

REFERENCE TITLE: retirement; return to work; restrictions

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2237

Introduced by
Representative Allen J

AN ACT

AMENDING SECTIONS 38-766, 38-849 AND 38-884, ARIZONA REVISED STATUTES;
RELATING TO PUBLIC PENSION PLANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-766, Arizona Revised Statutes, is amended to
3 read:

4 38-766. Retired members; return to work; suspension of
5 benefits; exceptions; maximum benefit

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

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

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

15 B. A retired member whose retirement benefits have been suspended
16 pursuant to subsection A of this section shall repay ASRS any retirement
17 benefits received by the member from the date ASRS notifies the member in
18 writing that the member's employment resulted in active membership in ASRS
19 pursuant to subsection A of this section, from the date ASRS determines that
20 the member knew or should have known that the member's employment resulted in
21 membership in ASRS pursuant to subsection A of this section or for any other
22 period that approximates the duration of the violation, as determined by
23 ASRS.

24 C. A member who satisfies subsection A, paragraph 1 or 2 of this
25 section is entitled to receive an annuity recomputed to include the
26 additional compensation and credited service. However, the recomputed
27 annuity shall be in the original optional form chosen pursuant to section
28 38-760, with the same beneficiary, if applicable, as when the member first
29 retired, unless the member has resumed active membership for at least sixty
30 consecutive months. A member who retired under a provision of law allowing
31 increased benefits if the retirement occurred during a specific period of
32 time and who subsequently becomes an employee under ASRS shall not retain the
33 increased benefits under the prior law when benefits are computed for the
34 member's most recent retirement.

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

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

41 2. Either:

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

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

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

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

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

15 G. An employer that engaged the retired member to work pursuant to
16 this section shall pay to ASRS an amount equal to the rate established by the
17 actuary pursuant to section 38-766.02, subsection B for the period starting
18 with the first day the retired member began working after retirement through
19 the earlier of:

20 1. The date the member terminates employment.

21 2. The date the employer begins payment for that member pursuant to
22 section 38-766.02.

23 3. The date the member resumes active membership pursuant to
24 subsection A of this section and the member and employer are required to make
25 contributions pursuant to section 38-736, 38-737 or 38-738.

26 H. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER WITHIN
27 THREE HUNDRED SIXTY-FIVE DAYS AFTER THE MEMBER'S RETIREMENT DATE.

28 Sec. 2. Section 38-849, Arizona Revised Statutes, is amended to read:

29 38-849. Limitations on receiving pension; violation;
30 classification; reemployment after severance;
31 reinstatement of service credits; reemployment of
32 retired member or member with a disability;
33 definition

34 A. If a member is convicted of, or discharged because of, theft,
35 embezzlement, fraud or misappropriation of an employer's property or property
36 under the control of the employer, the member shall be subject to restitution
37 and fines imposed by a court of competent jurisdiction. The court may order
38 the restitution or fines to be paid from any payments otherwise payable to
39 the member from the retirement system.

40 B. A person who knowingly makes any false statement or who falsifies
41 or permits to be falsified any record of the system with an intent to defraud
42 the system is guilty of a class 5 felony. If any change or error in the
43 records results in any member or beneficiary receiving from the system more
44 or less than the member or beneficiary would have been entitled to receive
45 had the records been correct, the local board shall correct such error, and

1 as far as practicable shall adjust the payments in such manner that the
2 actuarial equivalent of the benefit to which such member or beneficiary was
3 correctly entitled shall be paid. If a member is convicted of a crime
4 specified in this subsection, section 13-713 applies.

5 C. If a member who received a severance refund on termination of
6 employment pursuant to section 38-846.02 becomes reemployed with the same
7 employer within two years after the former member's termination date, the
8 member may have forfeited credited service attributable to service rendered
9 during a prior period of service as an employee restored on satisfaction of
10 each of the following conditions:

11 1. The member files with the system a written application for
12 reinstatement of forfeited credited service within ninety days after again
13 becoming an employee.

14 2. The retirement fund is paid the total amount previously withdrawn
15 pursuant to section 38-846.02 plus compound interest from the date of
16 withdrawal to the date of repayment. Interest shall be computed at the rate
17 of nine ~~per cent~~ PERCENT for each year compounded each year from the date of
18 withdrawal to the date of repayment. Forfeited credited service shall not be
19 restored until complete payment is received by the fund.

20 3. The required payment is completed within one year after returning
21 to employee status.

22 D. If a member who received a severance refund on termination of
23 employment, as provided in section 38-846.02, is subsequently reemployed by
24 an employer, the member's prior service credits shall be cancelled and
25 service shall be credited only from the date the member's most recent
26 reemployment period commenced. However, a present active member of the
27 system who forfeited credited service, received a severance refund pursuant
28 to section 38-846.02 and becomes reemployed with the same employer two years
29 or more after the member's termination date or becomes reemployed with
30 another employer may elect to redeem any part of that forfeited credited
31 service by paying into the system any amounts required pursuant to this
32 subsection. A present active member who elects to redeem any part of
33 forfeited credited service for which the member is deemed eligible by the
34 board shall pay into the system the amounts previously paid or transferred to
35 the member as a severance refund plus an amount, computed by the system's
36 actuary that is necessary to equal the increase in the actuarial present
37 value of projected benefits resulting from the redemption calculated using
38 the actuarial methods and assumptions prescribed by the system's actuary. On
39 satisfaction of this obligation the member's prior service credits shall be
40 reinstated.

41 E. If a retired member becomes reemployed in any capacity by the
42 employer from which the member retired before one year ~~from~~ AFTER the date of
43 retirement or in the same position at any time following retirement:

44 1. The following apply:

1 (a) Within ten days after the retired member is reemployed, the local
2 board shall advise the system in writing of the retired member's
3 reemployment.

4 (b) The system shall not make pension payments to the retired member
5 during the period of reemployment.

6 (c) Employee contributions shall not be made on the retired member's
7 account, nor shall any service be credited during the period of reemployment.
8 On subsequent termination of employment by the retired member, the retired
9 member is entitled to receive a pension based on the member's service and
10 compensation before the date of the member's reemployment. The employer
11 shall pay the alternate contribution rate pursuant to section 38-843.05.

12 2. Paragraph 1, subdivisions (a) and (b) of this subsection do not
13 apply if either:

14 (a) The retired member becomes reemployed after sixty consecutive days
15 from the member's retirement date as a result of participating in an open
16 competitive new hire process for an entry level, nonsupervisory position,
17 except if the retired member is hired for the same position.

18 (b) The retired member is hired as a fire inspector or arson
19 investigator.

20 **F. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER WITHIN**
21 **ONE YEAR AFTER THE MEMBER'S RETIREMENT DATE.**

22 ~~F.~~ **G.** If a retired member is assigned voluntary duties acting as a
23 limited authority peace officer, pursuant to the Arizona peace officer
24 standards and training board rules, employee contributions shall not be made
25 on the retired member's account, and any service shall not be credited during
26 the period of reemployment. The employer shall not pay the alternate
27 contribution rate pursuant to section 38-843.05.

28 ~~G.~~ **H.** If after one year from the date of retirement a retired member
29 becomes reemployed by the employer from which the member retired in a
30 position other than the same position from which the member retired, employee
31 contributions shall not be made on the retired member's account, and any
32 service shall not be credited during the period of reemployment. The
33 employer shall pay the alternate contribution rate pursuant to section
34 38-843.05.

35 ~~H.~~ **I.** At any time following retirement, if the retired member becomes
36 employed by an employer, other than the employer from which the member
37 retired, in a position ordinarily filled by an employee of an eligible group,
38 employee contributions shall not be made on the retired member's account, and
39 any service shall not be credited during the period of reemployment. The
40 employer shall pay the alternate contribution rate pursuant to section
41 38-843.05.

42 ~~I.~~ **J.** If a member who retired under an accidental or ordinary
43 disability becomes reemployed as an employee of an eligible group, section
44 38-844 applies and a determination shall be made by the local board as to
45 whether subsection E, ~~F.~~ **G.**, ~~or~~ **H OR I** of this section applies.

1 article. Medical examinations conducted under this article shall be
2 conducted by a physician and shall not be conducted or used for purposes of
3 hiring, advancement, discharge, job training or other terms, conditions and
4 privileges of employment unrelated to receipt or qualification for pension
5 benefits or service credits from the fund. This subsection does not affect
6 or impair the right of an employer to prescribe medical or physical standards
7 for employees or prospective employees.

8 C. If a member who becomes a member of the plan before January 1, 2012
9 ceases to be an employee for any reason other than death or retirement,
10 within twenty days after filing a completed application with the board, the
11 member is entitled to receive the following amounts, less any benefit
12 payments the member has received and any amount the member may owe to the
13 plan:

14 1. If the member has less than five years of credited service with the
15 plan, the member may withdraw the member's accumulated contributions from the
16 plan.

17 2. If the member has five or more years of credited service with the
18 plan, the member may withdraw the member's accumulated contributions plus an
19 amount equal to the amount determined as follows:

20 (a) 5.0 to 5.9 years of credited service, twenty-five percent of all
21 member contributions deducted from the member's salary pursuant to section
22 38-891, subsection B.

23 (b) 6.0 to 6.9 years of credited service, forty percent of all member
24 contributions deducted from the member's salary pursuant to section 38-891,
25 subsection B.

26 (c) 7.0 to 7.9 years of credited service, fifty-five percent of all
27 member contributions deducted from the member's salary pursuant to section
28 38-891, subsection B.

29 (d) 8.0 to 8.9 years of credited service, seventy percent of all
30 member contributions deducted from the member's salary pursuant to section
31 38-891, subsection B.

32 (e) 9.0 to 9.9 years of credited service, eighty-five percent of all
33 member contributions deducted from the member's salary pursuant to section
34 38-891, subsection B.

35 (f) 10.0 or more years of credited service, one hundred percent of all
36 member contributions deducted from the member's salary pursuant to section
37 38-891, subsection B.

38 D. If a member who becomes a member of the plan before January 1, 2012
39 has more than ten years of credited service with the plan, leaves the monies
40 prescribed in subsection C of this section on account with the plan for more
41 than thirty days after termination of employment and after that time period
42 requests a refund of those monies, the member is entitled to receive the
43 amount prescribed in subsection C of this section plus interest at a rate
44 determined by the board for each year computed from and after the member's
45 termination of employment.

1 E. The accumulated member contributions of a member who ceases to be
2 an employee for a reason other than death or retirement and who becomes a
3 member of the plan on or after January 1, 2012 shall be paid to the member
4 plus interest at a rate determined by the board as of the date of termination
5 within twenty days after filing with the plan a written application for
6 payment.

7 F. If the refund includes monies that are an eligible rollover
8 distribution and the member elects to have the distribution paid directly to
9 an eligible retirement plan or individual retirement account or annuity and
10 specifies the eligible retirement plan or individual retirement account or
11 annuity to which the distribution is to be paid, the distribution shall be
12 made in the form of a direct trustee-to-trustee transfer to the specified
13 eligible retirement plan. The distribution shall be made in the form and at
14 the time prescribed by the board.

15 G. For distributions occurring from and after December 31, 2007, a
16 member or a member's beneficiary, including a nonspouse designated
17 beneficiary to the extent permitted under subsection H of this section, may
18 roll over an eligible rollover distribution as defined in section 402(c)(4)
19 of the internal revenue code to a Roth individual retirement account, if, for
20 distributions occurring before January 1, 2010, the member or the member's
21 beneficiary satisfies the requirements for making a Roth individual
22 retirement account contribution under section 408A(c)(3)(B) of the internal
23 revenue code, as in effect on the date of the rollover. Any amount rolled
24 over to a Roth individual retirement account is included in the gross income
25 of the member or the member's beneficiary to the extent the amounts would
26 have been included in gross income if not rolled over as required under
27 section 408A(d)(3)(A) of the internal revenue code. For the purposes of this
28 subsection, the administrator is not responsible for ensuring the member or
29 the member's beneficiary is eligible to make a rollover to a Roth individual
30 retirement account.

31 H. For distributions made from and after December 31, 2009, a
32 nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the
33 internal revenue code may elect to directly roll over an eligible rollover
34 distribution to an individual retirement account under section 408(a) of the
35 internal revenue code or an individual retirement annuity under section
36 408(b) of the internal revenue code that is established on behalf of the
37 designated beneficiary and that will be treated as an inherited individual
38 retirement plan pursuant to section 402(c)(11) of the internal revenue code.
39 In order to be able to roll over the distribution, the distribution otherwise
40 must satisfy the definition of an eligible rollover distribution as defined
41 in section 402(c)(4) of the internal revenue code. In applying this
42 subsection, a nonspouse rollover is not subject to the direct rollover
43 requirements under section 401(a)(31) of the internal revenue code, the
44 rollover notice requirements under section 402(f) of the internal revenue

1 code or the mandatory withholding requirements under section 3405(c) of the
2 internal revenue code.

3 I. For plan years occurring before January 1, 2007, the period for
4 providing the rollover notice as required under section 402(f) of the
5 internal revenue code is no less than thirty days and no more than ninety
6 days before the date of distribution and, for plan years beginning from and
7 after December 31, 2006, the period for providing the rollover notice as
8 required under section 402(f) of the internal revenue code is no less than
9 thirty days and no more than one hundred eighty days before the date of
10 distribution.

11 J. Service shall be credited to a member's individual credited service
12 account in accordance with rules the local board prescribes. In no case
13 shall more than twelve months of credited service be credited on account of
14 all service rendered by a member in any one year. In no case shall service
15 be credited for any period during which the member is not employed in a
16 designated position, except as provided by sections 38-921 and 38-922.

17 K. Credited service is forfeited if the amounts prescribed in
18 subsection C, D or E of this section are paid or are transferred in
19 accordance with this section.

20 L. If a former member becomes reemployed with the same employer within
21 two years after the former member's termination date, a member may have
22 forfeited credited service attributable to service rendered during a prior
23 period of service as an employee restored on satisfaction of each of the
24 following conditions:

25 1. The member files with the plan a written application for
26 reinstatement of forfeited credited service within ninety days after again
27 becoming an employee.

28 2. The retirement fund is paid the total amount previously withdrawn
29 pursuant to subsection C, D or E of this section plus compound interest from
30 the date of withdrawal to the dates of repayment. Interest shall be computed
31 at the rate of nine percent for each year compounded each year from the date
32 of withdrawal to the date of repayment. Forfeited credited service shall not
33 be restored until complete payment is received by the fund.

34 3. The required payment is completed within one year after returning
35 to employee status.

36 M. If a member who receives a severance refund on termination of
37 employment pursuant to subsection C, D or E of this section is subsequently
38 reemployed by an employer, the member's prior service credits are cancelled,
39 and the board shall credit service only from the date the member's most
40 recent reemployment period commenced. However, a present active member of
41 the plan who received a refund of accumulated contributions from the plan
42 pursuant to subsection C, D or E of this section, forfeited credited service
43 pursuant to subsection K of this section and becomes reemployed with the same
44 employer two years or more after the member's termination date or becomes
45 reemployed with another employer may elect to redeem any part of that

1 forfeited credited service by paying into the plan any amounts required
2 pursuant to this subsection. A present active member who elects to redeem
3 any part of forfeited credited service for which the member is deemed
4 eligible by the board shall pay into the plan the amounts previously paid or
5 transferred as a refund of the member's accumulated contributions plus an
6 amount, computed by the plan's actuary that is necessary to equal the
7 increase in the actuarial present value of projected benefits resulting from
8 the redemption calculated using the actuarial methods and assumptions
9 prescribed by the plan's actuary. On satisfaction of this obligation, the
10 board shall reinstate the member's prior service credits.

11 N. A retired member may become employed by an employer in a designated
12 position and continue to receive a pension if the employment occurs at least
13 twelve months after retirement. The retired member shall not contribute to
14 the fund and shall not accrue credited service. If a retired member becomes
15 employed by an employer in a designated position before twelve months after
16 retirement:

17 1. Payment of the retired member's pension shall be suspended until
18 the retired member again ceases to be an employee. The amount of pension
19 shall not be changed on account of service as an employee subsequent to
20 retirement.

21 2. The retired member shall not contribute to the fund and shall not
22 accrue credited service.

23 O. AN EMPLOYER MAY NOT CONTRACT WITH OR LEASE A RETIRED MEMBER WITHIN
24 TWELVE MONTHS AFTER THE MEMBER'S RETIREMENT DATE.