

**RETIREMENT MODIFICATIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act.

**Highlighted Provisions:**

This bill:

- ▶ amends definitions;
- ▶ provides that "initially entering" employment includes employees that move from a position not covered under a Utah Retirement System to a position that is covered;
- ▶ clarifies post retirement employment provisions for a retiree who returns to work within one year or who elects to earn additional service credit;
- ▶ provides that a domestic relations court order must be received within 12 months of the death of the member;
- ▶ repeals language related to presentment by a policyholder;
- ▶ amends the definition of regular full-time employee to provide that the minimum earnings required for an elective or appointive officer to be eligible for a retirement benefit under the Tier I Public Employees' Systems is based on a monthly rate, not just the first month in office;
- ▶ clarifies that an employer must be a participating employer whether or not the employer has applied for admission to the system;
- ▶ clarifies that only Tier II governors and legislators and their spouses, not all Tier II public employees, may be eligible for the governors' and legislative paid-up group



- 28 health coverage;
- 29       ▶ clarifies that Tier II firefighters, including volunteer firefighters, are covered under
- 30 the URS long-term disability program;
- 31       ▶ provides that long-term disability claims must be made within six months, rather
- 32 than one year, from the employee's date of disability;
- 33       ▶ requires an employee receiving monthly disability benefits to provide certain
- 34 information and documentation requested by the office;
- 35       ▶ provides that monthly disability benefits are reduced for payments made for sick
- 36 leave, annual leave, or similar payments;
- 37       ▶ clarifies participation requirements for employers in the Tier II systems;
- 38       ▶ allows certain at-will employees to be exempt from the vesting requirement for the
- 39 defined contribution plan in the Tier II Public Employees' Retirement System;
- 40       ▶ clarifies who a participating employer must cover under the Tier II Public Safety
- 41 and Firefighters Systems; and
- 42       ▶ makes technical changes.

43 **Money Appropriated in this Bill:**

44       None

45 **Other Special Clauses:**

46       None

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49       **49-11-102**, as last amended by Laws of Utah 2011, Chapter 439
- 50       **49-11-505**, as last amended by Laws of Utah 2011, Chapters 138 and 439
- 51       **49-11-612**, as last amended by Laws of Utah 2010, Chapter 266
- 52       **49-11-616**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 53       **49-12-102**, as last amended by Laws of Utah 2008, Chapter 318
- 54       **49-13-102**, as last amended by Laws of Utah 2008, Chapter 318
- 55       **49-13-202**, as last amended by Laws of Utah 2010, Chapter 280
- 56       **49-20-404**, as last amended by Laws of Utah 2011, Chapter 439
- 57       **49-21-201**, as last amended by Laws of Utah 2010, Chapter 266
- 58       **49-21-401**, as last amended by Laws of Utah 2011, Chapters 366 and 439

- 59           **49-21-402**, as last amended by Laws of Utah 2011, Chapter 439
- 60           **49-22-202**, as enacted by Laws of Utah 2010, Chapter 266
- 61           **49-22-401**, as last amended by Laws of Utah 2011, Chapter 439
- 62           **49-23-202**, as enacted by Laws of Utah 2010, Chapter 266
- 63           **49-23-401**, as last amended by Laws of Utah 2011, Chapter 439
- 64           **49-23-601**, as last amended by Laws of Utah 2011, Chapters 290 and 439



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

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

68           **49-11-102. Definitions.**

69           As used in this title:

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

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

73           (2) "Actuarial equivalent" means a benefit of equal value when computed upon the  
74 basis of mortality tables as recommended by the actuary and adopted by the executive director,  
75 including regular interest.

76           (3) "Actuarial interest rate" means the interest rate as recommended by the actuary and  
77 adopted by the board upon which the funding of system costs and benefits are computed.

78           (4) (a) "Agency" means:

79           (i) a department, division, agency, office, authority, commission, board, institution, or  
80 hospital of the state;

81           (ii) a county, municipality, school district, local district, or special service district;

82           (iii) a state college or university; or

83           (iv) any other participating employer.

84           (b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a  
85 subdivision of another entity listed under Subsection (4)(a).

86           (5) "Allowance" or "retirement allowance" means the pension plus the annuity,  
87 including any cost of living or other authorized adjustments to the pension and annuity.

88           (6) "Alternate payee" means a member's former spouse or family member eligible to  
89 receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

90 (7) "Amortization rate" means the board certified percent of salary required to amortize  
91 the unfunded actuarial accrued liability in accordance with policies established by the board  
92 upon the advice of the actuary.

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

94 (9) "Appointive officer" means an employee appointed to a position for a definite and  
95 fixed term of office by official and duly recorded action of a participating employer whose  
96 appointed position is designated in the participating employer's charter, creation document, or  
97 similar document, and:

98 (a) who earns [~~during the first full month of the term of office~~] \$500 or more per  
99 month, indexed as of January 1, 1990, as provided in Section 49-12-407 for a Tier I appointive  
100 officer; and

101 (b) whose appointive position is full-time as certified by the participating employer for  
102 a Tier II appointive officer.

103 (10) (a) "At-will employee" means a person who is employed by a participating  
104 employer and:

105 (i) who is not entitled to merit or civil service protection and is generally considered  
106 exempt from a participating employer's merit or career service personnel systems;

107 (ii) whose on-going employment status is entirely at the discretion of the person's  
108 employer; or

109 (iii) who may be terminated without cause by a designated supervisor, manager, or  
110 director.

111 (b) "At-will employee" does not include a career employee who has obtained a  
112 reasonable expectation of continued employment based on inclusion in a participating  
113 employer's merit system, civil service protection system, or career service personnel systems,  
114 policies, or plans.

115 (11) "Beneficiary" means any person entitled to receive a payment under this title  
116 through a relationship with or designated by a member, participant, covered individual, or  
117 alternate payee of a defined contribution plan.

118 (12) "Board" means the Utah State Retirement Board established under Section  
119 49-11-202.

120 (13) "Board member" means a person serving on the Utah State Retirement Board as

121 established under Section 49-11-202.

122 (14) "Certified contribution rate" means the board certified percent of salary paid on  
123 behalf of an active member to the office to maintain the system on a financially and actuarially  
124 sound basis.

125 (15) "Contributions" means the total amount paid by the participating employer and the  
126 member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
127 Chapter 19, Utah Governors' and Legislators' Retirement Act.

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

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

132 (18) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,  
133 17, 18, and 19.

134 (19) "Defined benefit" or "defined benefit plan" or "defined benefit system" means a  
135 system or plan offered under this title to provide a specified allowance to a retiree or a retiree's  
136 spouse after retirement that is based on a set formula involving one or more of the following  
137 factors:

- 138 (a) years of service;
- 139 (b) final average monthly salary; or
- 140 (c) a retirement multiplier.

141 (20) "Defined contribution" or "defined contribution plan" means any defined  
142 contribution plan or deferred compensation plan authorized under the Internal Revenue Code  
143 and administered by the board.

144 (21) "Educational institution" means a political subdivision or instrumentality of the  
145 state or a combination thereof primarily engaged in educational activities or the administration  
146 or servicing of educational activities, including:

- 147 (a) the State Board of Education and its instrumentalities;
- 148 (b) any institution of higher education and its branches;
- 149 (c) any school district and its instrumentalities;
- 150 (d) any vocational and technical school; and
- 151 (e) any entity arising out of a consolidation agreement between entities described under

152 this Subsection (21).

153 (22) "Elected official":

154 (a) means a person elected to a state office, county office, municipal office, school  
155 board or school district office, local district office, or special service district office;

156 (b) includes a person who is appointed to serve an unexpired term of office described  
157 under Subsection (22)(a); and

158 (c) does not include a judge or justice who is subject to a retention election under  
159 Section 20A-12-201.

160 (23) (a) "Employer" means any department, educational institution, or political  
161 subdivision of the state eligible to participate in a government-sponsored retirement system  
162 under federal law.

163 (b) "Employer" may also include an agency financed in whole or in part by public  
164 funds.

165 (24) "Exempt employee" means an employee working for a participating employer:

166 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
167 49-14-203, 49-15-203, or 49-16-203; and

168 (b) for whom a participating employer is not required to pay contributions or  
169 nonelective contributions.

170 (25) "Final average monthly salary" means the amount computed by dividing the  
171 compensation received during the final average salary period under each system by the number  
172 of months in the final average salary period.

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

175 (27) (a) "Inactive member" means a member who has not been employed by a  
176 participating employer for a period of at least 120 days.

177 (b) "Inactive member" does not include retirees.

178 (28) (a) "Initially entering" means hired, appointed, or elected for the first time, in  
179 current service as a member with any participating employer.

180 (b) "Initially entering" does not include a person who has any prior service credit on  
181 file with the office.

182 (c) "Initially entering" includes an employee of a participating employer, except for an

183 employee that ~~H~~→ ~~[has been exempted]~~ is not eligible under a system or plan ←~~H~~ under  
 183a this title, who:

184 (i) does not have any prior service credit on file with the office;

185 (ii) is covered by a retirement plan other than a retirement plan created under this title;

186 and

187 (iii) moves to a position with a participating employer that is covered by this title.

188 (29) (a) "Member" means a person, except a retiree, with contributions on deposit with  
 189 a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah  
 190 Governors' and Legislators' Retirement Act, or with a terminated system.

191 (b) "Member" also includes leased employees within the meaning of Section 414(n)(2)  
 192 of the Internal Revenue Code, if the employees have contributions on deposit with the office.  
 193 If leased employees constitute less than 20% of the participating employer's work force that is  
 194 not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code,  
 195 "member" does not include leased employees covered by a plan described in Section 414(n)(5)  
 196 of the federal Internal Revenue Code.

197 (30) "Member contributions" means the sum of the contributions paid to a system or  
 198 the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a  
 199 system, and which are made by:

200 (a) the member; and

201 (b) the participating employer on the member's behalf under Section 414(h) of the  
 202 Internal Revenue Code.

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

205 (32) "Normal cost rate":

206 (a) means the percent of salary that is necessary for a retirement system that is fully  
 207 funded to maintain its fully funded status; and

208 (b) is determined by the actuary based on the assumed rate of return established by the  
 209 board.

210 (33) "Office" means the Utah State Retirement Office.

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

213 (35) "Participating employer" means a participating employer, as defined by Chapter

214 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
215 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
216 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
217 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'  
218 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds  
219 which is participating in a system or plan as of January 1, 2002.

220 (36) "Pension" means monthly payments derived from participating employer  
221 contributions.

222 (37) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by  
223 Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier  
224 II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan,  
225 the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23,  
226 Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under  
227 Section 49-11-801.

228 (38) (a) "Political subdivision" means any local government entity, including cities,  
229 towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally  
230 separate and distinct from the state and only if its employees are not by virtue of their  
231 relationship to the entity employees of the state.

232 (b) "Political subdivision" includes local districts, special service districts, or  
233 authorities created by the Legislature or by local governments, including the office.

234 (c) "Political subdivision" does not include a project entity created under Title 11,  
235 Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

236 (39) "Program" means the Public Employees' Insurance Program created under Chapter  
237 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
238 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
239 Disability Act.

240 (40) "Public funds" means those funds derived, either directly or indirectly, from public  
241 taxes or public revenue, dues or contributions paid or donated by the membership of the  
242 organization, used to finance an activity whose objective is to improve, on a nonprofit basis,  
243 the governmental, educational, and social programs and systems of the state or its political  
244 subdivisions.



245 (41) "Qualified defined contribution plan" means a defined contribution plan that  
246 meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

247 (42) (a) "Reemployed," "reemploy," or "reemployment" means work or service  
248 performed after retirement, in exchange for compensation.

249 (b) Reemployment includes work or service performed on a contract if the retiree is:

250 (i) listed as the contractor; or

251 (ii) an owner, partner, or principle of the contractor.

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

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

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

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

259 (47) "Retirement related contribution":

260 (a) means any employer payment to any type of retirement plan or program made on  
261 behalf of an employee; and

262 (b) does not include Social Security payments or Social Security substitute payments  
263 made on behalf of an employee.

264 (48) "Service credit" means:

265 (a) the period during which an employee is employed and compensated by a  
266 participating employer and meets the eligibility requirements for membership in a system or the  
267 Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are  
268 paid to the office; and

269 (b) periods of time otherwise purchasable under this title.

270 (49) "System" means the individual retirement systems created by Chapter 12, Public  
271 Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory  
272 Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public  
273 Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17,  
274 Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and  
275 Chapter 19, Utah Governors' and Legislators' Retirement Act, the defined benefit portion of the

276 Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System,  
 277 and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part  
 278 3, Tier II Hybrid Retirement System.

279 (50) "Tier I" means a system or plan under this title for which an employee is eligible  
 280 to participate if the employee initially enters regular full-time employment before July 1, 2011.

281 (51) (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I  
 282 system or plan for which an employee is eligible to participate, if the employee initially enters  
 283 regular full-time employment on or after July 1, 2011.

284 (b) "Tier II" includes:

285 (i) the Tier II hybrid system established under:

286 (A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

287 (B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

288 (ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

289 (A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

290 (B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

291 (52) "Unfunded actuarial accrued liability" or "UAAL":

292 (a) is determined by the system's actuary; and

293 (b) means the excess, if any, of the accrued liability of a retirement system over the  
 294 actuarial value of its assets.

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

297 Section 2. Section **49-11-505** is amended to read:

298 **49-11-505. Reemployment of a retiree -- Restrictions.**

299 (1) (a) For purposes of this section, "retiree":

300 (i) means a person who:

301 (A) retired from a participating employer; and

302 (B) begins reemployment on or after July 1, 2010, with a participating employer; ~~and~~ **[and]**

302a **(ii) does not include a person:**

302b **(A) who was reemployed by a participating employer before July 1, 2010; and**

302c **(B) whose participating employer that reemployed the person under Subsection**

302d **(1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with**

302e **Section 49-11-621 after July 1, 2010; and**

303 **[(ii)] (iii) ←H** does not include a **H→ [retiree] person ←H** who is reemployed as an active  
 303a senior judge appointed to

304 hear cases by the Utah Supreme Court in accordance with Article VIII, Section 4, Utah

305 Constitution.

306 (b) (i) This section does not apply to employment as an elected official if the elected

307 official's position is not full-time as certified by the participating employer.

308 (ii) The provisions of this section apply to an elected official whose elected position is  
309 full-time as certified by the participating employer.

310 (2) A retiree may not for the same period of reemployment:

311 (a) (i) earn additional service credit; or

312 (ii) receive any retirement related contribution from a participating employer; and

313 (b) receive a retirement allowance.

314 (3) (a) Except as provided under Subsection (3)(b), the office shall cancel the  
315 retirement allowance of a retiree if the reemployment with a participating employer begins  
316 within one year of the retiree's retirement date.

317 (b) The office may not cancel the retirement allowance of a retiree who is reemployed  
318 with a participating employer within one year of the retiree's retirement date if:

319 (i) the retiree is not reemployed by a participating employer for a period of at least 60  
320 days from the retiree's retirement date;

321 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree  
322 does not receive any employer provided benefits, including:

323 (A) medical benefits;

324 (B) dental benefits;

325 (C) other insurance benefits except for workers' compensation as provided under Title  
326 34A, Chapter 2, Workers' Compensation Act and withholdings required by federal or state law  
327 for Social Security, Medicare, and unemployment insurance; or

328 (D) paid time off, including sick, annual, or other type of leave; and

329 (iii) the retiree does not earn in any calendar year of reemployment an amount in excess  
330 of the lesser of:

331 (A) \$15,000; or

332 (B) one-half of the retiree's final average salary upon which the retiree's retirement  
333 allowance is based.

334 (c) Beginning January 1, 2013, the board shall adjust the amount under Subsection  
335 (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar  
336 year as measured by a United States Bureau of Labor Statistics Consumer Price Index average  
337 as determined by the board.

338 (d) The office shall cancel the retirement allowance of a retiree for the remainder of the  
339 calendar year if the reemployment with a participating employer exceeds the limitations under  
340 Subsection (3)(b)(iii).

341 (e) If a retiree is reemployed under the provisions of (3)(b), the termination date of the  
342 reemployment, as confirmed in writing by the participating employer, is considered the retiree's  
343 retirement date for the purpose of calculating the separation requirement under Subsection  
344 (3)(a).

345 (4) If a reemployed retiree is not subject to Subsection (3)(a), the retiree may elect to:

346 (a) earn additional service credit in accordance with this title and cancel the retiree's  
347 retirement allowance; or

348 (b) continue to receive the retiree's retirement allowance and forfeit any retirement  
349 related contribution from the participating employer who reemployed the retiree.

350 (5) If a retiree makes an election under Subsection (4)(b) to continue to receive a  
351 retirement allowance while reemployed, the participating employer shall contribute to the  
352 office the amortization rate, as defined in Section 49-11-102, to be applied to the system that  
353 would have covered the retiree.

354 (6) (a) A participating employer shall immediately notify the office:

355 (i) if the participating employer reemploys a retiree;

356 (ii) whether the reemployment is subject to Subsection (3) or (4) of this section; and

357 (iii) of any election by the retiree under Subsection (4).

358 (b) A participating employer shall certify to the office whether the position of an  
359 elected official is or is not full-time.

360 (c) A participating employer is liable to the office for a payment or failure to make a  
361 payment in violation of this section.

362 (d) If a participating employer fails to notify the office in accordance with this section,  
363 the participating employer is immediately subject to a compliance audit by the office.

364 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in  
365 accordance with Subsection (7)(b) if the office receives notice or learns of:

366 (i) the reemployment of a retiree in violation of Subsection (3); or

367 (ii) the election of a reemployed retiree under Subsection (4)(a).

368 (b) ~~[The]~~ If the retiree is eligible for retirement coverage in the reemployed position,

369 the office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the  
370 retiree to active member status on the first day of the month following the date of:

371 (i) reemployment if the retiree is subject to Subsection (3); or

372 (ii) an election by an employee under Subsection (4)(a).

373 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed  
374 position:

375 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

376 (ii) the participating employer shall pay the amortization rate to the office on behalf of  
377 the retiree.

378 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date  
379 of reemployment:

380 (i) is not entitled to a recalculated retirement benefit; and

381 (ii) will resume the allowance that was being paid at the time of cancellation.

382 (b) Subject to Subsection (2), a retiree who is re-instated to active membership under  
383 Subsection (7) and who retires two or more years after the date of re-instatement to active  
384 membership shall:

385 (i) resume receiving the allowance that was being paid at the time of cancellation; and

386 (ii) receive an additional allowance based on the formula in effect at the date of the  
387 subsequent retirement for all service credit accrued between the first and subsequent retirement  
388 dates.

389 (9) (a) A retiree subject to this section shall report to the office the status of the  
390 reemployment under Subsection (3) or (4).

391 (b) If the retiree fails to inform the office of an election under Subsection (9)(a), the  
392 office shall withhold one month's benefit for each month the retiree fails to inform the office  
393 under Subsection (9)(a).

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

395 Section 3. Section **49-11-612** is amended to read:

396 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**  
397 **payments -- Exemption from legal process.**

398 (1) As used in this section, "domestic relations order benefits" means:

399 (a) an allowance;

400 (b) a defined contribution account established under:  
401 (i) [~~Chapter 11,~~] Part 8, Defined Contribution Plans;  
402 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or  
403 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement  
404 Act;

405 (c) a continuing monthly death benefit established under:

- 406 (i) Chapter 14, Part 5, Death Benefit;
- 407 (ii) Chapter 15, Part 5, Death Benefit;
- 408 (iii) Chapter 16, Part 5, Death Benefit;
- 409 (iv) Chapter 17, Part 5, Death Benefit;
- 410 (v) Chapter 18, Part 5, Death Benefit; or
- 411 (vi) Chapter 19, Part 5, Death Benefit;

412 (d) a death benefit provided under a group insurance policy under:

- 413 (i) Chapter 12, Part 5, Death Benefit;
- 414 (ii) Chapter 13, Part 5, Death Benefit;
- 415 (iii) Chapter 22, Part 5, Death Benefit; or
- 416 (iv) Chapter 23, Part 5, Death Benefit; or

417 (e) a refund of member contributions upon termination.

418 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,  
419 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or  
420 any other retirement right accrued or accruing under this title and the assets of the funds created  
421 by this title are not subject to alienation or assignment by the member, retiree, participant, or  
422 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal  
423 or equitable process.

424 (3) The office may, upon the request of the retiree, deduct from the retiree's allowance  
425 insurance premiums or other dues payable on behalf of the retiree, but only to those entities  
426 that have received the deductions prior to February 1, 2002.

427 (4) (a) The office shall provide for the division of domestic relations order benefits  
428 with former spouses and family members under an order of a court of competent jurisdiction  
429 with respect to domestic relations matters on file with the office.

430 (b) The court order shall specify the manner in which the domestic relations order

431 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

432 (c) Domestic relations order benefits split under a domestic relations order are subject  
433 to the following:

434 (i) the amount to be paid or the period for which payments shall be made under the  
435 original domestic relations order may not be altered if the alteration affects the actuarial  
436 calculation of the allowance;

437 (ii) payments to an alternate payee shall begin at the time the member or beneficiary  
438 begins receiving payments; and

439 (iii) the alternate payee shall receive payments in the same form as allowances received  
440 by the member or beneficiary.

441 (d) ~~[A] To be valid, a court order under this section [may not be issued more than]~~  
442 must be received by the office within 12 months ~~[after]~~ of the death of the member.

443 (5) In accordance with federal law, the board may deduct the required amount from any  
444 benefit, payment, or other right accrued or accruing to any member or beneficiary of a system,  
445 plan, or program under this title to offset any amount that member or beneficiary owes to a  
446 system, plan, or program administered by the board.

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

448 Section 4. Section **49-11-616** is amended to read:

449 **49-11-616. Benefits information.**

450 (1) The office shall provide written general information to each participating employer  
451 concerning benefits available under this title.

452 (2) (a) A participating employer shall provide the information under Subsection (1) to  
453 each eligible employee immediately upon:

454 (i) termination of service;

455 (ii) leave of absence;

456 (iii) commencement of long-term disability benefits; or

457 (iv) retirement.

458 (b) (i) Each participating employer shall maintain the records necessary to demonstrate  
459 that each employee has received the information outlined in Subsection (1).

460 (ii) The records shall be made available to the office upon request.

461 (3) (a) The office shall provide each participating employer with a form to be signed by

462 each employee which verifies that the employee has been given the information required by  
463 this section.

464 (b) A copy of the signed form shall be immediately forwarded to the office by the  
465 participating employer or the employee.

466 ~~[(4) The dissemination of information to the employer by the office under this section~~  
467 ~~constitutes presentment by the policyholder under Title 31A, Chapter 22, Contracts in Specific~~  
468 ~~Lines, and other law.]~~

469 Section 5. Section **49-12-102** is amended to read:

470 **49-12-102. Definitions.**

471 As used in this chapter:

472 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total  
473 amount of payments made by a participating employer to a member of this system for services  
474 rendered to the participating employer, including:

475 (i) bonuses;

476 (ii) cost-of-living adjustments;

477 (iii) other payments currently includable in gross income and that are subject to Social  
478 Security deductions, including any payments in excess of the maximum amount subject to  
479 deduction under Social Security law;

480 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
481 or other benefits authorized by federal law; and

482 (v) member contributions.

483 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed  
484 under Internal Revenue Code, Section 401(a)(17).

485 (c) "Compensation" does not include:

486 (i) the monetary value of remuneration paid in kind, including a residence or use of  
487 equipment;

488 (ii) the cost of any employment benefits paid for by the participating employer;

489 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
490 otherwise ineligible for service credit;

491 (iv) any payments upon termination, including accumulated vacation, sick leave  
492 payments, severance payments, compensatory time payments, or any other special payments; or



493 (v) any allowances or payments to a member for costs or expenses paid by the  
494 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
495 housing costs, insurance costs, equipment costs, and dependent care costs.

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

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

501 (a) Except as provided in Subsection (2)(b), the percentage increase in annual  
502 compensation in any one of the years used may not exceed the previous year's compensation by  
503 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
504 of the dollar during the previous year, as measured by a United States Bureau of Labor  
505 Statistics Consumer Price Index average as determined by the board.

506 (b) In cases where the participating employer provides acceptable documentation to the  
507 office, the limitation in Subsection (2)(a) may be exceeded if:

508 (i) the member has transferred from another agency; or

509 (ii) the member has been promoted to a new position.

510 (c) If the member retires more than six months from the date of termination of  
511 employment, the member is considered to have been in service at the member's last rate of pay  
512 from the date of the termination of employment to the effective date of retirement for purposes  
513 of computing the member's final average salary only.

514 (d) If the member has less than five years of service credit in this system, final average  
515 salary means the average annual compensation paid to the member during the full period of  
516 service credit.

517 (3) "Participating employer" means an employer which meets the participation  
518 requirements of Sections 49-12-201 and 49-12-202.

519 (4) (a) "Regular full-time employee" means an employee whose term of employment  
520 for a participating employer contemplates continued employment during a fiscal or calendar  
521 year and whose employment normally requires an average of 20 hours or more per week,  
522 except as modified by the board, and who receives benefits normally provided by the  
523 participating employer.

- 524 (b) "Regular full-time employee" includes:
- 525 (i) a teacher whose term of employment for a participating employer contemplates  
526 continued employment during a school year and who teaches half-time or more;
- 527 (ii) a classified school employee whose employment normally requires an average of  
528 20 hours per week or more for a participating employer, regardless of benefits provided;
- 529 (iii) an officer, elective or appointive, who earns [~~during the first full month of the term~~  
530 ~~of office~~] \$500 or more per month, indexed as of January 1, 1990, as provided in Section  
531 49-12-407;
- 532 (iv) a faculty member or employee of an institution of higher education who is  
533 considered full-time by that institution of higher education; and
- 534 (v) an individual who otherwise meets the definition of this Subsection (4) who  
535 performs services for a participating employer through a professional employer organization or  
536 similar arrangement.
- 537 (5) "System" means the Public Employees' Contributory Retirement System created  
538 under this chapter.
- 539 (6) "Years of service credit" means:
- 540 (a) a period, consisting of 12 full months as determined by the board;
- 541 (b) a period determined by the board, whether consecutive or not, during which a  
542 regular full-time employee performed services for a participating employer, including any time  
543 the regular full-time employee was absent on a paid leave of absence granted by a participating  
544 employer or was absent in the service of the United States government on military duty as  
545 provided by this chapter; or
- 546 (c) the regular school year consisting of not less than eight months of full-time service  
547 for a regular full-time employee of an educational institution.
- 548 Section 6. Section **49-13-102** is amended to read:
- 549 **49-13-102. Definitions.**
- 550 As used in this chapter:
- 551 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total  
552 amount of payments made by a participating employer to a member of this system for services  
553 rendered to the participating employer, including:
- 554 (i) bonuses;

555 (ii) cost-of-living adjustments;  
556 (iii) other payments currently includable in gross income and that are subject to Social  
557 Security deductions, including any payments in excess of the maximum amount subject to  
558 deduction under Social Security law; and

559 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
560 or other benefits authorized by federal law.

561 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed  
562 under Internal Revenue Code, Section 401(a)(17).

563 (c) "Compensation" does not include:

564 (i) the monetary value of remuneration paid in kind, including a residence or use of  
565 equipment;

566 (ii) the cost of any employment benefits paid for by the participating employer;

567 (iii) compensation paid to a temporary employee, an exempt employee, or an employee  
568 otherwise ineligible for service credit;

569 (iv) any payments upon termination, including accumulated vacation, sick leave  
570 payments, severance payments, compensatory time payments, or any other special payments; or

571 (v) any allowances or payments to a member for costs or expenses paid by the  
572 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
573 housing costs, insurance costs, equipment costs, and dependent care costs.

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

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

578 (a) Except as provided in Subsection (2)(b), the percentage increase in annual  
579 compensation in any one of the years used may not exceed the previous year's compensation by  
580 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
581 of the dollar during the previous year, as measured by a United States Bureau of Labor  
582 Statistics Consumer Price Index average as determined by the board.

583 (b) In cases where the participating employer provides acceptable documentation to the  
584 office, the limitation in Subsection (2)(a) may be exceeded if:

585 (i) the member has transferred from another agency; or

586 (ii) the member has been promoted to a new position.

587 (c) If the member retires more than six months from the date of termination of  
588 employment and for purposes of computing the member's final average salary only, the  
589 member is considered to have been in service at his last rate of pay from the date of the  
590 termination of employment to the effective date of retirement.

591 (3) "Participating employer" means an employer which meets the participation  
592 requirements of Sections 49-13-201 and 49-13-202.

593 (4) (a) "Regular full-time employee" means an employee whose term of employment  
594 for a participating employer contemplates continued employment during a fiscal or calendar  
595 year and whose employment normally requires an average of 20 hours or more per week,  
596 except as modified by the board, and who receives benefits normally provided by the  
597 participating employer.

598 (b) "Regular full-time employee" includes:

599 (i) a teacher whose term of employment for a participating employer contemplates  
600 continued employment during a school year and who teaches half-time or more;

601 (ii) a classified school employee whose employment normally requires an average of  
602 20 hours per week or more for a participating employer, regardless of benefits provided;

603 (iii) an officer, elective or appointive, who earns [~~during the first full month of the term~~  
604 ~~of office~~] \$500 or more per month, indexed as of January 1, 1990, as provided in Section  
605 49-13-407;

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

608 (v) an individual who otherwise meets the definition of this Subsection (4) who  
609 performs services for a participating employer through a professional employer organization or  
610 similar arrangement.

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

612 (6) "Years of service credit" means:

613 (a) a period, consisting of 12 full months as determined by the board;

614 (b) a period determined by the board, whether consecutive or not, during which a  
615 regular full-time employee performed services for a participating employer, including any time  
616 the regular full-time employee was absent on a paid leave of absence granted by a participating

617 employer or was absent in the service of the United States government on military duty as  
618 provided by this chapter; or

619 (c) the regular school year consisting of not less than eight months of full-time service  
620 for a regular full-time employee of an educational institution.

621 Section 7. Section **49-13-202** is amended to read:

622 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
623 **requirements -- Nondiscrimination requirements -- Service credit purchases.**

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

626 (b) In addition to their participation in this system, participating employers may  
627 provide or participate in any additional public or private retirement, supplemental or defined  
628 contribution plan, either directly or indirectly, for their employees.

629 (2) The following employers may be excluded from participation in this system:

630 (a) an employer not initially admitted or included as a participating employer in this  
631 system before January 1, 1982, if:

632 (i) the employer elects not to provide or participate in any type of private or public  
633 retirement, supplemental or defined contribution plan, either directly or indirectly, for its  
634 employees, except for Social Security; or

635 (ii) the employer offers another collectively bargained retirement benefit and has  
636 continued to do so on an uninterrupted basis since that date;

637 (b) an employer that is a charter school sponsored by the State Board of Education or a  
638 school district that makes an election of nonparticipation in accordance with Section  
639 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election  
640 of nonparticipation in accordance with Subsection 53A-1a-512(9);

641 (c) an employer that is a hospital created as a special service district under Title 17D,  
642 Chapter 1, Special Service District Act, that makes an election of nonparticipation in  
643 accordance with Subsection (5); or

644 (d) an employer that is a risk management association initially created by interlocal  
645 agreement before 1986 for the purpose of implementing a self-insurance joint protection  
646 program for the benefit of member municipalities of the association.

647 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to

648 provide or participate in any type of public or private retirement, supplemental or defined  
649 contribution plan, either directly or indirectly, except for Social Security, the employer shall be  
650 a participating employer in this system regardless of whether the employer has applied for  
651 admission under Subsection (4).

652 (4) (a) An employer may, by resolution of its governing body, apply for admission to  
653 this system.

654 (b) Upon approval of the resolution by the board, the employer is a participating  
655 employer in this system and is subject to this title.

656 (5) (a) (i) Until June 30, 2009, a employer that is a hospital created as a special service  
657 district under Title 17D, Chapter 1, Special Service District Act, may make an election of  
658 nonparticipation as an employer for retirement programs under this chapter.

659 (ii) On or before July 1, 2010, an employer described in Subsection (2)(d) may make  
660 an election of nonparticipation as an employer for retirement programs under this chapter.

661 (b) An election provided under Subsection (5)(a):

662 (i) is a one-time election made no later than the time specified under Subsection (5)(a);

663 (ii) shall be documented by a resolution adopted by the governing body of the  
664 employer;

665 (iii) is irrevocable; and

666 (iv) applies to the employer described in Subsection (5)(a) and to all employees of that  
667 employer.

668 (c) The employer making an election under Subsection (5)(a) may offer employee  
669 benefit plans for its employees:

670 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

671 or

672 (ii) under any other program.

673 (6) If a participating employer purchases service credit on behalf of regular full-time  
674 employees for service rendered prior to the participating employer's admission to this system,  
675 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and  
676 former regular full-time employees who were eligible for service credit at the time service was  
677 rendered.

678 Section 8. Section **49-20-404** is amended to read:

679 **49-20-404. Governors' and legislative benefit.**

680 (1) The state shall pay the percentage described in Subsection (3) of the cost of  
681 providing paid-up group health coverage policy for members and their surviving spouses  
682 covered under Chapter 19, Utah Governors' and Legislators' Retirement Act, or governors and  
683 legislators, as defined in Section 49-19-102, and their surviving spouses covered under Chapter  
684 22, New Public Employees' Tier II Contributory Retirement Act, who:

- 685 (a) retire after January 1, 1998;  
686 (b) are at least 62 but less than 65 years of age;  
687 (c) elect to receive and apply for this benefit to the program; and  
688 (d) are active members at the time of retirement or have continued coverage with the  
689 program until the date of eligibility for the benefit under this Subsection (1).

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

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

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

- 697 (a) 100% if the member has accrued 10 or more years of service credit;  
698 (b) 80% if the member has accrued 8 or more years of service credit;  
699 (c) 60% if the member has accrued 6 or more years of service credit; and  
700 (d) 40% if the member has accrued 4 or more years of service credit.

701 Section 9. Section **49-21-201** is amended to read:

702 **49-21-201. Program membership -- Eligibility.**

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

704 (2) Public safety service employees, as defined in Sections 49-14-102, 49-15-102, and  
705 49-23-102 shall be covered under this chapter or a substantially similar long-term disability  
706 program in accordance with the provisions of Section 49-14-601, 49-15-601, or 49-23-601.

707 (3) Beginning on July 1, 2011, firefighter service employees, as defined in Section  
708 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as  
709 defined in Section 49-23-102, shall be covered under this chapter [~~or a substantially similar~~

710 ~~long-term disability program]~~ in accordance with the provisions of Section 49-23-601.

711 (4) Except as provided under Subsection (5), all other employers may provide coverage  
712 for their eligible employees under this chapter.

713 (5) If an employer elects to cover any of its eligible employees under this chapter, all of  
714 its eligible employees shall be covered.

715 (6) Except as provided under Subsections (1) and (2), nothing in this chapter requires  
716 any employer to cover its eligible employees under this chapter.

717 (7) The following employees are not eligible for coverage under this chapter:

718 (a) firefighter service employees, as defined under Section 49-16-102, that initially  
719 entered employment prior to July 1, 2011; and

720 (b) legislators.

721 Section 10. Section **49-21-401** is amended to read:

722 **49-21-401. Disability benefits -- Application -- Eligibility.**

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

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

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

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

729 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the  
730 application may be made by a person who is:

731 (i) the attorney for an eligible employee; or

732 (ii) appointed as a conservator or guardian of the eligible employee.

733 (b) A person described in Subsection (2)(a), may not make an application for a  
734 deceased employee.

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

737 (4) The office shall review all relevant information and determine whether or not the  
738 eligible employee has a total disability.

739 (5) If the office determines that the eligible employee has a total disability due to  
740 accidental bodily injury or physical illness which is not the result of the performance of an



741 employment duty, the eligible employee shall receive a monthly disability benefit equal to  
742 two-thirds of the eligible employee's regular monthly salary, for each month the total disability  
743 continues beyond the elimination period, not to exceed the maximum benefit period.

744 (6) If the office determines that the eligible employee has a total disability due to  
745 psychiatric illness, the eligible employee shall receive:

746 (a) a maximum of two years of monthly disability benefits equal to two-thirds of the  
747 eligible employee's regular monthly salary for each month the total disability continues beyond  
748 the elimination period;

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

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

755 (7) If the office determines that the eligible employee has a total disability due to a  
756 physical injury resulting from external force or violence as a result of the performance of an  
757 employment duty, the eligible employee shall receive a monthly disability benefit equal to  
758 100% of the eligible employee's regular monthly salary, for each month the total disability  
759 continues beyond the elimination period, not to exceed the maximum benefit period.

760 (8) (a) Successive periods of disability are considered as a continuous period of  
761 disability if the period of disability:

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

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

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

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

768 (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are  
769 considered as separate periods of disability.

770 (9) The office may, at any time, have any eligible employee claiming to have a  
771 disability examined by a physician chosen by the office to determine if the eligible employee

772 has a total disability.

773 (10) A claim brought by an eligible employee for long-term disability benefits under  
774 the Public Employee's Long-Term Disability Program is barred if it is not commenced within  
775 [~~one year~~] six months from the eligible employee's date of disability, unless the office  
776 determines that under the surrounding facts and circumstances, the eligible employee's failure  
777 to comply with the time limitations was reasonable.

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

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

784 (13) Regardless of any medical evidence provided by the employee to support the  
785 application for disability, an employee is not eligible for long-term disability benefits during  
786 any period in which the employee:

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

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

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

794 Section 11. Section **49-21-402** is amended to read:

795 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

796 **Application for other benefits required.**

797 (1) A monthly disability benefit may [~~not be paid for any period of total disability~~] be  
798 terminated unless:

799 (a) the eligible employee is under the ongoing care and treatment of a physician other  
800 than the eligible employee[:]; and

801 (b) the eligible employee provides the information and documentation requested by the  
802 office.

803 (2) The monthly disability benefit shall be reduced or reimbursed by any amount  
804 received by, or payable to, the eligible employee from the following sources for the same  
805 period of time during which the eligible employee is entitled to receive a monthly disability  
806 benefit:

807 (a) Social Security disability benefits, including all benefits received by the eligible  
808 employee, the eligible employee's spouse, and the eligible employee's children as determined  
809 by the Social Security Administration;

810 (b) workers' compensation indemnity benefits;

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

813 (d) unemployment compensation benefits;

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

815 (f) any money received by a judgment, settlement, or other payment as a result of a  
816 claim against an employer[-]; and

817 (g) any payments made for sick leave, annual leave, or similar payments.

818 (3) The monthly disability benefit shall be reduced by any amount in excess of  
819 one-third of the eligible employee's regular monthly salary received by, or payable to, the  
820 eligible employee from the following sources for the same period of time during which the  
821 eligible employee is entitled to receive a monthly disability benefit:

822 (a) any employer-sponsored retirement programs; and

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

825 (4) After the date of disability, cost-of-living increases to any of the benefits listed in  
826 Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability  
827 benefit.

828 (5) Any amounts payable to the eligible employee from one or more of the sources  
829 under Subsection (2) are considered as amounts received whether or not the amounts were  
830 actually received by the eligible employee.

831 (6) (a) An eligible employee shall first apply for all disability benefits from  
832 governmental entities under Subsection (2) to which the eligible employee is or may be  
833 entitled, and provide to the office evidence of the applications.

834 (b) If the eligible employee fails to make application under this Subsection (6), the  
835 monthly disability benefit shall be suspended.

836 Section 12. Section **49-22-202** is amended to read:

837 **49-22-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
838 **requirements.**

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

841 ~~[(2) An employer that is a charter school sponsored by the State Board of Education or~~  
842 ~~a school district may be excluded from participation in this system if the charter school makes~~  
843 ~~an election of nonparticipation in accordance with Section 53A-1a-512 unless the charter~~  
844 ~~school makes a one-time, irrevocable retraction of the election of nonparticipation in~~  
845 ~~accordance with Subsection 53A-1a-512(9).]~~

846 (2) The following employers may be excluded from participation in this system:

847 (a) an employer not initially admitted or included as a participating employer in this  
848 system before January 1, 1982, if:

849 (i) the employer elects not to provide or participate in any type of private or public  
850 retirement, supplemental or defined contribution plan, either directly or indirectly, for its  
851 employees, except for Social Security; or

852 (ii) the employer offers another collectively bargained retirement benefit and has  
853 continued to do so on an uninterrupted basis since that date;

854 (b) an employer that is a charter school sponsored by the State Board of Education or a  
855 school district that makes an election of nonparticipation in accordance with Section  
856 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election  
857 of nonparticipation in accordance with Subsection 53A-1a-512(9); or

858 (c) an employer that is a risk management association initially created by interlocal  
859 agreement before 1986 for the purpose of implementing a self-insurance joint protection  
860 program for the benefit of member municipalities of the association.

861 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to  
862 provide or participate in any type of public or private retirement, supplemental or defined  
863 contribution plan, either directly or indirectly, except for Social Security, the employer shall be  
864 a participating employer in this system regardless of whether the employer has applied for

865 admission under Subsection (4).

866 ~~[(3)]~~ (4) (a) An employer may, by resolution of its governing body, apply for admission  
867 to this system.

868 (b) Upon approval of the resolution by the board, the employer is a participating  
869 employer in this system and is subject to this title.

870 ~~[(4)]~~ (5) If a participating employer purchases service credit on behalf of a regular  
871 full-time ~~[employees]~~ employee for service rendered prior to the participating employer's  
872 admission to this system, ~~[the service credit shall be purchased]~~ the participating employer:

873 (a) shall purchase credit in a nondiscriminatory manner on behalf of all current and  
874 former regular full-time employees who were eligible for service credit at the time service was  
875 rendered[-]; and

876 (b) shall comply with the provisions of Section 49-11-403.

877 Section 13. Section **49-22-401** is amended to read:

878 **49-22-401. Contributions -- Rates.**

879 (1) Up to the amount allowed by federal law, the participating employer shall make a  
880 nonelective contribution of 10% of the participant's compensation to a defined contribution  
881 plan.

882 (2) (a) The participating employer shall contribute the 10% nonelective contribution  
883 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
884 Internal Revenue Code which:

885 (i) is sponsored by the board; and

886 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

887 (b) The member may make voluntary deferrals to:

888 (i) the qualified 401(k) plan which receives the employer contribution described in this  
889 Subsection (2); or

890 (ii) at the member's option, another defined contribution plan established by the  
891 participating employer.

892 (c) In addition to the percent specified under Subsection (2)(a), the participating  
893 employer shall pay the corresponding Tier I system amortization rate of the employee's  
894 compensation to the office to be applied to the employer's corresponding Tier I system liability.

895 (3) (a) ~~[The]~~ Except as provided under Subsection (3)(c), the total amount contributed

896 by the participating employer under Subsection (2)(a) vests to the member upon accruing four  
897 years employment as a regular full-time employee under this title.

898 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
899 member's benefit immediately and is nonforfeitable.

900 (c) Upon filing a written request for exemption with the office, the following  
901 employees are exempt from the vesting requirements of Subsection (3)(a):

902 (i) an executive department head of the state;

903 (ii) a member of the State Tax Commission;

904 (iii) a member of the Public Service Commission;

905 (iv) an employee of the Governor's Office of Planning and Budget;

906 (v) an employee of the Governor's Office of Economic Development;

907 (vi) an employee of the Commission on Criminal and Juvenile Justice;

908 (vii) an employee of the Governor's Office;

909 (viii) an employee of the State Auditor's Office;

910 (ix) an employee of the State Treasurer's Office;

911 (x) a person appointed as a city manager or appointed as a city administrator or another  
912 at-will employee of a municipality, county, or other political subdivision;

913 (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter  
914 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
915 through membership in a labor organization that provides retirement benefits to its members;  
916 and

917 (xii) an employee of the Utah Science Technology and Research Initiative created  
918 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

919 (d) (i) A participating employer shall prepare a list designating those positions eligible  
920 for exemption under Subsection (3)(c).

921 (ii) An employee may not be exempted unless the employee is employed in a position  
922 designated by the participating employer under Subsection (3)(c).

923 (e) (i) In accordance with this section, a municipality, county, or political subdivision  
924 may not exempt more than 50 positions or a number equal to 10% of the employees of the  
925 municipality, county, or political subdivision, whichever is less.

926 (ii) A municipality, county, or political subdivision may exempt at least one regular

927 full-time employee.

928 (f) Each participating employer shall:

929 (i) file each employee exemption annually with the office; and

930 (ii) update an employee exemption in the event of any change.

931 (g) The office may make rules to implement this Subsection (3).

932 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
933 invested in a default option selected by the board until the member is vested in accordance with  
934 Subsection (3)(a).

935 (b) A member may direct the investment of contributions including associated  
936 investment gains and losses made by a participating employer under Subsection (2)(a) only  
937 after the contributions have vested in accordance with Subsection (3)(a).

938 (c) A member may direct the investment of contributions made by the member under  
939 Subsection (3)(b).

940 (5) No loans shall be available from contributions made by a participating employer  
941 under Subsection (2)(a).

942 (6) No hardship distributions shall be available from contributions made by a  
943 participating employer under Subsection (2)(a).

944 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
945 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
946 contributions made by a participating employer on behalf of the member including associated  
947 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

948 (b) If a member who terminates employment with a participating employer prior to the  
949 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
950 another participating employer within 10 years of the termination date of the previous  
951 employment:

952 (i) all contributions made by the previous participating employer on behalf of the  
953 member including associated investment gains and losses shall be reinstated upon the member's  
954 employment as a regular full-time employee; and

955 (ii) the length of time that the member worked with the previous employer shall be  
956 included in determining whether the member has completed the vesting period under  
957 Subsection (3)(a).

958 (c) The office shall establish a forfeiture account and shall specify the uses of the  
959 forfeiture account, which may include an offset against administrative costs or employer  
960 contributions made under this section.

961 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
962 any relevant information pertaining to the maintenance of its tax qualification under the  
963 Internal Revenue Code.

964 (9) The office may take any action which in its judgment is necessary to maintain the  
965 tax-qualified status of its 401(k) defined contribution plan under federal law.

966 Section 14. Section **49-23-202** is amended to read:

967 **49-23-202. Participation of employers -- Admission requirements.**

968 (1) (a) An employer is a participating employer and may not withdraw from  
969 participation in this system.

970 (b) A participating employer shall cover its:

971 (i) public safety service employees in accordance with Section 49-15-202; and

972 (ii) firefighter service employees in accordance with Section 49-16-202.

973 (2) (a) An employer may, by resolution of its governing body, apply for admission to  
974 this system.

975 (b) Upon approval of the resolution by the board, the employer is a participating  
976 employer in this system and is subject to this title.

977 (3) If a participating employer purchases service credit on behalf of public safety  
978 service employees or firefighter service employees for service rendered prior to the  
979 participating employer's admission to this system, the service credit shall be purchased in a  
980 nondiscriminatory manner on behalf of all current and former public safety service employees  
981 or firefighter service employees who were eligible for service credit at the time service was  
982 rendered.

983 Section 15. Section **49-23-401** is amended to read:

984 **49-23-401. Contributions -- Rates.**

985 (1) Up to the amount allowed by federal law, the participating employer shall make a  
986 nonelective contribution of 12% of the participant's compensation to a defined contribution  
987 plan.

988 (2) (a) The participating employer shall contribute the 12% nonelective contribution



989 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
990 Internal Revenue Code which:

991 (i) is sponsored by the board; and

992 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

993 (b) The member may make voluntary deferrals to:

994 (i) the qualified 401(k) plan which receives the employer contribution described in this  
995 Subsection (2); or

996 (ii) at the member's option, another defined contribution plan established by the  
997 participating employer.

998 (c) In addition to the percent specified under Subsection (2)(a), the participating  
999 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1000 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1001 (3) (a) The total amount contributed by the participating employer under Subsection  
1002 (2)(a) vests to the member upon accruing four years of [~~employment as a regular full-time~~  
1003 ~~employee under this chapter~~] service credit under this title.

1004 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1005 member's benefit immediately and is nonforfeitable.

1006 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1007 invested in a default option selected by the board until the member is vested in accordance with  
1008 Subsection (3)(a).

1009 (b) A member may direct the investment of contributions, including associated  
1010 investment gains and losses, made by a participating employer under Subsection (2)(a) only  
1011 after the contributions have vested in accordance with Subsection (3)(a).

1012 (c) A member may direct the investment of contributions made by the member under  
1013 Subsection (3)(b).

1014 (5) No loans shall be available from contributions made by a participating employer  
1015 under Subsection (2)(a).

1016 (6) No hardship distributions shall be available from contributions made by a  
1017 participating employer under Subsection (2)(a).

1018 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1019 with a participating employer prior to the vesting period described in Subsection (3)(a), all

1020 contributions made by a participating employer on behalf of the member under Subsection  
 1021 (2)(a), including associated investment gains and losses [~~under Subsection (2)(a)~~], are subject  
 1022 to forfeiture.

1023 (b) If a member who terminates employment with a participating employer prior to the  
 1024 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
 1025 another participating employer within 10 years of the termination date of the previous  
 1026 employment:

1027 (i) all contributions made by the previous participating employer on behalf of the  
 1028 member, including associated investment gains and losses, shall be reinstated upon the  
 1029 member's employment as a regular full-time employee; and

1030 (ii) the length of time that the member worked with the previous employer shall be  
 1031 included in determining whether the member has completed the vesting period under  
 1032 Subsection (3)(a).

1033 (c) The office shall establish a forfeiture account and shall specify the uses of the  
 1034 forfeiture account, which may include an offset against administrative costs of employer  
 1035 contributions made under this section.

1036 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
 1037 any relevant information pertaining to the maintenance of its tax qualification under the  
 1038 Internal Revenue Code.

1039 (9) The office may take any action which in its judgment is necessary to maintain the  
 1040 tax-qualified status of its 401(k) defined contribution plan under federal law.

1041 Section 16. Section **49-23-601** is amended to read:

1042 **49-23-601. Long-term disability coverage.**

1043 (1) A participating employer shall cover a public safety employee who initially enters  
 1044 employment on or after July 1, 2011, under [~~Title 49,~~] Chapter 21, Public Employees'  
 1045 Long-Term Disability Act ~~H~~→ [f] , or a substantially similar long-term disability  
 1045a program [j] ←~~H~~ .

1046 (2) (a) A participating employer shall cover a firefighter employee who initially enters  
 1047 employment on or after July 1, 2011, under [~~Title 49,~~] Chapter 21, Public Employees'  
 1048 Long-Term Disability Act.

1049 (b) In accordance with this section, a participating employer shall provide long-term  
 1050 disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.

1051           (c) The office shall ensure that the cost of the long-term disability benefit coverage  
1052 provided under Subsections (2)(a) and (b) is funded with revenue received under Section  
1053 49-11-901.5.

---

---

**Legislative Review Note**  
**as of 1-6-12 9:14 AM**

**Office of Legislative Research and General Counsel**