

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 122
HOUSE BILL 2294

AN ACT

AMENDING SECTIONS 38-727 AND 38-801, ARIZONA REVISED STATUTES; RELATING TO
SUPERIOR COURT COMMISSIONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-727, Arizona Revised Statutes, is amended to
3 read:

4 38-727. Eligibility: options

5 The following provisions apply to all employees hired on or after the
6 effective date:

7 1. All employees and officers of this state and all officers and
8 employees of political subdivisions establishing a retirement plan
9 administered by the board pursuant to this article who as a result of state
10 service or service for the political subdivision are included in agreements
11 providing for their coverage under the federal old age and survivors
12 insurance system are subject to this article, except that membership is not
13 mandatory:

14 (a) On the part of any employee who is eligible and who elects to
15 participate in the optional retirement programs established by the Arizona
16 board of regents pursuant to the authority conferred by section 15-1628 or by
17 a community college district board pursuant to authority conferred by section
18 15-1451.

19 (b) For a state elected official who is subject to term limits, who is
20 eligible for participation in ASRS because the state elected official elected
21 not to participate in the elected officials' retirement plan as provided in
22 section 38-804, subsection A and who elects not to participate in ASRS as
23 provided in paragraph 7 of this section.

24 (c) On the part of any employee or officer who is eligible to
25 participate and who participates in the elected officials' retirement plan
26 pursuant to article 3 of this chapter, the public safety personnel retirement
27 system pursuant to article 4 of this chapter or the corrections officer
28 retirement plan pursuant to article 6 of this chapter.

29 2. All employees and officers of political subdivisions whose
30 compensation is provided wholly or in part from state monies and who are
31 declared to be state employees and officers by the legislature for retirement
32 purposes are subject, on legislative enactment, to this article and are
33 members of ASRS.

34 3. Any member whose service terminates other than by death or
35 withdrawal from membership is deemed to be a member of ASRS until the
36 member's death benefit is paid.

37 4. Employees and officers shall not become members of ASRS and, if
38 they are members immediately before becoming employed as provided by this
39 section, shall have their membership status suspended while they are employed
40 by state departments paying the salaries of their officers and employees
41 wholly or in part from monies received from sources other than appropriations
42 from the state general fund for the period or periods payment of the employer
43 contributions is not made by or on behalf of the departments.

1 5. Notwithstanding other provisions of this section, a temporary
2 employee of the legislature whose projected term of employment is for not
3 more than six months is ineligible for membership in ASRS. If the employment
4 continues beyond six successive months, the employee may elect to either:

5 (a) Receive credit for service for the first six months of employment
6 and establish membership in ASRS as of the beginning of the current term of
7 employment if, within forty-five days after the first six months of
8 employment, both the employer and the employee contribute to ASRS the amount
9 that would have been required to be contributed to ASRS during the first six
10 months of employment as if the employee had been a member of ASRS during
11 those six months.

12 (b) Establish membership in ASRS as of the day following the
13 completion of six months of employment.

14 6. A person who is employed in postgraduate training in an approved
15 medical residency training program of an employer or a postdoctoral scholar
16 who is employed by a university under the jurisdiction of the Arizona board
17 of regents is ineligible for membership in ASRS.

18 7. A state elected official who is subject to term limits and who is
19 eligible for participation in ASRS because the state elected official elected
20 not to participate in the elected officials' retirement plan as provided in
21 section 38-804, subsection A may elect not to participate in ASRS. The
22 election not to participate is specific for that term of office. The state
23 elected official who is subject to term limits shall make the election in
24 writing and file the election with ASRS within thirty days after the elected
25 official's retirement plan mails the notice to the state elected official of
26 the state elected official's eligibility to participate in ASRS. The
27 election is effective on the first day of the state elected official's
28 eligibility. If a state elected official who is subject to term limits fails
29 to make an election as provided in this paragraph, the state elected official
30 is deemed to have elected to participate in ASRS. The election not to
31 participate in ASRS is irrevocable and constitutes a waiver of all benefits
32 provided by ASRS for the state elected official's entire term, except for any
33 benefits accrued by the state elected official in ASRS for periods of
34 participation before being elected to an office subject to term limits or any
35 benefits expressly provided by law.

36 ~~8. Every full-time superior court commissioner who is appointed on or
37 after July 1 of the first fiscal year after the social security
38 administration approves the inclusion of superior court commissioners on this
39 state's section 218 agreement is a member of ASRS and is subject to this
40 article.~~

41 ~~9.~~ 8. Before July 1, 2015, a person may elect not to participate in
42 ASRS if the person becomes employed by an employer after the person has
43 attained at least sixty-five years of age, is not an active member, inactive
44 member, retired member or receiving benefits pursuant to article 2.1 of this
45 chapter and does not have any credited service or prior service in ASRS. The
46 employee shall make the election not to participate in writing and file the

1 election with ASRS within thirty days of employment. The election not to
2 participate is irrevocable for the remainder of the person's employment for
3 which the person made the election and constitutes a waiver of all benefits
4 provided by the Arizona state retirement system. The period the person works
5 is not eligible for purchase under section 38-743 or 38-744.

6 Sec. 2. Section 38-801, Arizona Revised Statutes, is amended to read:
7 38-801. Definitions

8 In this article, unless the context otherwise requires:

9 1. "Accumulated contributions" means the sum of all member
10 contributions deducted from the member's salary pursuant to section 38-810,
11 subsection A plus the amount transferred to the fund on behalf of the member
12 plus the amount deposited in the fund pursuant to section 38-816.

13 2. "Actuarial equivalent" means equality in present value of the
14 aggregate amounts expected to be received under two different forms of
15 payment, based on mortality and interest assumptions adopted by the board.

16 3. "Alternate payee" means the spouse or former spouse of a
17 participant as designated in a domestic relations order.

18 4. "Alternate payee's portion" means benefits that are payable to an
19 alternate payee pursuant to a plan approved domestic relations order.

20 5. "Average yearly salary" means the result obtained by dividing the
21 total salary paid to an employee during a considered period by the number of
22 years, including fractional years, in which the salary was received. The
23 considered period shall be:

24 (a) For an elected official who becomes a member of the plan before
25 January 1, 2012, the three consecutive years within the last ten completed
26 years of credited service as an elected official that yield the highest
27 average. If a member does not have three consecutive years of credited
28 service as an elected official, the considered period is the member's last
29 consecutive period of employment with a plan employer immediately before
30 retirement.

31 (b) For an elected official who becomes a member of the plan on or
32 after January 1, 2012, the five consecutive years within the last ten
33 completed years of credited service as an elected official that yield the
34 highest average. If a member does not have five consecutive years of
35 credited service as an elected official, the considered period is the
36 member's last consecutive period of employment with a plan employer
37 immediately before retirement.

38 6. "Board" means the board of trustees of the system.

39 7. "Credited service" means the number of whole and fractional years
40 of a member's service as an elected official after the elected official's
41 effective date of participation for which member and employer contributions
42 are on deposit with the fund, plus credited service transferred to the plan
43 from another retirement system or plan for public employees of this state,
44 plus service as an elected official before the elected official's effective
45 date of participation that is being funded pursuant to a joinder agreement
46 pursuant to section 38-810, subsection C and section 38-815 or service that

1 was redeemed pursuant to section 38-816. Credited service does not include
2 periods of service for which an active member is uncompensated by the
3 employer and for which no contributions to the plan are made.

4 8. "Cure period" means the ninety-day period in which a participant or
5 alternate payee may submit an amended domestic relations order and request a
6 determination, calculated from the time the plan issues a determination
7 finding that a previously submitted domestic relations order did not qualify
8 as a plan approved domestic relations order.

9 9. "Determination" means a written document that indicates to a
10 participant and alternate payee whether a domestic relations order qualifies
11 as a plan approved domestic relations order.

12 10. "Determination period" means the ninety-day period in which the
13 plan must review a domestic relations order that is submitted by a
14 participant or alternate payee to determine whether the domestic relations
15 order qualifies as a plan approved domestic relations order, calculated from
16 the time the plan mails a notice of receipt to the participant and alternate
17 payee.

18 11. "Direct rollover" means a payment by the plan to an eligible
19 retirement plan that is specified by the distributee.

20 12. "Distributee" means a member, a member's surviving spouse or a
21 member's spouse or former spouse who is the alternate payee under a plan
22 approved domestic relations order.

23 13. "Domestic relations order" means an order of a court of this state
24 that is made pursuant to the domestic relations laws of this state and that
25 creates or recognizes the existence of an alternate payee's right to, or
26 assigns to an alternate payee the right to, receive a portion of the benefits
27 payable to a participant.

28 14. "Effective date of participation" means August 7, 1985, except with
29 respect to employers and their elected officials whose contributions to the
30 plan commence after that date, in which case the effective date of their
31 participation in the plan is specified in the applicable joinder agreement.

32 15. "Elected official" means:

33 (a) Every elected official of this state.

34 (b) Every elected official of each county of this state.

35 (c) Every justice of the supreme court, ~~—~~

36 ~~(d)~~ every judge of the court of appeals, ~~—~~

37 ~~(e)~~ every judge of the superior court, ~~—~~

38 ~~(f)~~ AND every full-time superior court commissioner ~~who is a member of~~
39 ~~the plan before July 1 of the first fiscal year after the social security~~
40 ~~administration approves the inclusion of superior court commissioners on this~~
41 ~~state's section 218 agreement~~, except full-time superior court commissioners
42 who failed to make a timely election of membership under the judges'
43 retirement plan, repealed on August 7, 1985.

44 ~~(g)~~ (d) The administrator of the board if the administrator is a
45 natural person but only if the administrator is employed by the board before
46 January 1, 2012.

1 ~~(h)~~ (e) Each elected official of an incorporated city or town whose
2 employer has executed a proper joinder agreement for coverage of its elected
3 officials.

4 16. "Eligible child" means an unmarried child of a deceased active or
5 retired member who meets one of the following qualifications:

6 (a) Is under eighteen years of age.

7 (b) Is at least eighteen years of age and under twenty-three years of
8 age only during any period that the child is a full-time student.

9 (c) Is under a disability that began before the child attained
10 twenty-three years of age and remains a dependent of the surviving spouse or
11 guardian.

12 17. "Eligible retirement plan" means any of the following that accepts
13 a distributee's eligible rollover distribution:

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

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

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

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

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

24 (f) An eligible deferred compensation plan described in section 457(b)
25 of the internal revenue code that is maintained by a state, a political
26 subdivision of a state or any agency or instrumentality of a state or a
27 political subdivision of a state and that agrees to separately account for
28 amounts transferred into the eligible deferred compensation plan from this
29 plan.

30 18. "Eligible rollover distribution" means a payment to a distributee,
31 but does not include any of the following:

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

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

39 (c) The portion of any distribution that is not includable in gross
40 income.

41 19. "Employer" means a department, agency or political subdivision of
42 this state that makes employer contributions to the plan pursuant to section
43 38-810 on behalf of an elected official who participates in the plan.

44 20. "Fund" means the elected officials' retirement plan fund.

45 21. "Notice of receipt" means a written document that is issued by the
46 plan to a participant and alternate payee and that states that the plan has

- 1 received a domestic relations order and a request for a determination that
2 the domestic relations order is a plan approved domestic relations order.
- 3 22. "Participant" means a member who is subject to a domestic relations
4 order.
- 5 23. "Participant's portion" means benefits that are payable to a
6 participant pursuant to a plan approved domestic relations order.
- 7 24. "Pension" means a series of monthly payments to a person who is
8 entitled to receive benefits under the plan.
- 9 25. "Personal representative" means the personal representative of a
10 deceased alternate payee.
- 11 26. "Plan" means the elected officials' retirement plan.
- 12 27. "Plan approved domestic relations order" means a domestic relations
13 order that the plan approves as meeting all the requirements for a plan
14 approved domestic relations order as otherwise prescribed in this article.
- 15 28. "Retired member" means a person who is being paid a pension based
16 on the person's credited service as a member of the plan.
- 17 29. "Segregated funds" means the amount of benefits that would
18 currently be payable to an alternate payee pursuant to a domestic relations
19 order under review by the plan, or a domestic relations order submitted to
20 the plan that failed to qualify as a plan approved domestic relations order,
21 if the domestic relations order were determined to be a plan approved
22 domestic relations order.
- 23 30. "System" means the public safety personnel retirement system.

APPROVED BY THE GOVERNOR APRIL 17, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2013.