

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 181
SENATE BILL 1018

AN ACT

AMENDING SECTION 38-711, 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. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member
9 contributions as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment,
12 based on mortality and interest rate assumptions approved from time to
13 time by the board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January
20 1, 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, the higher of either:

23 (i) The monthly average of compensation that is calculated pursuant
24 to subdivision (b) of this paragraph.

25 (ii) The monthly average of compensation on which contributions
26 were remitted during a period of sixty consecutive months during which the
27 member receives the highest compensation within the last one hundred
28 twenty months of credited service. Any month for which no contributions
29 are reported to ASRS or that falls within a period of nonpaid or partially
30 paid leave of absence or sabbatical leave shall be excluded from the
31 computation. The sixty consecutive months may entirely precede, may be
32 both before and after or may be completely after any excluded months. If
33 the member was employed for less than sixty consecutive months, the
34 average monthly compensation is based on the total consecutive months
35 worked. Payments for accumulated vacation or annual leave, sick leave,
36 compensatory time or other forms of termination pay that, before August
37 12, 2005, constitute compensation for members whose membership in ASRS
38 commenced before January 1, 1984, do not cease to be included as
39 compensation if paid in the form of nonelective employer contributions
40 under a 26 United States Code section 403(b) plan if all payments of
41 employer and employee contributions are made at the time of termination.
42 Contributions shall be made to ASRS on these amounts pursuant to sections
43 38-735, 38-736 and 38-737.

44 (b) For a member whose membership in ASRS commenced on or after
45 January 1, 1984 but before July 1, 2011, the monthly average of

1 compensation on which contributions were remitted during a period of
2 thirty-six consecutive months during which a member receives the highest
3 compensation within the last one hundred twenty months of credited
4 service. Any month for which no contributions are reported to ASRS or
5 that falls within a period of nonpaid or partially paid leave of absence
6 or sabbatical leave shall be excluded from the computation. The
7 thirty-six consecutive months may entirely precede, may be both before and
8 after or may be completely after any excluded months. If the member was
9 employed for less than thirty-six consecutive months, the average monthly
10 compensation shall be based on the total consecutive months worked.

11 (c) For a member whose membership in ASRS commenced on or after
12 July 1, 2011, the monthly average of compensation on which contributions
13 were remitted during a period of sixty consecutive months during which a
14 member receives the highest compensation within the last one hundred
15 twenty months of credited service. Any month for which no contributions
16 are reported to ASRS or that falls within a period of nonpaid or partially
17 paid leave of absence or sabbatical leave shall be excluded from the
18 computation. The sixty consecutive months may entirely precede, may be
19 both before and after or may be completely after any excluded months. If
20 the member was employed for less than sixty consecutive months, the
21 average monthly compensation shall be based on the total consecutive
22 months worked.

23 6. "Board" means the ASRS board established in section 38-713.

24 7. "Compensation" means:

25 (a) **FOR MEMBERS WHOSE MEMBERSHIP BEGAN ON OR BEFORE DECEMBER 31,**
26 **2019,** the gross amount paid to a member by an employer as salary or wages,
27 including amounts that are subject to deferred compensation or tax shelter
28 agreements, for services rendered to or for an employer, or that would
29 have been paid to the member except for the member's election or a legal
30 requirement that all or part of the gross amount be used for other
31 purposes, but does not include amounts paid in excess of compensation
32 limits established in section 38-746. Compensation includes amounts paid
33 as salary or wages to a member by a second employer if the member meets
34 the requirements prescribed in paragraph 23, subdivision (b) of this
35 section with that second employer. Compensation, as provided in paragraph
36 5, subdivision (b) or (c) of this section, does not include:

37 ~~(a)~~ (i) Lump sum payments, on termination of employment, for
38 accumulated vacation or annual leave, sick leave, compensatory time or any
39 other form of termination pay whether the payments are made in one payment
40 or by installments over a period of time.

41 ~~(b)~~ (ii) Damages, costs, attorney fees, interest or other
42 penalties paid pursuant to a court order or a compromise settlement or
43 agreement to satisfy a grievance or claim even though the amount of the
44 payment is based in whole or in part on previous salary or wage levels,
45 except that, if the court order or compromise settlement or agreement

1 directs salary or wages to be paid for a specific period of time, the
2 payment is compensation for that specific period of time. If the amount
3 directed to be paid is less than the actual salary or wages that would
4 have been paid for the period if service had been performed, the
5 contributions for the period shall be based on the amount of compensation
6 that would have been paid if the service had been performed.

7 ~~(c)~~ (iii) Payment, at the member's option, in lieu of fringe
8 benefits that are normally paid for or provided by the employer.

9 ~~(d)~~ (iv) Merit awards pursuant to section 38-613 and performance
10 bonuses paid to assistant attorneys general pursuant to section 41-192.

11 ~~(e)~~ (v) Amounts that are paid as salary or wages to a member for
12 which employer contributions have not been paid.

13 (b) FOR A MEMBER WHOSE MEMBERSHIP BEGAN ON OR AFTER JANUARY 1,
14 2020, ONLY GROSS WAGES PAID TO A MEMBER BY THE EMPLOYER FOR SERVICES
15 RENDERED TO THE EMPLOYER DURING THE PERIOD CONSIDERED AS CREDITED SERVICE,
16 INCLUDING AMOUNTS REPORTED AS WAGES AND TIPS AND OTHER COMPENSATION ON THE
17 MEMBER'S FEDERAL FORM W-2 WAGE AND TAX STATEMENT, INCLUDING PRETAX
18 DEDUCTIONS, EXCEPT FOR THE FOLLOWING:

19 (i) PAYMENTS MADE FOR ACCRUED LEAVE THAT IS NOT BEING USED TO
20 REPLACE REGULAR WORK HOURS, WHETHER PAID IN A LUMP SUM OR IN INSTALLMENTS.

21 (ii) PAYMENTS MADE ON TERMINATION FROM EMPLOYMENT, WHETHER PAID IN
22 A LUMP SUM OR IN INSTALLMENTS OR AS A BONUS OR AN INCENTIVE FOR
23 TERMINATION OR RETIREMENT.

24 (iii) EMPLOYER-PAID CONTRIBUTIONS THAT ARE MADE TO, AND ANY
25 DISTRIBUTIONS FROM, PLANS, PROGRAMS OR ARRANGEMENTS QUALIFIED UNDER
26 SECTION 117, 125, 129, 401, 403, 408 OR 457 OF THE INTERNAL REVENUE CODE.

27 (iv) PAYMENTS FOR ALLOWANCES.

28 (v) REIMBURSEMENTS FOR EMPLOYEE BUSINESS EXPENSES OR EMPLOYEE
29 PERSONAL EXPENSES.

30 (vi) EMPLOYER-PAID CONTRIBUTIONS FOR COVERAGE UNDER, OR
31 DISTRIBUTIONS FROM, AN ACCIDENT, HEALTH OR LIFE INSURANCE PLAN, PROGRAM OR
32 ARRANGEMENT.

33 (vii) PAYMENTS MADE IN LIEU OF ANY EMPLOYER-PAID INSURANCE
34 COVERAGE.

35 (viii) WORKERS' COMPENSATION, UNEMPLOYMENT COMPENSATION PAYMENTS
36 AND DISABILITY PAYMENTS.

37 (ix) MERIT AWARDS PURSUANT TO SECTION 38-613.

38 (x) PAYMENTS PAID PURSUANT TO A COURT ORDER OR SETTLEMENT AGREEMENT
39 TO SATISFY A CLAIM EVEN THOUGH THE AMOUNT OF THE PAYMENT IS BASED ON
40 PREVIOUS SALARY OR WAGE LEVELS, EXCEPT IF THE COURT ORDER OR SETTLEMENT
41 AGREEMENT DIRECTS SALARY OR WAGES TO BE PAID FOR A SPECIFIC PERIOD OF
42 TIME, THE PAYMENT IS COMPENSATION FOR THAT SPECIFIC PERIOD OF TIME.

43 (xi) PAYMENTS MADE IN THE FORM OF GOODS OR SERVICES IN LIEU OF
44 GROSS WAGES.

1 (xii) ANY OTHER PAYMENT THAT IS NOT REPORTED AS WAGES AND TIPS AND
2 OTHER COMPENSATION ON THE MEMBER'S FEDERAL W-2 WAGE AND TAX STATEMENT FOR
3 ACTUAL SERVICES RENDERED.

4 (xiii) PAYMENTS IN EXCESS OF THE SECTION 415 OF THE INTERNAL
5 REVENUE CODE LIMITS ESTABLISHED IN SECTION 38-746.

6 (xiv) PAYMENTS FOR ANY OTHER EMPLOYMENT BENEFIT.

7 (xv) PAYMENTS FOR WHICH EMPLOYER OR EMPLOYEE CONTRIBUTIONS HAVE NOT
8 BEEN PAID.

9 8. "Contingent annuitant" means the person named by a member to
10 receive retirement income payable following a member's death after
11 retirement as provided in section 38-760.

12 9. "Credited service" means, subject to section 38-739, the number
13 of years standing to the member's credit on the books of ASRS during which
14 the member made the required contributions.

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the typical pay period amount
17 immediately before the date of a request to ASRS to purchase credited
18 service pursuant to section 38-743, 38-744 or 38-745. The typical pay
19 period amount shall be determined by taking the five pay periods
20 immediately before the date of a request, disregarding the highest and
21 lowest compensation amount pay periods and averaging the three remaining
22 pay periods.

23 (b) Annualized compensation of the partial year, disregarding the
24 first compensation amount pay period, if the member has less than twelve
25 months total compensation on the date of a request to purchase credited
26 service pursuant to section 38-743, 38-744 or 38-745.

27 (c) The sum of the twelve months of compensation immediately before
28 the date of a request to ASRS to purchase credited service pursuant to
29 section 38-743, 38-744 or 38-745.

30 (d) The sum of the thirty-six months of compensation immediately
31 before the date of a request to ASRS to purchase credited service pursuant
32 to section 38-743, 38-744 or 38-745 divided by three.

33 (e) If the member has retired one or more times from ASRS, the
34 average monthly compensation that was used for calculating the member's
35 last pension benefit times twelve.

36 11. "Early retirement" means retirement before a member's normal
37 retirement date after five years of total credited service and attainment
38 of age fifty.

39 12. "Effective date" means July 1, 1970, except with respect to
40 employers and members whose contributions to ASRS commence thereafter, the
41 effective date of their membership in ASRS is as specified in the
42 applicable joinder agreement.

43 13. "Employer" means:

44 (a) This state.

45 (b) Participating political subdivisions.

- 1 (c) Participating political subdivision entities.
2 14. "Employer contributions" means all amounts paid into ASRS by an
3 employer on behalf of a member.
4 15. "Fiscal year" means the period from July 1 of any year to June
5 30 of the following year.
6 16. "Inactive member" means a member who previously made
7 contributions to ASRS and who satisfies each of the following:
8 (a) Has not retired.
9 (b) Is not eligible for active membership in ASRS.
10 (c) Is not currently making contributions to ASRS.
11 (d) Has not withdrawn contributions from ASRS.
12 17. "Interest" means the assumed actuarial investment earnings rate
13 approved by the board.
14 18. "Internal revenue code" means the United States internal
15 revenue code of 1986, as amended.
16 19. "Investment manager" means the persons, companies, banks,
17 insurance company investment funds, mutual fund companies, management or
18 any combinations of those entities that are appointed by ASRS and that
19 have responsibility and authority for investment of the monies of ASRS.
20 20. "Late retirement" means retirement after normal retirement.
21 21. "Leave of absence" means any unpaid leave authorized by the
22 employer, including leaves authorized for sickness or disability or to
23 pursue education or training.
24 22. "Life annuity" means equal monthly installments payable during
25 the member's lifetime after retirement.
26 23. "Member":
27 (a) Means any employee of an employer on the effective date.
28 (b) Means all employees of an employer who are eligible for
29 membership pursuant to section 38-727 and who are engaged to work at least
30 twenty weeks in each fiscal year and at least twenty hours each week.
31 (c) Means any person receiving a benefit under ASRS.
32 (d) Means any person who is a former active member of ASRS and who
33 has not withdrawn contributions from ASRS pursuant to section 38-740.
34 (e) Does not include any employee of an employer who is otherwise
35 eligible pursuant to this article and who begins service in a limited
36 appointment for not more than eighteen months on or after July 1, 1979.
37 If the employment exceeds eighteen months, the employee shall be covered
38 by ASRS as of the beginning of the nineteenth month of employment. In
39 order to be excluded under this subdivision, classifications of employees
40 designated by employers as limited appointments must be approved by the
41 director.
42 (f) Does not include any leased employee. For the purposes of
43 section 414(n) of the internal revenue code, "leased employee" means an
44 individual who:
45 (i) Is not otherwise an employee of an employer.

1 (ii) Pursuant to a leasing agreement between the employer and
2 another person, performs services for the employer on a substantially
3 full-time basis for at least one year.

4 (iii) Performs services under the primary direction or control of
5 the employer.

6 24. "Member contributions" means all amounts paid to ASRS by a
7 member.

8 25. "Normal costs" means the sum of the individual normal costs for
9 all active members for each fiscal year. The normal cost for an
10 individual active member is the cost that is assigned to the fiscal year,
11 through June 29, 2016, using the projected unit credit method and,
12 beginning June 30, 2016, using the actuarial cost method determined by the
13 board pursuant to section 38-714.

14 26. "Normal retirement age" means the age at which a member reaches
15 the member's normal retirement date.

16 27. "Normal retirement date" means the earliest of the following:

17 (a) For a member whose membership commenced before July 1, 2011:

18 (i) A member's sixty-fifth birthday.

19 (ii) A member's sixty-second birthday and completion of at least
20 ten years of credited service.

21 (iii) The first day that the sum of a member's age and years of
22 total credited service equals eighty.

23 (b) For a member whose membership commenced on or after July 1,
24 2011:

25 (i) A member's sixty-fifth birthday.

26 (ii) A member's sixty-second birthday and completion of at least
27 ten years of credited service.

28 (iii) A member's sixtieth birthday and completion of at least
29 twenty-five years of credited service.

30 (iv) A member's fifty-fifth birthday and completion of at least
31 thirty years of credited service.

32 28. "Political subdivision" means any political subdivision of this
33 state and includes a political subdivision entity.

34 29. "Political subdivision entity" means an entity:

35 (a) That is located in this state.

36 (b) That is created in whole or in part by political subdivisions,
37 including instrumentalities of political subdivisions.

38 (c) Where a majority of the membership of the entity is composed of
39 political subdivisions.

40 (d) Whose primary purpose is the performance of a ~~government~~
41 ~~related~~ GOVERNMENT-RELATED service.

42 30. "Retired member" means a member who is receiving retirement
43 benefits pursuant to this article.

1 31. "Service year" means fiscal year, except that:

2 (a) If the normal work year required of a member is less than the
3 full fiscal year but is for a period of at least nine months, the service
4 year is the normal work year.

5 (b) For a salaried member employed on a contract basis under one
6 contract, or two or more consecutive contracts, for a total period of at
7 least nine months, the service year is the total period of the contract or
8 consecutive contracts.

9 (c) In determining average monthly compensation pursuant to
10 paragraph 5 of this section, the service year is considered to be twelve
11 months of compensation.

12 32. "State" means this state, including any department, office,
13 board, commission, agency, institution or other instrumentality of this
14 state.

15 33. "Vested" means that a member is eligible to receive a future
16 retirement benefit.

APPROVED BY THE GOVERNOR MAY 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2019.