

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

CHAPTER 320

HOUSE BILL 2104

AN ACT

AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-739.01; AMENDING SECTIONS 38-766.01 AND 38-766.02, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 38, chapter 5, article 2, Arizona Revised Statutes,
3 is amended by adding section 38-739.01, to read:

4 38-739.01. Credited service retention

5 CONSISTENT WITH THE COMPLIANCE STATEMENT ISSUED BY THE UNITED STATES
6 INTERNAL REVENUE SERVICE, AN EMPLOYEE WHO IS EMPLOYED WITH AN ASRS EMPLOYER
7 IN A POSITION THAT WAS EXEMPT FROM ASRS MEMBERSHIP BECAUSE THE POSITION WAS
8 NOT INCLUDED IN AGREEMENTS PROVIDING FOR THE EMPLOYEE'S COVERAGE UNDER THE
9 FEDERAL OLD-AGE AND SURVIVORS INSURANCE SYSTEM BUT ON WHOSE BEHALF THE
10 EMPLOYER HAS REMITTED ASRS CONTRIBUTIONS SHALL RETAIN CREDITED SERVICE FOR
11 THE PERIOD OF EMPLOYMENT FOR WHICH THE EMPLOYER REMITTED ASRS CONTRIBUTIONS
12 ON THE EMPLOYEE'S BEHALF.

13 Sec. 2. Section 38-766.01, Arizona Revised Statutes, is amended to
14 read:

15 38-766.01. Retired members; return to work

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

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

20 2. The retired member terminated direct employment with an employer at
21 least three hundred sixty-five consecutive days before returning to work.

22 3. If the retired member returns to work as a teacher, the retired
23 member's employment is not subject to the requirements prescribed in sections
24 15-536, 15-538, 15-538.01 and 15-539 through 15-543.

25 B. NOTWITHSTANDING SECTION 38-766 AND SUBSECTION A OF THIS SECTION, AT
26 A RETIRED MEMBER'S ELECTION, A RETIRED MEMBER MAY RETURN TO WORK AS A STATE
27 ELECTED OFFICIAL WHO IS SUBJECT TO TERM LIMITS AND STILL BE ELIGIBLE TO
28 RECEIVE RETIREMENT BENEFITS.

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

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

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

38 ~~E.~~ F. A retired member who returns to work pursuant to this section
39 does not accrue credited service, member service as provided in section
40 15-1628, subsection B, paragraph 4, additional account balances, retirement
41 benefits or long-term disability program benefits pursuant to article 2.1 of
42 this chapter for the period the retired member returns to work. The period
43 the retired member returns to work is not eligible for purchase under section
44 38-743 or 38-744.

45 Sec. 3. Section 38-766.02, Arizona Revised Statutes, is amended to
46 read:

1 38-766.02. Retired members: return to work: employer
2 contribution payments: definitions

3 A. Notwithstanding section 38-766.01, subsection ~~D~~ E, beginning July
4 1, 2012, an employer shall pay contributions at an alternate contribution
5 rate on behalf of a retired member who returns to work in any capacity in a
6 position ordinarily filled by an employee of the employer. This subsection
7 applies to a retired member who has reached a normal retirement age or a
8 retired member who retired under section 38-758 if the retired member's
9 retirement benefit has not been suspended pursuant to section 38-766.

10 B. The ASRS actuary shall determine the alternate contribution rate in
11 an annual valuation performed as of June 30. For the fiscal year beginning
12 on July 1 of the following calendar year, the valuation shall determine the
13 percentage to be applied to the compensation, gross salary or contract fee of
14 a retired member who meets the requirements of this section.

15 C. The alternate contribution rate shall not be less than two ~~per-cent~~
16 PERCENT in any fiscal year. The alternate contribution rate is equal to the
17 lesser of:

18 1. The employer contribution rate established by the ASRS actuary
19 pursuant to section 38-737 plus the employer contribution rate established by
20 the ASRS actuary pursuant to section 38-797.06.

21 2. The total past service funding requirement rate established by the
22 ASRS actuary pursuant to section 38-737 plus the total past service funding
23 requirement rate established by the ASRS actuary pursuant to section
24 38-797.06.

25 D. ASRS shall determine the schedule and method of payment of the
26 alternate contribution rate. Subject to section 38-738, subsection A, all
27 contributions made by the employer and allocated to the fund established by
28 section 38-712 are irrevocable and shall be used as benefits under this
29 article or to pay the expenses of ASRS. Payments made pursuant to this
30 section by employers become delinquent after the due date prescribed in the
31 board's rules and thereafter shall be increased by interest from and after
32 that date until payment is received by ASRS. ASRS shall charge interest on
33 the delinquent payments as prescribed in section 38-711. ASRS may recover
34 delinquent payments due under this section, together with interest charges as
35 provided in this section, by action in a court of competent jurisdiction
36 against an employer liable for payments or, at the request of the director,
37 ASRS may deduct the delinquent payments and interest charges from any other
38 monies, including excise revenue taxes, payable to the employer by any
39 department or agency of this state.

40 E. An employer of a retired member shall submit any reports, data,
41 paperwork or materials that are requested by ASRS and that are necessary to
42 determine the compensation, gross salary or contract fee associated with a
43 retired member who returns to work or to determine the function, utilization,
44 efficacy or operation of the return to work program.

45 F. For the purposes of this section:

1 1. "Contract fee" means the gross amount paid to a retired member as
2 an independent contractor minus an amount, not to exceed ten per cent, for an
3 administrative fee.

4 2. "Gross salary" means the gross amount paid to a retired member by a
5 leasing company as salary or wages, including amounts that are subject to
6 deferred compensation or tax shelter agreements, for services rendered or
7 that would have been paid to the retired member except for the member's
8 election or a legal requirement that all or part of the gross amount be used
9 for other purposes.

10 Sec. 4. Retroactivity

11 Sections 38-766.01 and 38-766.02, Arizona Revised Statutes, as amended
12 by this act, apply retroactively to from and after June 30, 2015.

13 Sec. 5. Emergency

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

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 18, 2016.