of Title 63, Chapter 46b, Administrative
188 Procedures Act, except as specifically modified under this title;

189 (c) hear and determine all facts relevant to a decision, including facts pertaining to
190 applications for benefits under any system, plan, or program under this title and all matters
191 pertaining to the administration of the office; and

192 (d) make conclusions of law in determining the person's rights under any system, plan,
193 or program under this title and matters pertaining to the administration of the office.

194 (3) The board shall review and approve or deny all decisions of the hearing officer in
195 accordance with rules adopted by the board.

196 (4) The moving party in any proceeding brought under this section shall bear the burden
197 of proof.

198 (5) A party may file an application for reconsideration by the board upon any of the
199 following grounds:

- 200 (a) that the board acted in excess of its powers;
- 201 (b) that the order or award was procured by fraud;
- 202 (c) that the evidence does not justify the determination of the hearing officer; or
- 203 (d) that the party has discovered new material evidence that could not, with reasonable
204 diligence, have been discovered or procured prior to the hearing.

205 (6) The board shall affirm, reverse, or modify the decision of the hearing officer, or
206 remand the application to the hearing officer for further consideration.

207 (7) A party aggrieved by the board's decision may obtain judicial review by complying
208 with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

210 Section 5. Section **49-11-619** is amended to read:

211 **49-11-619. Permanent relinquishment of benefit -- Procedure.**

212 (1) (a) Except for defined contribution plans authorized by this title, a member, retiree,
213 or beneficiary may permanently relinquish a benefit under this title by signing an irrevocable
214 written relinquishment.

215 (b) If the retiree has designated a beneficiary which is still living, the written
216 relinquishment must be signed by both the retiree and the beneficiary.

217 (2) The value of the benefit permanently relinquished under Subsection (1) shall remain
218 in the fund from which the benefit was relinquished and shall be used in the calculation of future
219 contribution rates.

220 (3) A designated beneficiary may disclaim beneficiary status and the benefit shall then be
221 payable first to any alternate designated beneficiary, then dispersed under Title 75, Chapter 2,
222 Intestate Succession and Wills, as applicable.

223 (4) The office is not required to recognize or accept any written relinquishment that
224 jeopardizes the tax qualified status of the systems, plans, or programs or otherwise violates
225 federal law.

226 Section 6. Section **49-20-404** is amended to read:

227 **49-20-404. Governors' and legislative benefit.**

228 (1) The state shall pay the percentage described in Subsection (3) of the cost of
229 providing paid-up group health coverage policy for members and their surviving spouses
230 covered under Chapter 19, Utah Governors' and Legislators' Retirement Act who:

- 231 (a) retire after January 1, 1998;
- 232 (b) are at least 62 but less than 65 years of age;
- 233 (c) elect to receive and apply for this benefit to the program; and
- 234 (d) are active members at the time of retirement or have [~~retired and~~] continued
235 coverage with the program until the date of eligibility for the benefit under this Subsection (1).

236 (2) The state shall pay the percentage described in Subsection (3) of the cost of
237 providing Medicare supplemental coverage for members and their surviving spouses covered
238 under Chapter 19, Utah Governors' and Legislators' Retirement Act who:

- 239 (a) retire after January 1, 1998;
- 240 (b) are at least 65 years of age; and
- 241 (c) elect to receive and apply for this benefit to the program.

242 (3) The following percentages apply to the benefit described in Subsections (1) and (2):

- 243 (a) 100% if the member has accrued 10 or more years of service credit;
- 244 (b) 80% if the member has accrued 8 or more years of service credit;
- 245 (c) 60% if the member has accrued 6 or more years of service credit; and
- 246 (d) 40% if the member has accrued 4 or more years of service credit.

247 Section 7. Section **49-21-201** is amended to read:

248 **49-21-201. Program membership -- Eligibility.**

249 (1) The state shall cover all of its eligible employees under this chapter.

250 (2) Public safety service employees, as defined in Sections 49-14-102 and 49-15-102,
251 shall be covered under this chapter or a substantially similar long-term disability program in
252 accordance with the provisions of Section 49-14-601 or 49-15-601.

253 [~~(2)~~] (3) Except as provided under [~~Subsections (5), (6), and (7)] Subsection (5), all~~

254 other employers may provide coverage for their eligible employees under this chapter.

255 ~~[(3)]~~ (4) If an employer elects to cover any of its eligible employees under this chapter,
256 all of its eligible employees shall be covered.

257 ~~[(4) Nothing]~~ (5) Except as provided under Subsections (1) and (2), nothing in this
258 chapter requires any employer ~~[other than the state]~~ to cover its eligible employees under this
259 chapter.

260 (6) The following employees are not eligible for coverage under this chapter:

261 ~~[(5) Firefighter]~~ (a) firefighter service employees, as defined under Section 49-16-102[;
262 ~~are not eligible for coverage under this chapter.]; and~~

263 (b) legislators.

264 ~~[(6) Public safety service employees, as defined in Sections 49-14-102 and 49-15-102;~~
265 ~~who are covered under a long-term disability program offered by an employer which is~~
266 ~~substantially similar to this program are not eligible for coverage under this chapter.]~~

267 ~~[(7) Legislators are not eligible for coverage under this chapter.]~~

268 Section 8. Section **49-21-401** is amended to read:

269 **49-21-401. Disability benefits -- Application -- Eligibility.**

270 (1) An eligible employee shall apply for long-term disability benefits under this chapter
271 by:

272 (a) completing an application form prepared by the office;

273 (b) signing a consent form allowing the office access to the eligible employee's medical
274 records; and

275 (c) providing any documentation or information reasonably requested by the office.

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

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

280 (4) If the office determines that the eligible employee is totally disabled due to
281 accidental bodily injury or physical illness which is not the result of the performance of an

282 employment duty, the eligible employee shall receive a monthly disability benefit equal to 2/3 of
283 the eligible employee's regular monthly salary, for each month the total disability continues
284 beyond the elimination period, not to exceed the maximum benefit period.

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

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

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

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

296 (6) If the office determines that the eligible employee is totally disabled due to a
297 physical injury resulting from external force or violence as a result of the performance of an
298 employment duty, the eligible employee shall receive a monthly disability benefit equal to 100%
299 of the eligible employee's regular monthly salary, for each month the total disability continues
300 beyond the elimination period, not to exceed the maximum benefit period.

301 (7) (a) Successive periods of disability are considered as a continuous period of
302 disability if the period of disability:

303 (i) results from the same or related causes;

304 (ii) is separated by less than six months of continuous full-time work at the individual's
305 usual place of employment; and

306 (iii) commences while the individual is an eligible employee covered by this chapter.

307 (b) The inability to work for a period of less than 15 consecutive calendar days is not
308 considered as a period of disability.

309 (c) If Subsection (7)(a) or (b) does not apply, successive periods of disability are

310 considered as separate periods of disability.

311 (8) The office may, at any time, have any eligible employee claiming disability examined
312 by a physician chosen by the office to determine if the eligible employee is totally disabled.

313 (9) A claim brought by an eligible employee for long-term disability benefits under the
314 Public Employee's Long-Term Disability Program is barred if it is not commenced within one
315 year from the eligible employee's date of disability, unless the office determines that under the
316 surrounding facts and circumstances, the eligible employee's failure to comply with the time
317 limitations was reasonable.

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

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

324 (12) Regardless of any medical evidence provided by the employee to support the
325 application for disability, an employee is not eligible for long-term disability benefits during any
326 period in which the employee:

327 (a) makes a claim that the employee is able to work; or

328 (b) has a pending action in a court or before any state or local administrative body in
329 which the employee has made a claim that the employee is able to work.

330 (13) Notwithstanding the provisions of Section 49-11-618, upon written request by an
331 employer, information obtained under this part may, upon an order of a court or an
332 administrative law judge, be released to an employer who is a party in an action under
333 Subsection (12).

334 Section 9. Section **49-21-403** is amended to read:

335 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

336 (1) An eligible employee covered by this chapter and eligible for service credit under a
337 system, including an eligible employee who relinquishes rights to retirement benefits under

338 Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a
339 monthly disability benefit until the earlier of:

340 (a) the date the eligible employee is no longer disabled;

341 [~~(a)~~] (b) the date the eligible employee has accumulated:

342 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
343 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
344 Act;

345 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
346 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act; or

347 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
348 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
349 Retirement Act; or

350 [~~(b)~~] (c) the date the eligible employee has received a monthly disability benefit for the
351 following applicable time periods:

352 (i) if the eligible employee is under age 60, the monthly disability benefit is payable until
353 age 65;

354 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly
355 disability benefit is payable for five years;

356 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
357 monthly disability benefit is payable for four years;

358 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
359 monthly disability benefit is payable for three years;

360 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
361 monthly disability benefit is payable for two years; and

362 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
363 monthly disability benefit is payable for one year.

364 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible for
365 service credit under a system may retire under the requirements of the system which covered the

366 eligible employee on the date of disability.

367 (b) The final average salary used in the calculation of the allowance shall be based on
368 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase
369 factor applied to retirees of the system which covered the eligible employee on the date of
370 disability.

371 (3) An eligible employee who is eligible for service credit in a system, but has
372 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
373 eligible employee would have received by being eligible for service credit in the system covering
374 the eligible employee on the date of disability, except for the accrual of service credit, in
375 accordance with this title.

376 (4) An eligible employee receiving a monthly disability benefit who has service credit
377 from two or more systems may not combine service credits under Section 49-11-405 in
378 qualifying for retirement, unless the eligible employee would receive a greater allowance by
379 combining the service credits.

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

- 382 (a) the date the eligible employee would be eligible for an unreduced allowance;
- 383 (b) the date the eligible employee has received a monthly disability benefit for the
384 applicable time period as set forth in Subsection (1)(b); or
- 385 (c) the date the eligible employee receives a reduced allowance.