

REFERENCE TITLE: public retirement systems; ineligible employees

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

## HB 2562

Introduced by  
Representative Robson

### AN ACT

AMENDING TITLE 12, CHAPTER 7, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-824; AMENDING SECTIONS 38-797, 38-797.07 AND 38-842, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 38, CHAPTER 5, ARTICLE 8, ARIZONA REVISED STATUTES, TO "DEFINED CONTRIBUTION PLANS"; AMENDING SECTION 38-951, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-955; RELATING TO PUBLIC RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 12, chapter 7, article 2, Arizona Revised Statutes,  
3 is amended by adding section 12-824, to read:

4 12-824. Arizona state retirement system: public safety  
5 personnel retirement system: civil liability

6 THE ARIZONA STATE RETIREMENT SYSTEM AND THE PUBLIC SAFETY PERSONNEL  
7 RETIREMENT SYSTEM ARE NOT LIABLE IN ANY CIVIL ACTION BY AN EMPLOYEE WHO WAS  
8 ENROLLED IN EITHER THE ARIZONA STATE RETIREMENT SYSTEM OR THE PUBLIC SAFETY  
9 PERSONNEL RETIREMENT SYSTEM AND WHO WAS PARTICIPATING IN THE RETIREMENT  
10 SYSTEM BUT WHO WAS NOT ELIGIBLE BECAUSE EITHER THE EMPLOYEE WAS NOT INCLUDED  
11 IN AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD AGE  
12 AND SURVIVORS INSURANCE SYSTEM OR DID NOT MEET THE DEFINITION OF MEMBER  
13 PURSUANT TO SECTION 38-842.

14 Sec. 2. Section 38-797, Arizona Revised Statutes, is amended to read:

15 38-797. Definitions

16 In this article, unless the context otherwise requires:

17 1. "ASRS" means the Arizona state retirement system established by  
18 article 2 of this chapter.

19 2. "Assets" means the accumulated resources of the LTD program.

20 3. "Board" means the ASRS board established pursuant to section  
21 38-713.

22 4. "Compensation" has the same meaning prescribed in section 38-711.

23 5. "Depository" means a bank in which the monies of the LTD program  
24 are deposited and collateralized as provided by law.

25 6. "Employer" has the same meaning prescribed in section 38-711.

26 7. "Employer contributions" means all amounts paid into the LTD  
27 program by an employer.

28 8. "Fiscal year" has the same meaning prescribed in section 38-711.

29 9. "LTD program" means the long-term disability program established by  
30 this article.

31 10. "Member":

32 (a) Has the same meaning prescribed in section 38-711.

33 (b) INCLUDES AN EMPLOYEE DESCRIBED IN SECTION 38-955.

34 11. "Monthly compensation" means one-twelfth of a member's annual  
35 compensation paid and payable in the fiscal year during which a member  
36 becomes disabled.

37 12. "Normal retirement date":

38 (a) Has the same meaning prescribed in section 38-711 FOR MEMBERS  
39 ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER.

40 (b) MEANS SIXTY-FIVE YEARS OF AGE FOR MEMBERS ELIGIBLE PURSUANT TO  
41 SECTION 38-955.

42 13. "Political subdivision" has the same meaning prescribed in section  
43 38-711.

44 14. "State" has the same meaning prescribed in section 38-711.

1       Sec. 3. Section 38-797.07, Arizona Revised Statutes, is amended to  
2 read:

3       38-797.07. LTD program benefits; limitations; definitions

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

5       1. Except as provided in paragraph 9 of this subsection, monthly LTD  
6 program benefits shall not exceed two-thirds of a member's monthly  
7 compensation at the time disability commences, reduced by:

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

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

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

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

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

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

26       (e) All of any workers' compensation benefits.

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

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

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

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

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

41       2. For a member whose disability commences on or after ~~the effective~~  
42 ~~date of this amendment to this section~~ **AUGUST 2, 2012**, a member's monthly  
43 income from the monthly LTD program benefits and sources listed in paragraph  
44 1 of this subsection shall not exceed one hundred per cent of the member's  
45 monthly compensation at the time disability commences. ASRS shall offset the

1 member's monthly LTD program benefits by the amount necessary to reduce the  
2 member's total monthly income to meet the limit prescribed in this paragraph.

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

5 4. Monthly LTD program benefits are not payable to a member who files  
6 an initial claim for disability more than twelve months after the date of the  
7 member's date of disability unless the member demonstrates to ASRS good cause  
8 for not filing the initial claim within twelve months after the date of  
9 disability.

10 5. Monthly LTD program benefits are not payable to a member who is  
11 receiving retirement benefits from ASRS.

12 6. Monthly LTD program benefits are not payable to a member whose  
13 disability is due to, or a result of, any of the following:

14 (a) An intentionally self-inflicted injury.

15 (b) War, whether declared or not.

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

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

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

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

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

32 7. Monthly LTD program benefits cease to be payable to a member at the  
33 earliest of the following:

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

35 (b) The date the member:

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

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

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

44 (d) The later of the following:

45 (i) The member's normal retirement date.

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

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

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

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

12 8. Monthly LTD program benefits are payable only for disabilities that  
13 commence on or after July 1, 1988.

14 9. The minimum benefit for a member who is entitled to receive monthly  
15 LTD program benefits is fifty dollars per month.

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

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

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

32 11. A member shall be considered totally disabled if based on objective  
33 medical evidence:

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

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

43 B. A member WHO IS ELIGIBLE PURSUANT TO ARTICLE 2 OF THIS CHAPTER AND  
44 who receives monthly LTD program benefits is entitled to receive service  
45 credit pursuant to article 2 of this chapter from the time disability

1 commences until LTD program benefits cease to be payable, except that for a  
2 member who receives monthly LTD program benefits on or after June 30, 1999  
3 the number of years of service credited to the member's retirement account  
4 during the period the member receives LTD program benefit payments shall not  
5 cause the member's total credited service for retirement benefits to exceed  
6 the greater of thirty years or the total years of service credited to the  
7 member's retirement account on the commencement of disability.

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

15 D. ASRS may suspend or terminate benefits under this article if a  
16 member fails to provide information, data, paperwork or other materials that  
17 are requested by ASRS or the insurance company or claims administrator that  
18 is selected by the board to administer the LTD program. If the member  
19 provides the information requested, ASRS shall retroactively reinstate the  
20 benefits or claim for which the member qualifies under this article.

21 E. For the purposes of this section:

22 1. "Objective medical evidence" means evidence that established facts  
23 and conditions, as perceived without distortion by personal feelings,  
24 prejudices or interpretations, and includes x-rays, quantitative tests,  
25 laboratory findings, data, records, reports from the attending physician and  
26 reports from a consulting physician, as applicable.

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

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

36 Sec. 4. Section 38-842, Arizona Revised Statutes, is amended to read:

37 38-842. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Accidental disability" means a physical or mental condition that  
40 the local board finds totally and permanently prevents an employee from  
41 performing a reasonable range of duties within the employee's job  
42 classification and that was incurred in the performance of the employee's  
43 duty.

44 2. "Accumulated contributions" means, for each member, the sum of the  
45 amount of the member's aggregate contributions made to the fund and the

1 amount, if any, attributable to the employee's contributions before the  
2 member's effective date under another public retirement system, other than  
3 the federal social security act, and transferred to the fund minus the  
4 benefits paid to or on behalf of the member.

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

8 4. "Alternate payee" means the spouse or former spouse of a  
9 participant as designated in a domestic relations order.

10 5. "Alternate payee's portion" means benefits that are payable to an  
11 alternate payee pursuant to a plan approved domestic relations order.

12 6. "Annuitant" means a person who is receiving a benefit pursuant to  
13 section 38-846.01.

14 7. "Average monthly benefit compensation" means the result obtained by  
15 dividing the total compensation paid to an employee during a considered  
16 period by the number of months, including fractional months, in which such  
17 compensation was received. For an employee who becomes a member of the  
18 system before January 1, 2012, the considered period shall be the three  
19 consecutive years within the last twenty completed years of credited service  
20 that yield the highest average. For an employee who becomes a member of the  
21 system on or after January 1, 2012, the considered period is the five  
22 consecutive years within the last twenty completed years of credited service  
23 that yield the highest average. In the computation under this paragraph, a  
24 period of nonpaid or partially paid industrial leave shall be considered  
25 based on the compensation the employee would have received in the employee's  
26 job classification if the employee was not on industrial leave.

27 8. "Board" means the board of trustees of the system, who are the  
28 persons appointed to invest and operate the fund.

29 9. "Catastrophic disability" means a physical and not a psychological  
30 condition that the local board determines prevents the employee from totally  
31 and permanently engaging in any gainful employment and that results from a  
32 physical injury incurred in the performance of the employee's duty.

33 10. "Certified peace officer" means a peace officer certified by the  
34 Arizona peace ~~officers~~ OFFICER standards and training board.

35 11. "Claimant" means any member or beneficiary who files an application  
36 for benefits pursuant to this article.

37 12. "Compensation" means, for the purpose of computing retirement  
38 benefits, base salary, overtime pay, shift differential pay, military  
39 differential wage pay, compensatory time used by an employee in lieu of  
40 overtime not otherwise paid by an employer and holiday pay paid to an  
41 employee by the employer on a regular monthly, semimonthly or biweekly  
42 payroll basis and longevity pay paid to an employee at least every six months  
43 for which contributions are made to the system pursuant to section 38-843,  
44 subsection D. Compensation does not include, for the purpose of computing  
45 retirement benefits, payment for unused sick leave, payment in lieu of

1 vacation, payment for unused compensatory time or payment for any fringe  
2 benefits. In addition, compensation does not include, for the purpose of  
3 computing retirement benefits, payments made directly or indirectly by the  
4 employer to the employee for work performed for a third party on a contracted  
5 basis or any other type of agreement under which the third party pays or  
6 reimburses the employer for the work performed by the employee for that third  
7 party, except for third party contracts between public agencies for law  
8 enforcement, criminal, traffic and crime suppression activities training or  
9 fire, wildfire, emergency medical or emergency management activities or where  
10 the employer supervises the employee's performance of law enforcement,  
11 criminal, traffic and crime suppression activities training or fire,  
12 wildfire, emergency medical or emergency management activities. For the  
13 purposes of this paragraph, "base salary" means the amount of compensation  
14 each employee is regularly paid for personal services rendered to an employer  
15 before the addition of any extra monies, including overtime pay, shift  
16 differential pay, holiday pay, longevity pay, fringe benefit pay and similar  
17 extra payments.

18 13. "Credited service" means the member's total period of service  
19 before the member's effective date of participation, plus those compensated  
20 periods of the member's service thereafter for which the member made  
21 contributions to the fund.

22 14. "Cure period" means the ninety-day period in which a participant or  
23 alternate payee may submit an amended domestic relations order and request a  
24 determination, calculated from the time the system issues a determination  
25 finding that a previously submitted domestic relations order did not qualify  
26 as a plan approved domestic relations order.

27 15. "Depository" means a bank in which all monies of the system are  
28 deposited and held and from which all expenditures for benefits, expenses and  
29 investments are disbursed.

30 16. "Determination" means a written document that indicates to a  
31 participant and alternate payee whether a domestic relations order qualifies  
32 as a plan approved domestic relations order.

33 17. "Determination period" means the ninety-day period in which the  
34 system must review a domestic relations order that is submitted by a  
35 participant or alternate payee to determine whether the domestic relations  
36 order qualifies as a plan approved domestic relations order, calculated from  
37 the time the system mails a notice of receipt to the participant and  
38 alternate payee.

39 18. "Direct rollover" means a payment by the system to an eligible  
40 retirement plan that is specified by the distributee.

41 19. "Distributee" means a member, a member's surviving spouse or a  
42 member's spouse or former spouse who is the alternate payee under a plan  
43 approved domestic relations order.

44 20. "Domestic relations order" means an order of a court of this state  
45 that is made pursuant to the domestic relations laws of this state and that



1 creates or recognizes the existence of an alternate payee's right to, or  
2 assigns to an alternate payee the right to, receive a portion of the benefits  
3 payable to a participant.

4 21. "Effective date of participation" means July 1, 1968, except with  
5 respect to employers and their covered employees whose contributions to the  
6 fund commence thereafter, the effective date of their participation in the  
7 system is as specified in the applicable joinder agreement.

8 22. "Effective date of vesting" means the date a member's rights to  
9 benefits vest pursuant to section 38-844.01.

10 23. "Eligible child" means an unmarried child of a deceased member or  
11 retired member who meets one of the following qualifications:

12 (a) Is under eighteen years of age.

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

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

18 24. "Eligible groups" means only the following who are regularly  
19 assigned to hazardous duty:

20 (a) Municipal police officers who are certified peace officers.

21 (b) Municipal fire fighters.

22 (c) Paid full-time fire fighters employed directly by a fire district  
23 organized pursuant to section 48-803 or 48-804 with three or more full-time  
24 fire fighters, but not including fire fighters employed by a fire district  
25 pursuant to a contract with a corporation.

26 (d) State highway patrol officers who are certified peace officers.

27 (e) State fire fighters.

28 (f) County sheriffs and deputies who are certified peace officers.

29 (g) Game and fish wardens who are certified peace officers.

30 (h) Police officers who are certified peace officers and fire fighters  
31 of a nonprofit corporation operating a public airport pursuant to sections  
32 28-8423 and 28-8424. A police officer shall be designated pursuant to  
33 section 28-8426 to aid and supplement state and local law enforcement  
34 agencies and a fire fighter's sole duty shall be to perform fire fighting  
35 services, including services required by federal regulations.

36 (i) Police officers who are certified peace officers and who are  
37 appointed by the Arizona board of regents.

38 (j) Police officers who are certified peace officers and who are  
39 appointed by a community college district governing board.

40 (k) State attorney general investigators who are certified peace  
41 officers.

42 (l) County attorney investigators who are certified peace officers.

43 (m) Police officers who are certified peace officers and who are  
44 employed by an Indian reservation police agency.

1 (n) Fire fighters who are employed by an Indian reservation fire  
2 fighting agency.

3 (o) Department of liquor licenses and control investigators who are  
4 certified peace officers.

5 (p) Arizona department of agriculture officers who are certified peace  
6 officers.

7 (q) Arizona state parks board rangers and managers who are certified  
8 peace officers.

9 (r) County park rangers who are certified peace officers.

10 25. "Eligible retirement plan" means any of the following that accepts  
11 a distributee's eligible rollover distribution:

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

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

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

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

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

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

28 26. "Eligible rollover distribution" means a payment to a distributee,  
29 but does not include any of the following:

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

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

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

39 27. "Employee" means any person who is employed by a participating  
40 employer and who is a member of an eligible group but does not include any  
41 persons compensated on a contractual or fee basis. If an eligible group  
42 requires certified peace officer status or fire fighter certification and at  
43 the option of the local board, employee may include a person who is training  
44 to become a certified peace officer or fire fighter.

28. "Employers" means:

(a) Cities contributing to the fire fighters' relief and pension fund as provided in sections 9-951 through 9-971 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid fire fighters.

(b) Cities contributing under the state police pension laws as provided in sections 9-911 through 9-934 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision of this state, including towns, cities, fire districts, counties and nonprofit corporations operating public airports pursuant to sections 28-8423 and 28-8424, that has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

(e) Indian tribes that have elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

29. "Fund" means the public safety personnel retirement fund, which is the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

30. "Local board" means the retirement board of the employer, who are the persons appointed to administer the system as it applies to their members in the system.

31. "Member":

(a) Means any full-time employee who meets all of the following qualifications:

~~(a)~~ (i) Who is either a paid municipal police officer, a paid fire fighter, a law enforcement officer who is employed by this state including the director thereof, a state fire fighter who is primarily assigned to fire fighting duties, a fire fighter or police officer of a nonprofit corporation operating a public airport pursuant to sections 28-8423 and 28-8424, all ranks designated by the Arizona law enforcement merit system council, a state attorney general investigator who is a certified peace officer, a county attorney investigator who is a certified peace officer, a department of liquor licenses and control investigator who is a certified peace officer, an Arizona department of agriculture officer who is a certified peace officer, an Arizona state parks board ranger or manager who is a certified peace officer, a county park ranger who is a certified peace officer, a person who is a certified peace officer and who is employed by an Indian reservation police agency, a fire fighter who is employed by an Indian reservation fire fighting agency, ~~or~~ an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968 and who is or was regularly assigned to hazardous duty or, beginning

retroactively to January 1, 2009, who is a police chief or a fire chief OR AN EMPLOYEE OF AN ELIGIBLE GROUP WHOSE PRIMARY DUTIES INCLUDE THE PERFORMANCE OF LAW ENFORCEMENT, CRIMINAL, TRAFFIC AND CRIME SUPPRESSION ACTIVITIES, FIRE INVESTIGATION, FIRE SUPPRESSION AND PREVENTION OR EMERGENCY MANAGEMENT ACTIVITIES.

~~(b)~~ (ii) Who, on or after the employee's effective date of participation, is receiving compensation for personal services rendered to an employer or would be receiving compensation except for an authorized leave of absence.

~~(e)~~ (iii) Whose customary employment is at least forty hours per week or, for those employees who customarily work fluctuating work weeks, whose customary employment averages at least forty hours per week.

~~(d)~~ (iv) Who is engaged to work for more than six months in a calendar year.

~~(e)~~ (v) Who, if economic conditions exist, is required to take furlough days or reduce the hours of the employee's normal work week below forty hours but not less than thirty hours per pay cycle, and maintain the employee's active member status within the system as long as the hour change does not extend beyond twelve consecutive months.

~~(f)~~ (vi) Who has not attained age sixty-five before the employee's effective date of participation or who was over age sixty-five with twenty-five years or more of service prior to the employee's effective date of participation.

(b) DOES NOT INCLUDE AN EMPLOYEE EMPLOYED BY AN ELIGIBLE GROUP WHOSE POSITION CLASSIFICATION PROVIDES SOLELY FOR SUPPORT DUTIES, INCLUDING SECRETARIES, CLERICAL PERSONNEL, MAINTENANCE PERSONNEL AND DISPATCHERS.

32. "Normal retirement date" means:

(a) For an employee who becomes a member of the system before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

(b) For an employee who becomes a member of the system on or after January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty-five years of service if the employee is at least fifty-two and one-half years of age.

33. "Notice of receipt" means a written document that is issued by the system to a participant and alternate payee and that states that the system has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

34. "Ordinary disability" means a physical condition that the local board determines will prevent an employee totally and permanently from performing a reasonable range of duties within the employee's department or a

1 mental condition that the local board determines will prevent an employee  
2 totally and permanently from engaging in any substantial gainful activity.

3 35. "Participant" means a member who is subject to a domestic relations  
4 order.

5 36. "Participant's portion" means benefits that are payable to a  
6 participant pursuant to a plan approved domestic relations order.

7 37. "Pension" means a series of monthly amounts that are payable to a  
8 person who is entitled to receive benefits under the plan but does not  
9 include an annuity that is payable pursuant to section 38-846.01.

10 38. "Personal representative" means the personal representative of a  
11 deceased alternate payee.

12 39. "Plan approved domestic relations order" means a domestic relations  
13 order that the system approves as meeting all the requirements for a plan  
14 approved domestic relations order as otherwise prescribed in this article.

15 40. "Regularly assigned to hazardous duty" means regularly assigned to  
16 duties of the type normally expected of municipal police officers, municipal  
17 or state fire fighters, eligible fire district fire fighters, state highway  
18 patrol officers, county sheriffs and deputies, fish and game wardens, fire  
19 fighters and police officers of a nonprofit corporation operating a public  
20 airport pursuant to sections 28-8423 and 28-8424, police officers who are  
21 appointed by the Arizona board of regents or a community college district  
22 governing board, state attorney general investigators who are certified peace  
23 officers, county attorney investigators who are certified peace officers,  
24 department of liquor licenses and control investigators who are certified  
25 peace officers, Arizona department of agriculture officers who are certified  
26 peace officers, Arizona state parks board rangers and managers who are  
27 certified peace officers, county park rangers who are certified peace  
28 officers, police officers who are certified peace officers and who are  
29 employed by an Indian reservation police agency or fire fighters who are  
30 employed by an Indian reservation fire fighting agency. Those individuals  
31 who are assigned solely to support duties such as secretaries, stenographers,  
32 clerical personnel, clerks, cooks, maintenance personnel, mechanics and  
33 dispatchers are not assigned to hazardous duty regardless of their position  
34 classification title. Since the normal duties of those jobs described in this  
35 paragraph are constantly changing, questions as to whether a person is or was  
36 previously regularly assigned to hazardous duty shall be resolved by the  
37 local board on a case-by-case basis. Resolutions by local boards are subject  
38 to rehearing and appeal.

39 41. "Retirement" or "retired" means termination of employment after a  
40 member has fulfilled all requirements for a pension or, for an employee who  
41 becomes a member of the system on or after January 1, 2012, attains the age  
42 and service requirements for a normal retirement date. Retirement shall be  
43 considered as commencing on the first day of the month immediately following  
44 a member's last day of employment or authorized leave of absence, if later.

1       42. "Segregated funds" means the amount of benefits that would  
2 currently be payable to an alternate payee pursuant to a domestic relations  
3 order under review by the system, or a domestic relations order submitted to  
4 the system that failed to qualify as a plan approved domestic relations  
5 order, if the domestic relations order were determined to be a plan approved  
6 domestic relations order.

7       43. "Service" means the last period of continuous employment of an  
8 employee by the employers before the employee's retirement, except that if  
9 such period includes employment during which the employee would not have  
10 qualified as a member had the system then been effective, such as employment  
11 as a volunteer fire fighter, then only twenty-five per cent of such  
12 noncovered employment shall be considered as service. Any absence that is  
13 authorized by an employer shall not be considered as interrupting continuity  
14 of employment if the employee returns within the period of authorized  
15 absence. Transfers between employers also shall not be considered as  
16 interrupting continuity of employment. Any period during which a member is  
17 receiving sick leave payments or a temporary disability pension shall be  
18 considered as service. Notwithstanding any other provision of this  
19 paragraph, any period during which a person was employed as a full-time paid  
20 fire fighter for a corporation that contracted with an employer to provide  
21 firefighting services on behalf of the employer shall be considered as  
22 service if the employer has elected at its option to treat part or all of the  
23 period the firefighter worked for the company as service in its applicable  
24 joinder agreement. Any reference in this system to the number of years of  
25 service of an employee shall be deemed to include fractional portions of a  
26 year.

27       44. "State" means the state of Arizona, including any department,  
28 office, board, commission, agency or other instrumentality of the state.

29       45. "System" means the public safety personnel retirement system  
30 established by this article.

31       46. "Temporary disability" means a physical or mental condition that  
32 the local board finds totally and temporarily prevents an employee from  
33 performing a reasonable range of duties within the employee's department and  
34 that was incurred in the performance of the employee's duty.

35       Sec. 5. Heading change

36       The article heading of title 38, chapter 5, article 8, Arizona Revised  
37 Statutes, is changed from "SUPPLEMENTAL DEFINED CONTRIBUTION PLANS" to  
38 "DEFINED CONTRIBUTION PLANS".

39       Sec. 6. Section 38-951, Arizona Revised Statutes, is amended to read:

40       38-951. Definitions

41       In this article, unless the context otherwise requires:

42       1. "Board" means the Arizona state retirement system board established  
43 by section 38-713 or the board of trustees established by section 38-848.

1           2. "Eligible group" means any of the following:

2           (a) The Arizona state retirement system established by article 2 of  
3 this chapter.

4           (b) The elected officials' retirement plan established by article 3 of  
5 this chapter.

6           (c) The public safety personnel retirement system established by  
7 article 4 of this chapter.

8           (d) The corrections officer retirement plan established by article 6  
9 of this chapter.

10          (e) An optional retirement program established pursuant to section  
11 15-1451 or 15-1628.

12          3. "Employer" means an agency or department of this state or an agency  
13 or department of a political subdivision of this state that has employees in  
14 an eligible group.

15          4. "Plan" means a ~~supplemental~~ defined contribution plan authorized by  
16 this article.

17          Sec. 7. Title 38, chapter 5, article 8, Arizona Revised Statutes, is  
18 amended by adding section 38-955, to read:

19          38-955. Defined contribution plan; eligibility; contribution;  
20                 vesting

21          A. AN EMPLOYEE OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE  
22 WHO IS NOT ELIGIBLE FOR THE ARIZONA STATE RETIREMENT SYSTEM PURSUANT TO  
23 ARTICLE 2 OF THIS CHAPTER BECAUSE THE EMPLOYEE IS NOT INCLUDED IN AGREEMENTS  
24 PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE FEDERAL OLD AGE AND SURVIVORS  
25 INSURANCE SYSTEM AND WHO IS NOT ELIGIBLE FOR A STATEWIDE RETIREMENT SYSTEM OR  
26 PLAN PURSUANT TO ARTICLE 3, 4 OR 6 OF THIS CHAPTER BECAUSE THE EMPLOYEE DOES  
27 NOT MEET THE DEFINITION OF A MEMBER IN THOSE SYSTEMS OR PLANS, BUT WHO IS  
28 ENGAGED TO WORK AT LEAST TWENTY WEEKS IN EACH FISCAL YEAR AND AT LEAST TWENTY  
29 HOURS EACH WEEK SHALL BE ENROLLED IN THE PLAN ESTABLISHED BY ASRS PURSUANT TO  
30 SECTION 38-952.

31          B. EACH EMPLOYEE SHALL CONTRIBUTE ONE-HALF OF THE TOTAL ASRS NORMAL  
32 COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S COMPENSATION, AS  
33 DEFINED IN SECTION 38-711, BY SALARY REDUCTION THAT SHALL BE DEPOSITED IN THE  
34 EMPLOYEE'S ANNUITY ACCOUNT. EACH EMPLOYER SHALL CONTRIBUTE ONE-HALF OF THE  
35 TOTAL ASRS NORMAL COST PLUS ONE AND ONE-HALF PER CENT OF THE EMPLOYEE'S  
36 COMPENSATION, AS DEFINED IN SECTION 38-711, THAT SHALL BE DEPOSITED IN THE  
37 EMPLOYEE'S ANNUITY ACCOUNT. EMPLOYEE AND EMPLOYER CONTRIBUTIONS AND EARNINGS  
38 ON THOSE CONTRIBUTIONS ARE IMMEDIATELY VESTED.

39          C. EACH EMPLOYEE AND EMPLOYER SHALL ALSO CONTRIBUTE TO THE LONG-TERM  
40 DISABILITY PROGRAM PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER. AN EMPLOYEE MAY  
41 RECEIVE BENEFITS PURSUANT TO ARTICLE 2.1 OF THIS CHAPTER IF THE EMPLOYEE  
42 BECOMES TOTALLY DISABLED.

1           Sec. 8. Disenrollment of ineligible employees

2           Beginning on the effective date of this act, the director of the  
3 Arizona state retirement system and the administrator of the public safety  
4 personnel retirement system shall begin the disenrollment of ineligible  
5 employees and the enrollment of those employees in the appropriate state  
6 retirement system or plan.

7           Sec. 9. Emergency

8           This act is an emergency measure that is necessary to preserve the  
9 public peace, health or safety and is operative immediately as provided by  
10 law.