

Senator Todd Weiler proposes the following substitute bill:

**RETIREMENT MODIFICATIONS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

Senate Sponsor: Todd Weiler

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**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;



- 26           ▶ allows the executive director of the Department of Corrections to be excluded from
- 27 the Public Safety Contributory Retirement System, the Public Safety
- 28 Noncontributory Retirement System, and the Tier I Public Safety Noncontributory
- 29 Retirement System;
- 30           ▶ clarifies that only Tier II governors and legislators and their spouses, not all Tier II
- 31 public employees, may be eligible for the governors' and legislative paid-up group
- 32 health coverage;
- 33           ▶ clarifies that Tier II firefighters, including volunteer firefighters, are covered under
- 34 the URS long-term disability program;
- 35           ▶ provides that long-term disability claims must be made within six months, rather
- 36 than one year, from the employee's date of disability;
- 37           ▶ requires an employee receiving monthly disability benefits to provide certain
- 38 information and documentation requested by the office;
- 39           ▶ provides that monthly disability benefits are reduced for payments made for sick
- 40 leave, annual leave, or similar payments;
- 41           ▶ clarifies participation requirements for employers in the Tier II systems;
- 42           ▶ allows certain at-will employees to be exempt from the vesting requirement for the
- 43 defined contribution plan in the Tier II Public Employees' Retirement System;
- 44           ▶ allows certain public safety service employees to be exempt from the vesting
- 45 requirement for the defined contribution plan in the New Public Safety and
- 46 Firefighter Tier II Contributory Retirement System;
- 47           ▶ clarifies who a participating employer must cover under the Tier II Public Safety
- 48 and Firefighters Systems; and
- 49           ▶ makes technical changes.

50 **Money Appropriated in this Bill:**

51           None

52 **Other Special Clauses:**

53           None

54 **Utah Code Sections Affected:**

55 AMENDS:

56           **49-11-102**, as last amended by Laws of Utah 2011, Chapter 439

- 57            **49-11-505**, as last amended by Laws of Utah 2011, Chapters 138 and 439
- 58            **49-11-612**, as last amended by Laws of Utah 2010, Chapter 266
- 59            **49-11-616**, as renumbered and amended by Laws of Utah 2002, Chapter 250
- 60            **49-12-102**, as last amended by Laws of Utah 2008, Chapter 318
- 61            **49-13-102**, as last amended by Laws of Utah 2008, Chapter 318
- 62            **49-13-202**, as last amended by Laws of Utah 2010, Chapter 280
- 63            **49-14-203**, as last amended by Laws of Utah 2010, Chapter 264
- 64            **49-15-203**, as last amended by Laws of Utah 2010, Chapter 264
- 65            **49-20-404**, as last amended by Laws of Utah 2011, Chapter 439
- 66            **49-21-201**, as last amended by Laws of Utah 2010, Chapter 266
- 67            **49-21-401**, as last amended by Laws of Utah 2011, Chapters 366 and 439
- 68            **49-21-402**, as last amended by Laws of Utah 2011, Chapter 439
- 69            **49-22-202**, as enacted by Laws of Utah 2010, Chapter 266
- 70            **49-22-401**, as last amended by Laws of Utah 2011, Chapter 439
- 71            **49-23-202**, as enacted by Laws of Utah 2010, Chapter 266
- 72            **49-23-401**, as last amended by Laws of Utah 2011, Chapter 439
- 73            **49-23-601**, as last amended by Laws of Utah 2011, Chapters 290 and 439

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

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

77            **49-11-102. Definitions.**

78            As used in this title:

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

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

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

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

87            (4) (a) "Agency" means:

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

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

91 (iii) a state college or university; or

92 (iv) any other participating employer.

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

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

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

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

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

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

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

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

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

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

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

118 (iii) who may be terminated without cause by a designated supervisor, manager, or

119 director.

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

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

127 (12) "Board" means the Utah State Retirement Board established under Section  
128 49-11-202.

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

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

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

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

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

141 (18) "Current service" means covered service as defined in Chapters 12, 13, 14, 15, 16,  
142 17, 18, and 19.

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

147 (a) years of service;

148 (b) final average monthly salary; or

149 (c) a retirement multiplier.

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

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

156 (a) the State Board of Education and its instrumentalities;

157 (b) any institution of higher education and its branches;

158 (c) any school district and its instrumentalities;

159 (d) any vocational and technical school; and

160 (e) any entity arising out of a consolidation agreement between entities described under  
161 this Subsection (21).

162 (22) "Elected official":

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

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

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

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

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

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

175 (a) who is not eligible for service credit under Section 49-12-203, 49-13-203,  
176 49-14-203, 49-15-203, or 49-16-203; and

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

179 (25) "Final average monthly salary" means the amount computed by dividing the  
180 compensation received during the final average salary period under each system by the number

181 of months in the final average salary period.

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

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

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

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

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

191 (c) "Initially entering" includes an employee of a participating employer, except for an  
192 employee that is not eligible under a system or plan under this title, who:

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

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

195 and

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

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

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

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

209 (a) the member; and

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

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

214 (32) "Normal cost rate":

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

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

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

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

222 (35) "Participating employer" means a participating employer, as defined by Chapter  
223 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'  
224 Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act,  
225 Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters'  
226 Retirement Act, Chapter 17, Judges' Contributory Retirement Act, and Chapter 18, Judges'  
227 Noncontributory Retirement Act, or an agency financed in whole or in part by public funds  
228 which is participating in a system or plan as of January 1, 2002.

229 (36) "Pension" means monthly payments derived from participating employer  
230 contributions.

231 (37) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by  
232 Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier  
233 II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan,  
234 the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23,  
235 Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under  
236 Section 49-11-801.

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

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



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

245 (39) "Program" means the Public Employees' Insurance Program created under Chapter  
246 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees'  
247 Long-Term Disability program created under Chapter 21, Public Employees' Long-Term  
248 Disability Act.

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

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

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

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

259 (i) listed as the contractor; or

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

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

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

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

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

268 (47) "Retirement related contribution":

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

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

273 (48) "Service credit" means:

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

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

279 (49) "System" means the individual retirement systems created by Chapter 12, Public  
280 Employees' Contributory Retirement Act, Chapter 13, Public Employees' Noncontributory  
281 Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public  
282 Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17,  
283 Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and  
284 Chapter 19, Utah Governors' and Legislators' Retirement Act, the defined benefit portion of the  
285 Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System,  
286 and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part  
287 3, Tier II Hybrid Retirement System.

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

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

293 (b) "Tier II" includes:

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

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

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

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

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

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

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

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

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

304 (53) "Voluntary deferrals" means an amount contributed by a participant into that

305 participant's defined contribution account.

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

307 **49-11-505. Reemployment of a retiree -- Restrictions.**

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

309 (i) means a person who:

310 (A) retired from a participating employer; and

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

312 (ii) does not include a person:

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

314 (B) whose participating employer that reemployed the person under Subsection

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

316 Section 49-11-621 after July 1, 2010; and

317 [~~(ii)~~] (iii) does not include a [~~retiree~~] person who is reemployed as an active senior  
318 judge appointed to hear cases by the Utah Supreme Court in accordance with Article VIII,  
319 Section 4, Utah Constitution.

320 (b) (i) This section does not apply to employment as an elected official if the elected  
321 official's position is not full-time as certified by the participating employer.

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

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

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

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

327 (b) receive a retirement allowance.

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

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

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

335 (ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree

336 does not receive any employer provided benefits, including:

337 (A) medical benefits;

338 (B) dental benefits;

339 (C) other insurance benefits except for workers' compensation as provided under Title  
340 34A, Chapter 2, Workers' Compensation Act and withholdings required by federal or state law  
341 for Social Security, Medicare, and unemployment insurance; or

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

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

345 (A) \$15,000; or

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

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

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

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

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

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

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

364 (5) If a retiree makes an election under Subsection (4)(b) to continue to receive a  
365 retirement allowance while reemployed, the participating employer shall contribute to the  
366 office the amortization rate, as defined in Section 49-11-102, to be applied to the system that

367 would have covered the retiree.

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

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

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

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

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

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

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

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

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

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

382 (b) ~~[The]~~ If the retiree is eligible for retirement coverage in the reemployed position,  
383 the office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the  
384 retiree to active member status on the first day of the month following the date of:

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

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

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

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

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

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

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

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

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

398 membership shall:

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

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

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

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

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

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

410 **49-11-612. Domestic relations order benefits -- Nonassignability of benefits or**  
411 **payments -- Exemption from legal process.**

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

413 (a) an allowance;

414 (b) a defined contribution account established under:

415 (i) [~~Chapter 11,~~] Part 8, Defined Contribution Plans;

416 (ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

417 (iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement  
418 Act;

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

420 (i) Chapter 14, Part 5, Death Benefit;

421 (ii) Chapter 15, Part 5, Death Benefit;

422 (iii) Chapter 16, Part 5, Death Benefit;

423 (iv) Chapter 17, Part 5, Death Benefit;

424 (v) Chapter 18, Part 5, Death Benefit; or

425 (vi) Chapter 19, Part 5, Death Benefit;

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

427 (i) Chapter 12, Part 5, Death Benefit;

428 (ii) Chapter 13, Part 5, Death Benefit;

429 (iii) Chapter 22, Part 5, Death Benefit; or

430 (iv) Chapter 23, Part 5, Death Benefit; or

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

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

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

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

444 (b) The court order shall specify the manner in which the domestic relations order  
445 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.

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

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

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

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

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

457 (5) In accordance with federal law, the board may deduct the required amount from any  
458 benefit, payment, or other right accrued or accruing to any member or beneficiary of a system,  
459 plan, or program under this title to offset any amount that member or beneficiary owes to a

460 system, plan, or program administered by the board.

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

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

463 **49-11-616. Benefits information.**

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

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

468 (i) termination of service;

469 (ii) leave of absence;

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

471 (iv) retirement.

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

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

475 (3) (a) The office shall provide each participating employer with a form to be signed by  
476 each employee which verifies that the employee has been given the information required by  
477 this section.

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

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

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

484 **49-12-102. Definitions.**

485 As used in this chapter:

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

489 (i) bonuses;

490 (ii) cost-of-living adjustments;



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

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

496 (v) member contributions.

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

499 (c) "Compensation" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

541 (ii) a classified school employee whose employment normally requires an average of  
542 20 hours per week or more for a participating employer, regardless of benefits provided;

543 (iii) an officer, elective or appointive, who earns [~~during the first full month of the term~~  
544 ~~of office~~] \$500 or more per month, indexed as of January 1, 1990, as provided in Section  
545 49-12-407;

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

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

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

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

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

555 (b) a period determined by the board, whether consecutive or not, during which a  
556 regular full-time employee performed services for a participating employer, including any time  
557 the regular full-time employee was absent on a paid leave of absence granted by a participating  
558 employer or was absent in the service of the United States government on military duty as  
559 provided by this chapter; or

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

562 Section 6. Section **49-13-102** is amended to read:

563 **49-13-102. Definitions.**

564 As used in this chapter:

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

568 (i) bonuses;

569 (ii) cost-of-living adjustments;

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

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

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

577 (c) "Compensation" does not include:

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

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

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

583 (iv) any payments upon termination, including accumulated vacation, sick leave

584 payments, severance payments, compensatory time payments, or any other special payments; or

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

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

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

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

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

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

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

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

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

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

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

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

- 615 (ii) a classified school employee whose employment normally requires an average of  
616 20 hours per week or more for a participating employer, regardless of benefits provided;
- 617 (iii) an officer, elective or appointive, who earns [~~during the first full month of the term~~  
618 ~~of office~~] \$500 or more per month, indexed as of January 1, 1990, as provided in Section  
619 49-13-407;
- 620 (iv) a faculty member or employee of an institution of higher education who is  
621 considered full-time by that institution of higher education; and
- 622 (v) an individual who otherwise meets the definition of this Subsection (4) who  
623 performs services for a participating employer through a professional employer organization or  
624 similar arrangement.
- 625 (5) "System" means the Public Employees' Noncontributory Retirement System.
- 626 (6) "Years of service credit" means:
- 627 (a) a period, consisting of 12 full months as determined by the board;
- 628 (b) a period determined by the board, whether consecutive or not, during which a  
629 regular full-time employee performed services for a participating employer, including any time  
630 the regular full-time employee was absent on a paid leave of absence granted by a participating  
631 employer or was absent in the service of the United States government on military duty as  
632 provided by this chapter; or
- 633 (c) the regular school year consisting of not less than eight months of full-time service  
634 for a regular full-time employee of an educational institution.

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

636 **49-13-202. Participation of employers -- Limitations -- Exclusions -- Admission**  
637 **requirements -- Nondiscrimination requirements -- Service credit purchases.**

- 638 (1) (a) Unless excluded under Subsection (2), an employer is a participating employer  
639 and may not withdraw from participation in this system.
- 640 (b) In addition to their participation in this system, participating employers may  
641 provide or participate in any additional public or private retirement, supplemental or defined  
642 contribution plan, either directly or indirectly, for their employees.
- 643 (2) The following employers may be excluded from participation in this system:
- 644 (a) an employer not initially admitted or included as a participating employer in this  
645 system before January 1, 1982, if:

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

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

651 (b) an employer that is a charter school sponsored by the State Board of Education or a  
652 school district that makes an election of nonparticipation in accordance with Section  
653 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election  
654 of nonparticipation in accordance with Subsection 53A-1a-512(9);

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

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

661 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to  
662 provide or participate in any type of public or private retirement, supplemental or defined  
663 contribution plan, either directly or indirectly, except for Social Security, the employer shall be  
664 a participating employer in this system regardless of whether the employer has applied for  
665 admission under Subsection (4).

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

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

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

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

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

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

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

679 (iii) is irrevocable; and

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

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

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

685 or

686 (ii) under any other program.

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

692 Section 8. Section **49-14-203** is amended to read:

693 **49-14-203. Exemption of certain employees from coverage.**

694 (1) A public safety service employee is excluded from coverage under this system if  
695 the employee:

696 (a) is serving:

697 (i) as the Commissioner of Public Safety[~~-or~~];

698 (ii) as the executive director of the Department of Corrections; or

699 (iii) as the elected or appointed sheriff or chief of police of a public safety

700 organization[~~, is excluded from coverage under this system if that public safety service~~  
701 employee]; and

702 (b) files a formal written request seeking the exemption.

703 (2) Except as provided in Subsection (3), the public safety service employee may not  
704 continue employment with the same participating employer and receive an allowance from the  
705 office based on public safety service at the same time.

706 (3) (a) The Commissioner of Public Safety or an elected sheriff who is eligible to retire  
707 under Section 49-14-401 may until July 1, 2010:

- 708 (i) retire from this system and receive an allowance;
- 709 (ii) continue in the elected or appointed position; and
- 710 (iii) file for the exemption under Subsection (1).
- 711 (b) A person who makes an election under Subsection (3)(a) may continue under the
- 712 terms of the election.

713 Section 9. Section **49-15-203** is amended to read:

714 **49-15-203. Exemption of certain employees from coverage.**

715 (1) A public safety service employee is excluded from coverage under this system if  
716 the employee:

717 (a) is serving:

718 (i) as the Commissioner of Public Safety[~~-or~~];

719 (ii) as the executive director of the Department of Corrections; or

720 (iii) as the elected or appointed sheriff or chief of police of a public safety

721 organization[~~; is excluded from coverage under this system if that public safety service~~  
722 employee]; and

723 (b) files a formal written request seeking the exemption.

724 (2) Except as provided in Subsection (3), the public safety service employee may not  
725 continue employment with the same participating employer and receive an allowance from the  
726 office based on public safety service at the same time.

727 (3) (a) The Commissioner of Public Safety, an elected sheriff, or an appointed chief of  
728 police who is eligible to retire under Section 49-15-401 may until July 1, 2010:

729 (i) retire from this system and receive an allowance;

730 (ii) continue in the elected or appointed position; and

731 (iii) file for the exemption under Subsection (1).

732 (b) A person who makes an election under Subsection (3)(a) may continue under the  
733 terms of the election.

734 Section 10. Section **49-20-404** is amended to read:

735 **49-20-404. Governors' and legislative benefit.**

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



739 legislators, as defined in Section 49-19-102, and their surviving spouses covered under Chapter  
740 22, New Public Employees' Tier II Contributory Retirement Act, who:

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

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

- 749 (a) retire after January 1, 1998;  
750 (b) are at least 65 years of age; and  
751 (c) elect to receive and apply for this benefit to the program.  
752 (3) The following percentages apply to the benefit described in Subsections (1) and (2):  
753 (a) 100% if the member has accrued 10 or more years of service credit;  
754 (b) 80% if the member has accrued 8 or more years of service credit;  
755 (c) 60% if the member has accrued 6 or more years of service credit; and  
756 (d) 40% if the member has accrued 4 or more years of service credit.

757 Section 11. Section **49-21-201** is amended to read:

758 **49-21-201. Program membership -- Eligibility.**

- 759 (1) The state shall cover all of its eligible employees under this chapter.  
760 (2) Public safety service employees, as defined in Sections 49-14-102, 49-15-102, and  
761 49-23-102 shall be covered under this chapter or a substantially similar long-term disability  
762 program in accordance with the provisions of Section 49-14-601, 49-15-601, or 49-23-601.  
763 (3) Beginning on July 1, 2011, firefighter service employees, as defined in Section  
764 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as  
765 defined in Section 49-23-102, shall be covered under this chapter [~~or a substantially similar~~  
766 ~~long-term disability program~~] in accordance with the provisions of Section 49-23-601.  
767 (4) Except as provided under Subsection (5), all other employers may provide coverage  
768 for their eligible employees under this chapter.  
769 (5) If an employer elects to cover any of its eligible employees under this chapter, all of

770 its eligible employees shall be covered.

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

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

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

776 (b) legislators.

777 Section 12. Section **49-21-401** is amended to read:

778 **49-21-401. Disability benefits -- Application -- Eligibility.**

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

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

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

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

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

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

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

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

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

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

795 (5) If the office determines that the eligible employee has a total disability due to  
796 accidental bodily injury or physical illness which is not the result of the performance of an  
797 employment duty, the eligible employee shall receive a monthly disability benefit equal to  
798 two-thirds of the eligible employee's regular monthly salary, for each month the total disability  
799 continues beyond the elimination period, not to exceed the maximum benefit period.

800 (6) If the office determines that the eligible employee has a total disability due to

801 psychiatric illness, the eligible employee shall receive:

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

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

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

811 (7) If the office determines that the eligible employee has a total disability due to a  
812 physical injury resulting from external force or violence as a result of the performance of an  
813 employment duty, the eligible employee shall receive a monthly disability benefit equal to  
814 100% of the eligible employee's regular monthly salary, for each month the total disability  
815 continues beyond the elimination period, not to exceed the maximum benefit period.

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

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

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

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

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

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

826 (9) The office may, at any time, have any eligible employee claiming to have a  
827 disability examined by a physician chosen by the office to determine if the eligible employee  
828 has a total disability.

829 (10) A claim brought by an eligible employee for long-term disability benefits under  
830 the Public Employee's Long-Term Disability Program is barred if it is not commenced within  
831 [~~one year~~] six months from the eligible employee's date of disability, unless the office

832 determines that under the surrounding facts and circumstances, the eligible employee's failure  
833 to comply with the time limitations was reasonable.

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

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

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

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

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

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

850 Section 13. Section **49-21-402** is amended to read:

851 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

852 **Application for other benefits required.**

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

855 (a) the eligible employee is under the ongoing care and treatment of a physician other  
856 than the eligible employee[-]; and

857 (b) the eligible employee provides the information and documentation requested by the  
858 office.

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

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

866 (b) workers' compensation indemnity benefits;

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

869 (d) unemployment compensation benefits;

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

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

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

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

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

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

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

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

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

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

892 Section 14. Section **49-22-202** is amended to read:

893 **49-22-202. Participation of employers -- Limitations -- Exclusions -- Admission**

894 requirements.

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

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

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

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

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

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

910 (b) an employer that is a charter school sponsored by the State Board of Education or a  
911 school district that makes an election of nonparticipation in accordance with Section  
912 53A-1a-512 unless the charter school makes a one-time, irrevocable retraction of the election  
913 of nonparticipation in accordance with Subsection 53A-1a-512(9); or

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

917 (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to  
918 provide or participate in any type of public or private retirement, supplemental or defined  
919 contribution plan, either directly or indirectly, except for Social Security, the employer shall be  
920 a participating employer in this system regardless of whether the employer has applied for  
921 admission under Subsection (4).

922 ~~[(3)]~~ (4) (a) An employer may, by resolution of its governing body, apply for admission  
923 to this system.

924 (b) Upon approval of the resolution by the board, the employer is a participating

925 employer in this system and is subject to this title.

926 [~~(4)~~] (5) If a participating employer purchases service credit on behalf of a regular  
927 full-time [~~employees~~] employee for service rendered prior to the participating employer's  
928 admission to this system, [~~the service credit shall be purchased~~] the participating employer:

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

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

933 Section 15. Section **49-22-401** is amended to read:

934 **49-22-401. Contributions -- Rates.**

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

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

941 (i) is sponsored by the board; and

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

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

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

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

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

951 (3) (a) [~~The~~] Except as provided under Subsection (3)(c), the total amount contributed  
952 by the participating employer under Subsection (2)(a) vests to the member upon accruing four  
953 years employment as a regular full-time employee under this title.

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

- 956 (c) Upon filing a written request for exemption with the office, the following  
957 employees are exempt from the vesting requirements of Subsection (3)(a):
- 958 (i) an executive department head of the state;
  - 959 (ii) a member of the State Tax Commission;
  - 960 (iii) a member of the Public Service Commission;
  - 961 (iv) an employee of the Governor's Office of Planning and Budget;
  - 962 (v) an employee of the Governor's Office of Economic Development;
  - 963 (vi) an employee of the Commission on Criminal and Juvenile Justice;
  - 964 (vii) an employee of the Governor's Office;
  - 965 (viii) an employee of the State Auditor's Office;
  - 966 (ix) an employee of the State Treasurer's Office;
  - 967 (x) a person appointed as a city manager or appointed as a city administrator or another  
968 at-will employee of a municipality, county, or other political subdivision;
  - 969 (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter  
970 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided  
971 through membership in a labor organization that provides retirement benefits to its members;  
972 and
  - 973 (xii) an employee of the Utah Science Technology and Research Initiative created  
974 under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 975 (d) (i) A participating employer shall prepare a list designating those positions eligible  
976 for exemption under Subsection (3)(c).
- 977 (ii) An employee may not be exempted unless the employee is employed in a position  
978 designated by the participating employer under Subsection (3)(c).
- 979 (e) (i) In accordance with this section, a municipality, county, or political subdivision  
980 may not exempt more than 50 positions or a number equal to 10% of the employees of the  
981 municipality, county, or political subdivision, whichever is less.
- 982 (ii) A municipality, county, or political subdivision may exempt at least one regular  
983 full-time employee.
- 984 (f) Each participating employer shall:
- 985 (i) file each employee exemption annually with the office; and
  - 986 (ii) update an employee exemption in the event of any change.



987 (g) (i) The office shall make rules to implement this Subsection (3).

988 (ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the  
989 exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or  
990 after July 1, 2011 on behalf an exempted employee who began the employment before May 8,  
991 2012.

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

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

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

1000 (5) No loans shall be available from contributions made by a participating employer  
1001 under Subsection (2)(a).

1002 (6) No hardship distributions shall be available from contributions made by a  
1003 participating employer under Subsection (2)(a).

1004 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1005 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1006 contributions made by a participating employer on behalf of the member including associated  
1007 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

1008 (b) If a member who terminates employment with a participating employer prior to the  
1009 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1010 another participating employer within 10 years of the termination date of the previous  
1011 employment:

1012 (i) all contributions made by the previous participating employer on behalf of the  
1013 member including associated investment gains and losses shall be reinstated upon the member's  
1014 employment as a regular full-time employee; and

1015 (ii) the length of time that the member worked with the previous employer shall be  
1016 included in determining whether the member has completed the vesting period under  
1017 Subsection (3)(a).

1018 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1019 forfeiture account, which may include an offset against administrative costs or employer  
1020 contributions made under this section.

1021 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
1022 any relevant information pertaining to the maintenance of its tax qualification under the  
1023 Internal Revenue Code.

1024 (9) The office may take any action which in its judgment is necessary to maintain the  
1025 tax-qualified status of its 401(k) defined contribution plan under federal law.

1026 Section 16. Section **49-23-202** is amended to read:

1027 **49-23-202. Participation of employers -- Admission requirements.**

1028 (1) (a) An employer is a participating employer and may not withdraw from  
1029 participation in this system.

1030 (b) A participating employer shall cover its:

1031 (i) public safety service employees in accordance with Section 49-15-202; and

1032 (ii) firefighter service employees in accordance with Section 49-16-202.

1033 (2) (a) An employer may, by resolution of its governing body, apply for admission to  
1034 this system.

1035 (b) Upon approval of the resolution by the board, the employer is a participating  
1036 employer in this system and is subject to this title.

1037 (3) If a participating employer purchases service credit on behalf of public safety  
1038 service employees or firefighter service employees for service rendered prior to the  
1039 participating employer's admission to this system, the service credit shall be purchased in a  
1040 nondiscriminatory manner on behalf of all current and former public safety service employees  
1041 or firefighter service employees who were eligible for service credit at the time service was  
1042 rendered.

1043 Section 17. Section **49-23-401** is amended to read:

1044 **49-23-401. Contributions -- Rates.**

1045 (1) Up to the amount allowed by federal law, the participating employer shall make a  
1046 nonelective contribution of 12% of the participant's compensation to a defined contribution  
1047 plan.

1048 (2) (a) The participating employer shall contribute the 12% nonelective contribution

1049 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
1050 Internal Revenue Code which:

1051 (i) is sponsored by the board; and

1052 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

1053 (b) The member may make voluntary deferrals to:

1054 (i) the qualified 401(k) plan which receives the employer contribution described in this  
1055 Subsection (2); or

1056 (ii) at the member's option, another defined contribution plan established by the  
1057 participating employer.

1058 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1059 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1060 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1061 (3) (a) ~~[The]~~ Except as provided under Subsection (3)(c), the total amount contributed  
1062 by the participating employer under Subsection (2)(a) vests to the member upon accruing four  
1063 years of [employment as a regular full-time employee under this chapter] service credit under  
1064 this title.

1065 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
1066 member's benefit immediately and is nonforfeitable.

1067 (c) Upon filing a written request for exemption with the office, the following  
1068 employees are exempt from the vesting requirements of Subsection (3)(a) if employee is a  
1069 public safety service employee and is:

1070 (i) an executive department head of the state;

1071 (ii) an elected or appointed sheriff of a county; or

1072 (iii) an elected or appointed chief of police of a municipality.

1073 (d) (i) A participating employer shall prepare a list designating those positions eligible  
1074 for exemption under Subsection (3)(c).

1075 (ii) An employee may not be exempted unless the employee is employed in a position  
1076 designated by the participating employer under Subsection (3)(c).

1077 (e) Each participating employer shall:

1078 (i) file each employee exemption annually with the office; and

1079 (ii) update an employee exemption in the event of any change.

1080 (f) (i) The office shall make rules to implement this Subsection (3).

1081 (ii) The rules made under Subsection (3)(f)(i) shall include provisions to allow the  
1082 exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or  
1083 after July 1, 2011 on behalf an exempted employee who began the employment before May 8,  
1084 2012.

1085 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
1086 invested in a default option selected by the board until the member is vested in accordance with  
1087 Subsection (3)(a).

1088 (b) A member may direct the investment of contributions, including associated  
1089 investment gains and losses, made by a participating employer under Subsection (2)(a) only  
1090 after the contributions have vested in accordance with Subsection (3)(a).

1091 (c) A member may direct the investment of contributions made by the member under  
1092 Subsection (3)(b).

1093 (5) No loans shall be available from contributions made by a participating employer  
1094 under Subsection (2)(a).

1095 (6) No hardship distributions shall be available from contributions made by a  
1096 participating employer under Subsection (2)(a).

1097 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
1098 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
1099 contributions made by a participating employer on behalf of the member under Subsection  
1100 (2)(a), including associated investment gains and losses [~~under Subsection (2)(a)~~] are subject to  
1101 forfeiture.

1102 (b) If a member who terminates employment with a participating employer prior to the  
1103 vesting period described in Subsection (3)(a) subsequently enters employment with the same or  
1104 another participating employer within 10 years of the termination date of the previous  
1105 employment:

1106 (i) all contributions made by the previous participating employer on behalf of the  
1107 member, including associated investment gains and losses, shall be reinstated upon the  
1108 member's employment as a regular full-time employee; and

1109 (ii) the length of time that the member worked with the previous employer shall be  
1110 included in determining whether the member has completed the vesting period under

1111 Subsection (3)(a).

1112 (c) The office shall establish a forfeiture account and shall specify the uses of the  
1113 forfeiture account, which may include an offset against administrative costs of employer  
1114 contributions made under this section.

1115 (8) The office may request from any other qualified 401(k) plan under Subsection (2)  
1116 any relevant information pertaining to the maintenance of its tax qualification under the  
1117 Internal Revenue Code.

1118 (9) The office may take any action which in its judgment is necessary to maintain the  
1119 tax-qualified status of its 401(k) defined contribution plan under federal law.

1120 Section 18. Section **49-23-601** is amended to read:

1121 **49-23-601. Long-term disability coverage.**

1122 (1) A participating employer shall cover a public safety employee who initially enters  
1123 employment on or after July 1, 2011, under [~~Title 49,~~] Chapter 21, Public Employees'  
1124 Long-Term Disability Act, or a substantially similar long-term disability program.

1125 (2) (a) A participating employer shall cover a firefighter employee who initially enters  
1126 employment on or after July 1, 2011, under [~~Title 49,~~] Chapter 21, Public Employees'  
1127 Long-Term Disability Act.

1128 (b) In accordance with this section, a participating employer shall provide long-term  
1129 disability benefit coverage for a volunteer firefighter as provided under Section 49-16-701.

1130 (c) The office shall ensure that the cost of the long-term disability benefit coverage  
1131 provided under Subsections (2)(a) and (b) is funded with revenue received under Section  
1132 49-11-901.5.