House Engrossed

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2024

AN ACT

AMENDING SECTIONS 38-730, 38-735, 38-745, 38-762, 38-764, 38-766 AND 38-766.01, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-766.02; AMENDING SECTIONS 38-770, 38-773, 38-797.07 AND 38-922, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-730, Arizona Revised Statutes, is amended to read:

38-730. Charter city or ASRS retirement service credits; transfers

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

~~C. The retirement system that transfers the retirement service credits shall pay to the retirement system of the new employer an amount equal to the present value, as of the date of the transfer, of all benefits generated by the transferred service credits in the retirement system of the new employer as determined by the governing board of the retirement system of the new employer. The amount of any payment under this subsection shall include the accumulated retirement contributions of the employee whose retirement service credits are transferred.~~

C. THE TRANSFER SHALL BE MADE PURSUANT TO SECTION 38-922.

D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

E. The retirement system to which the employee is transferring shall not apply service credits to the employee's account until such time as complete payment is made to the retirement system to which the employee is transferring. On completion of the transfer provided for in this section, the employee's rights in the retirement system from which the employee is transferring are extinguished.

Sec. 2. Section 38-735, Arizona Revised Statutes, is amended to read:

38-735. Payment of contributions; recovery of delinquent payments

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made BY EMPLOYERS pursuant to this article ~~by employers~~ OR ARTICLE 2.1, 7 OR 8 OF THIS CHAPTER become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this ~~subsection~~ ARTICLE OR ARTICLE 2.1, 7 OR 8 OF THIS CHAPTER, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against ~~a political subdivision~~ AN EMPLOYER THAT IS liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the ~~political subdivision~~ EMPLOYER by any department or agency of this state. THE EMPLOYER SHALL RECORD DELINQUENT PAYMENTS THAT ARE RECOVERED OR DEDUCTED FROM OTHER MONIES PURSUANT TO THIS SUBSECTION PURSUANT TO APPLICABLE ACCOUNTING AND FINANCIAL REPORTING STANDARDS.

Sec. 3. Section 38-745, Arizona Revised Statutes, is amended to read:

38-745. Credit for military service

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if all of the following apply:

1. The member was honorably separated from the military service.

2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.

3. Beginning July 1, 2010, a member has at least five years of credited service in ASRS.

B. The cost to purchase military service credit is an amount equal to the present value of the additional benefit that is derived from the purchased credited service using the actuarial assumptions that are approved by the board.

C. An active member of ASRS who is called to active military service may receive credited service for not more than sixty months of active military service, except as provided by the uniformed services employment and reemployment rights act (38 United States Code section 4312(c)). The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:

1. Was an active member of ASRS on the day before the member began active military service.

2. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.

3. Volunteers or is ordered into active military service of the United States as part of a military call-up.

4. One of the following occurs:

(a) Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated.

(b) Is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization.

(c) Becomes disabled as a result of or during the military service and is unable to return to the same employer.

(d) Dies as a result of or during the military service.

D. Contributions made pursuant to subsection C of this section shall be for the period of time beginning on the date the member began active military service and ending on the later of one of the following dates:

1. The date the member ~~is separated from active military service~~ RETURNS TO EMPLOYMENT OR THE DATE THE MEMBER SHOULD HAVE RETURNED TO EMPLOYMENT PURSUANT TO 20 CODE OF FEDERAL REGULATIONS SECTION 1002.115, WHICHEVER DATE IS EARLIER.

2. The date the member is released from service related hospitalization or ~~one year~~ TWO YEARS after initiation of service related hospitalization, whichever date is earlier.

3. One year after the date of disability.

4. The date the member dies as a result of or during active military service.

E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than sixty months.

F. The employer shall make contributions pursuant to subsection C of this section as follows:

1. Contributions shall be based on the compensation that a member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine a member's rate of compensation for the period that the member was ordered into active military service, the employer shall make contributions based on the member’s average rate of compensation during the twelve-month period immediately preceding the period of active military service.

3. If a member has been employed less than twelve months before being ordered into active military service, the employer shall make contributions based on the employment period immediately preceding the period of active military service.

4. Employer contributions shall be made in a lump sum and without penalty when the member returns to employment, when it is determined that the member is unable to return to employment because of a disability as a result of or that occurred during military service or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

G. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

H. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection C of this section.

I. In addition to, but not in duplication of, the provisions of subsection C of this section, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

J. A MEMBER WHO DOES NOT CURRENTLY PERFORM SERVICES FOR AN EMPLOYER BY REASON OF QUALIFIED MILITARY SERVICE, AS THAT TERM IS DEFINED IN SECTION 414(u) OF THE INTERNAL REVENUE CODE, AND WHO IS RECEIVING DIFFERENTIAL WAGE PAYMENTS, AS THAT TERM IS DEFINED IN SECTION 3401(h)(2) OF THE INTERNAL REVENUE CODE, SHALL NOT BE CONSIDERED AS HAVING A SEVERANCE FROM EMPLOYMENT FOR ALL PURPOSES UNDER ASRS DURING THE PERIOD THE DIFFERENTIAL WAGES ARE BEING PAID BY THE EMPLOYER TO THE EMPLOYEE.

Sec. 4. Section 38-762, Arizona Revised Statutes, is amended to read:

38-762. Survivor benefits before retirement; definitions

A. On the death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. Two times the member's contribution and interest to the defined benefit plan established by this article for credited service that a member earned by working for an employer, plus all contributions and interest made for the purchase of military service, leave without pay or other public service credit.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 of this section shall be accumulated at compound interest at a rate determined by the board through the day of the payment of the benefit.

C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of this section of

more than five thousand dollars may elect to receive the actuarial equivalent of the survivor benefit pursuant to one of the following options:

1. A monthly income for five, ten or fifteen years certain and for life thereafter.

2. Another form of optional benefits approved by the board.

D. On the death of an active or inactive member who has reached an early retirement date applicable to the member or who has a minimum of fifteen years of credited service and whose designated beneficiary is a spouse, A MEMBER'S NATURAL OR ADOPTED child under the age of twenty-one or ~~handicapped child age twenty-one or older, including a legally adopted child or a stepchild~~ A MEMBER'S NATURAL OR ADOPTED CHILD OF ANY AGE WHO IS DISABLED, ASRS shall pay the designated beneficiary a survivor benefit equal to the present value, on the date following the date of the member's death, of the life annuity that would have been payable to the designated beneficiary if the member had retired on the date of the member's death and elected to receive an annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount that would have been payable during the lifetime of the member. If there is more than one designated beneficiary under this subsection, ASRS shall determine the amount of the annuity and its present value as if the oldest of the beneficiaries was the sole beneficiary. Payment under this subsection shall be in lieu of, but not less than, any payment under subsection A of this section. Payment under this subsection, at the election of the designated beneficiary, may be made in a single sum or may be made in accordance with subsection C of this section. A beneficiary may not elect this option unless a benefit of twenty-five dollars or more per month is payable to the designated beneficiary or the designated beneficiary's estate.

E. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

F. If a deceased member did not designate a beneficiary or the beneficiary named by a member predeceases the member, ASRS shall pay the member's survivor benefit to the following persons in the following order of priority:

1. The member's surviving spouse.

2. The member's surviving NATURAL OR ADOPTED children~~, including adopted children,~~ in equal shares.

3. The member's surviving parents in equal shares.

4. The member's estate.

G. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment

and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

H. For the purposes of this section: ~~,~~

1. "Designated beneficiary" means any individual designated by the member as the member's beneficiary.

2. "DISABLED" MEANS A PERSON IS INCAPABLE OF SELF-SUSTAINING EMPLOYMENT BY REASON OF MENTAL OR PHYSICAL HANDICAP AND IS CHIEFLY DEPENDENT ON THE MEMBER FOR SUPPORT.

Sec. 5. Section 38-764, Arizona Revised Statutes, is amended to read:

38-764. Commencement of retirement; payment of retirement benefits; lump sum payments

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I of this section.

B. Except as provided in subsection C of this section, all retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A of this section.

2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

C. In the case of incapacity of a retired member or contingent annuitant, or in the case of any other emergency, as determined by the board, the board may make the payment to or on behalf of the retired member or contingent annuitant or to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the retired member or contingent annuitant and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

D. Except as provided in subsection E of this section, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

E. The board may pay the entire retirement benefit in a lump sum pursuant to subsection D of this section only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

F. If any benefit that is payable as a series of periodic payments amounts to less than ~~twenty dollars per month~~ A THRESHOLD AMOUNT DETERMINED BY THE BOARD, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid ~~quarterly, semiannually, annually or~~ in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS AND IS ELIGIBLE FOR THE COVERAGE PROVIDED PURSUANT TO SECTION 38-782 AND THE PAYMENT PURSUANT TO SECTION 38-783, BUT IS NOT ELIGIBLE FOR A BENEFIT INCREASE PURSUANT TO SECTION 38-767.

G. All distributions of retirement benefits to a member shall be distributed within the required distribution provisions of section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury as prescribed in section 38-775.

H. A member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

I. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 23, subdivision (b).

Sec. 6. Section 38-766, Arizona Revised Statutes, is amended to read:

38-766. Retired members; return to work; suspension of benefits; exceptions; maximum benefit

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment and files an application for reretirement on a form that is approved by the director.

2. Attains a normal retirement date, no longer meets the requirements for active membership pursuant to this subsection and files an application for reretirement on a form that is approved by the director.

B. A RETIRED MEMBER WHOSE RETIREMENT BENEFITS HAVE BEEN SUSPENDED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL REPAY ASRS ANY RETIREMENT BENEFITS RECEIVED BY THE MEMBER FROM THE DATE ASRS NOTIFIES THE MEMBER IN WRITING THAT THE MEMBER'S EMPLOYMENT RESULTED IN ACTIVE MEMBERSHIP IN ASRS PURSUANT TO SUBSECTION A OF THIS SECTION, FROM THE DATE ASRS DETERMINES THAT THE MEMBER KNEW OR SHOULD HAVE KNOWN THAT THE MEMBER'S EMPLOYMENT RESULTED IN MEMBERSHIP IN ASRS PURSUANT TO SUBSECTION A OF THIS SECTION OR FOR ANY OTHER PERIOD AS DETERMINED BY ASRS.

~~B.~~ C. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section

38-760, with the same beneficiary, if applicable, as when the member first retired, unless the member has resumed active membership for at least sixty consecutive months. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

~~C.~~ D. Notwithstanding subsection A of this section, ASRS shall not suspend the payment of retirement benefits if a retired member begins or returns to employment with an employer in a position that satisfies all of the following:

1. Results in a true change in position, job duties and job title from the position occupied by the member before ASRS retirement.

2. Either:

(a) Requires participation in another state retirement system, plan or program and the retired member makes contributions or waives participation pursuant to section 38-804, subsection A.

(b) Permits a member to elect to participate in another state retirement system, plan or program and the member makes such an election.

3. Does not require membership in the defined benefit plan established by this article.

~~D.~~ E. A retired member who returns to work pursuant to subsection ~~C~~ D of this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

~~E.~~ F. Section 38-769, subsection L applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

G. AN EMPLOYER THAT ENGAGED THE RETIRED MEMBER TO WORK PURSUANT TO THIS SECTION SHALL PAY TO ASRS AN AMOUNT EQUAL TO THE RATE ESTABLISHED BY THE ACTUARY PURSUANT TO SECTION 38-766.02, SUBSECTION B FOR THE PERIOD STARTING WITH THE FIRST DAY THE RETIRED MEMBER BEGAN WORKING AFTER RETIREMENT THROUGH THE EARLIER OF:

1. THE DATE THE MEMBER TERMINATES EMPLOYMENT.

2. THE DATE THE EMPLOYER BEGINS PAYMENT FOR THAT MEMBER PURSUANT TO SECTION 38-766.02.

3. THE DATE THE MEMBER RESUMES ACTIVE MEMBERSHIP PURSUANT TO SUBSECTION A OF THIS SECTION AND THE MEMBER AND EMPLOYER ARE REQUIRED TO MAKE CONTRIBUTIONS PURSUANT TO SECTION 38-736, 38-737 OR 38-738.

Sec. 7. Section 38-766.01, Arizona Revised Statutes, is amended to read:

38-766.01. Retired members; return to work

A. Notwithstanding section 38-766, at a retired member's election, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.

2. The retired member terminated DIRECT employment WITH AN EMPLOYER at least twelve CONSECUTIVE months before returning to work.

3. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

B. A retired member's election to return to work under this section is irrevocable for the remainder of the retired member's employment for which the retiree made the election.

C. The retired member shall acknowledge this section in writing and file the acknowledgement with the employer within thirty days of returning to work.

D. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05.

E. A retired member who returns to work pursuant to this section does not accrue credited service, member service as provided in section 15-1628, subsection B, paragraph 4, additional account balances, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work. The period the retired member returns to work is not eligible for purchase under section 38-743 or 38-744.

Sec. 8. Title 38, chapter 5, article 2, Arizona Revised Statutes, is amended by adding section 38-766.02, to read:

38-766.02. Retired members; return to work; employer contribution payments; definitions

A. NOTWITHSTANDING SECTION 38-766.01, SUBSECTION D, BEGINNING JULY 1, 2014, AN EMPLOYER SHALL PAY CONTRIBUTIONS AT AN ALTERNATE CONTRIBUTION RATE ON BEHALF OF A RETIRED MEMBER WHO RETURNS TO WORK IN ANY CAPACITY IN A POSITION ORDINARILY FILLED BY AN EMPLOYEE OF THE EMPLOYER WHO IS INCLUDED IN AGREEMENTS PROVIDING FOR THEIR COVERAGE UNDER THE FEDERAL OLD AGE AND SURVIVORS INSURANCE SYSTEM. THIS SUBSECTION APPLIES TO A RETIRED MEMBER WHO HAS BEEN RETIRED FOR MORE THAN THREE HUNDRED SIXTY-FIVE DAYS IF THE RETIRED MEMBER HAS REACHED A NORMAL RETIREMENT AGE OR IF THE RETIRED MEMBER RETIRED UNDER SECTION 38-758 AND THE RETIRED MEMBER'S RETIREMENT BENEFIT HAS NOT BEEN SUSPENDED PURSUANT TO SECTION 38-766.

B. THE ASRS ACTUARY SHALL DETERMINE THE ALTERNATE CONTRIBUTION RATE IN AN ANNUAL VALUATION PERFORMED AS OF JUNE 30. FOR THE FISCAL YEAR BEGINNING ON JULY 1 OF THE FOLLOWING CALENDAR YEAR, THE VALUATION SHALL DETERMINE THE

PERCENTAGE TO BE APPLIED TO THE COMPENSATION, GROSS SALARY OR CONTRACT FEE OF A RETIRED MEMBER WHO MEETS THE REQUIREMENTS OF THIS SECTION.

C. THE ALTERNATE CONTRIBUTION RATE SHALL NOT BE LESS THAN TWO PER CENT IN ANY FISCAL YEAR. THE ALTERNATE CONTRIBUTION RATE IS EQUAL TO THE LESSER OF:

1. THE EMPLOYER CONTRIBUTION RATE ESTABLISHED BY THE ASRS ACTUARY PURSUANT TO SECTION 38-737 PLUS THE EMPLOYER CONTRIBUTION RATE ESTABLISHED BY THE ASRS ACTUARY PURSUANT TO SECTION 38-797.06.

2. TWO TIMES THE PAST SERVICE FUNDING REQUIREMENT RATE ESTABLISHED BY THE ASRS ACTUARY PURSUANT TO SECTION 38-737 PLUS THE PAST SERVICE FUNDING REQUIREMENT RATE ESTABLISHED BY THE ASRS ACTUARY PURSUANT TO SECTION 38-797.06.

D. ASRS SHALL DETERMINE THE SCHEDULE AND METHOD OF PAYMENT OF THE ALTERNATE CONTRIBUTION RATE. SUBJECT TO SECTION 38-738, SUBSECTION A, ALL CONTRIBUTIONS MADE BY THE EMPLOYER AND ALLOCATED TO THE FUND ESTABLISHED BY SECTION 38-712 ARE IRREVOCABLE AND SHALL BE USED AS BENEFITS UNDER THIS ARTICLE OR TO PAY THE EXPENSES OF ASRS. PAYMENTS MADE PURSUANT TO THIS SECTION BY EMPLOYERS BECOME DELINQUENT AFTER THE DUE DATE PRESCRIBED IN THE BOARD'S RULES AND THEREAFTER SHALL BE INCREASED BY INTEREST FROM AND AFTER THAT DATE UNTIL PAYMENT IS RECEIVED BY ASRS. ASRS SHALL CHARGE INTEREST ON THE DELINQUENT PAYMENTS AS PRESCRIBED IN SECTION 38-711. ASRS MAY RECOVER DELINQUENT PAYMENTS DUE UNDER THIS SECTION, TOGETHER WITH INTEREST CHARGES AS PROVIDED IN THIS SECTION, BY ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST AN EMPLOYER LIABLE FOR PAYMENTS OR, AT THE REQUEST OF THE DIRECTOR, ASRS MAY DEDUCT THE DELINQUENT PAYMENTS AND INTEREST CHARGES FROM ANY OTHER MONIES, INCLUDING EXCISE REVENUE TAXES, PAYABLE TO THE EMPLOYER BY ANY DEPARTMENT OR AGENCY OF THIS STATE.

E. AN EMPLOYER OF A RETIRED MEMBER SHALL SUBMIT ANY REPORTS, DATA, PAPERWORK OR MATERIALS THAT ARE REQUESTED BY ASRS AND THAT ARE NECESSARY TO DETERMINE THE COMPENSATION, GROSS SALARY OR CONTRACT FEE ASSOCIATED WITH A RETIRED MEMBER WHO RETURNS TO WORK OR TO DETERMINE THE FUNCTION, UTILIZATION, EFFICACY OR OPERATION OF THE RETURN TO WORK PROGRAM.

F. FOR THE PURPOSES OF THIS SECTION:

1. "CONTRACT FEE" MEANS THE GROSS AMOUNT PAID TO A RETIRED MEMBER AS AN INDEPENDENT CONTRACTOR MINUS AN AMOUNT, NOT TO EXCEED TEN PER CENT, FOR AN ADMINISTRATIVE FEE.

2. "GROSS SALARY" MEANS THE GROSS AMOUNT PAID TO A RETIRED MEMBER BY A LEASING COMPANY AS SALARY OR WAGES, INCLUDING AMOUNTS THAT ARE SUBJECT TO DEFERRED COMPENSATION OR TAX SHELTER AGREEMENTS, FOR SERVICES RENDERED OR THAT WOULD HAVE BEEN PAID TO THE RETIRED MEMBER EXCEPT FOR THE MEMBER'S ELECTION OR A LEGAL REQUIREMENT THAT ALL OR PART OF THE GROSS AMOUNT BE USED FOR OTHER PURPOSES.

Sec. 9. Section 38-770, Arizona Revised Statutes, is amended to read:

38-770. Eligible rollover distribution; definitions

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.

C. In addition to the other elections permitted in this section, effective for distributions made from and after December 31, 2006, a designated beneficiary of a member who is not the member's surviving spouse may elect, at any time and in the manner prescribed by ASRS, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan described in subsection D, paragraph 3, subdivisions (a) and (b) of this section. For the purposes of this subsection, "designated beneficiary" has the same meaning prescribed in section 38-775.

D. For the purposes of this section:

1. "Direct rollover" means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. "Distributee" means a member, a member's surviving spouse or a member's spouse or former spouse who is the alternate payee under an acceptable domestic relations order as defined in section 38-773.

3. "Eligible retirement plan" means any of the following that accepts a distributee’s eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a

political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from ASRS.

(g) BEGINNING JANUARY 1, 2008, A ROTH INDIVIDUAL RETIREMENT ACCOUNT DESCRIBED IN SECTION 408A OF THE INTERNAL REVENUE CODE.

4. "Eligible rollover distribution" means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) Except as provided in this paragraph, the portion of any distribution that is not includable in gross income. A distribution does not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income if the portion is paid only to an individual retirement account or annuity described in section 408(a) or 408(b) of the internal revenue code, to a qualified plan described in section 401(a) of the internal revenue code or an annuity contract described in section 403(b) of the internal revenue code that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(d) Any distribution that is made due to hardship of the member.

Sec. 10. Section 38-773, Arizona Revised Statutes, is amended to read:

38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of its acceptance of the domestic relations order and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.

2. The name and last known mailing address of each alternate payee covered by the order.

3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.

4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.

2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.

2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. IF AN ALTERNATE PAYEE PREDECEASES THE MEMBER, AMOUNTS PAYABLE TO THE ALTERNATE PAYEE CEASE ON THE DEATH OF THE ALTERNATE PAYEE. ASRS SHALL CAUSE THE AMOUNT FORMERLY PAYABLE TO THE ALTERNATE PAYEE TO REVERT TO THE MEMBER.

~~G.~~ H. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or

affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

Sec. 11. Section 38-797.07, Arizona Revised Statutes, is amended to read:

38-797.07. LTD program benefits; limitations; definitions

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph ~~7~~ 8 of this subsection, monthly LTD program benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) For a member whose disability commences before July 1, 2008, sixty-four per cent of social security disability benefits that the member and the member's dependents are eligible to receive.

(b) For a member whose disability commences on or after July 1, 2008, eighty-five per cent of social security disability benefits that the member and the member's dependents are eligible to receive, but not including:

(i) The amount of attorney fees approved pursuant to social security administration rules and reasonable documented costs paid to an attorney to secure that disability benefit.

(ii) Any cost-of-living adjustments that are granted after the member commences benefits under this section.

(c) For a member whose disability commences before July 1, 2008, eighty-three per cent of social security retirement benefits that the member is eligible to receive.

(d) For a member whose disability commences on or after July 1, 2008, eighty-five per cent of social security retirement benefits that the member is eligible to receive, but not including any cost-of-living adjustments that are granted after the member commences benefits under this section.

(e) All of any workers' compensation benefits.

(f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

(h) Fifty per cent of any salary, wages, commissions or other employment related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly LTD program benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. MONTHLY LTD PROGRAM BENEFITS ARE NOT PAYABLE TO A MEMBER WHO FILES AN INITIAL CLAIM FOR DISABILITY MORE THAN TWENTY-FOUR MONTHS AFTER THE DATE OF THE MEMBER'S DATE OF DISABILITY.

~~3.~~ 4. Monthly LTD program benefits are not payable to a member who is receiving retirement benefits from ASRS.

~~4.~~ 5. Monthly LTD program benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) For a member whose most recent membership in the LTD program commences before July 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer before July 1, 1988.

(e) For a member whose most recent membership in the LTD program commences on or after July 1, 2008, an injury or sickness for which the member received medical treatment within six months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an active member of an employer for twelve continuous months.

~~5.~~ 6. Monthly LTD program benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

~~6.~~ 7. Monthly LTD program benefits are payable only for disabilities that commence on or after July 1, 1988.

~~7.~~ 8. The minimum benefit for a member who is entitled to receive monthly LTD program benefits is fifty dollars per month.

~~8.~~ 9. Members are eligible to receive the LTD program benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the social security benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the social security benefits until the social security benefits are actually awarded, or if the social security benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that those benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

~~9.~~ 10. A member shall be considered totally disabled if:

(a) During the first thirty months of a period of disability, the member is unable to perform all duties of the position held by the member when the member became totally disabled.

(b) For a member who has received monthly LTD program benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled LTD program benefits prescribed in paragraph 1 of this subsection.

B. A member who receives monthly LTD program benefits is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until LTD program benefits cease to be payable, except that for a member who receives monthly LTD program benefits on or after June 30, 1999 the number of years of service credited to the member's retirement account during the period the member receives LTD program benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly LTD program benefits.

D. ASRS MAY SUSPEND OR TERMINATE BENEFITS UNDER THIS ARTICLE IF A MEMBER FAILS TO PROVIDE INFORMATION, DATA, PAPERWORK OR OTHER MATERIALS THAT ARE REQUESTED BY ASRS OR THE INSURANCE COMPANY OR CLAIMS ADMINISTRATOR THAT IS SELECTED BY THE BOARD TO ADMINISTER THE LTD PROGRAM.

~~D.~~ E. For the purposes of this section:

1. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

2. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231u).

Sec. 12. Section 38-922, Arizona Revised Statutes, is amended to read:

38-922. Transfer or redemption of service credits

A. Service credits qualified in accordance with section 38-730 OR 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:

1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer. IF A SYSTEM'S OR PLAN'S MARKET VALUE IS GREATER THAN ONE HUNDRED PER CENT, THE SYSTEM OR PLAN SHALL USE A ONE HUNDRED PER CENT MARKET VALUE.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn ~~his~~ THE APPLICANT'S member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which ~~he~~ THE APPLICANT is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

F. A member electing to transfer to or redeem service with the public safety personnel retirement system, the elected officials' retirement plan or the corrections officer retirement plan pursuant to this section may pay for the service being transferred or redeemed in the form of a lump sum payment to the system or plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Sec. 13. Rule making authority

Notwithstanding any other law, the Arizona state retirement system may conduct rule making for the purpose of implementing this act.

Sec. 14. Legislative intent; alternate contribution rate; ASRS employers

The legislature intends by this act to establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system.

Sec. 15. Appropriation; Arizona state retirement system; exemption

A. The sum of $150,000 is appropriated from the Arizona state retirement system administration account in fiscal year 2011-2012 to the Arizona state retirement system for the administrative implementation of this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.