

State of Arizona
House of Representatives
Fifty-fourth Legislature
Second Regular Session
2020

HOUSE BILL 2113

AN ACT

AMENDING SECTION 38-738, 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 38-738, Arizona Revised Statutes, is amended to
3 read:

4 38-738. Adjustment and refund

5 A. If more than the correct amount of employer or member
6 contributions is paid into ASRS by an employer through a mistake of fact,
7 ASRS shall ~~return those contributions to~~ PROVIDE the employer **WITH AN**
EMPLOYER CREDIT AGAINST FUTURE CONTRIBUTIONS if the employer requests
8 ~~return of the contributions through~~ an employer credit or, if the request
9 is made within one year after the date of overpayment, by check on request
10 of the employer. ASRS **MAY NOT PAY AN EMPLOYER EARNINGS ATTRIBUTABLE TO**
THE EXCESS CONTRIBUTIONS BUT SHALL REDUCE THE AMOUNT RETURNED TO AN
EMPLOYER PURSUANT TO THIS SUBSECTION BY THE AMOUNT OF LOSSES ATTRIBUTABLE
TO THE EXCESS CONTRIBUTIONS. If more than the correct amount of employer
11 or member contributions is paid into ASRS by an employer through a mistake
12 of law, ASRS shall ~~return those contributions to~~ PROVIDE the employer **WITH**
AN EMPLOYER CREDIT AGAINST FUTURE CONTRIBUTIONS if the employer requests
13 ~~return of the contributions through~~ an employer credit. **ON RECEIPT OF AN**
EMPLOYER CREDIT OR CHECK PURSUANT TO THIS SUBSECTION, THE EMPLOYER SHALL
RETURN ANY MEMBER PORTION OF THE RETURNED CONTRIBUTIONS TO THE MEMBER.

14 B. If less than the correct amount of employer or member
15 contributions is paid into ASRS by an employer, the following apply:

16 1. The member shall pay an amount that is equal to the amount that
17 would have been paid in member contributions for the period in question.
18 For active members, payments shall be made as provided in section 38-747.
19 For members who are inactive, retired or on long-term disability, payments
20 shall be made using after-tax income and a personal check, cashier's check
21 or money order. If the member does not make the payment within ninety
22 days after being notified by ASRS that the employer has paid all amounts
23 due from the employer, the unpaid amount accrues interest until the amount
24 is paid in full. The member is responsible for payment of the unpaid
25 amount and interest. The interest rate is the interest rate assumption
26 that is approved by the board for actuarial equivalency for the period in
27 question to the date payment is received.

28 2. If the member contributions to ASRS made pursuant to this
29 subsection exceed the limits prescribed in section 38-747, subsection E
30 when taking into account other annual additions of the member for the
31 limitation year, the amount to be paid by the member shall be adjusted as
32 provided in section 38-747. For the purposes of this paragraph,
33 "limitation year" has the same meaning prescribed in section 38-769.

34 3. The employer shall pay to ASRS an amount equal to the amount
35 that would have been paid in employer contributions for the period in
36 question together with accumulated interest that would have accrued on
37 both the employer and member contributions due. If the employer does not
38 remit full payment of all employer contributions and all interest due

1 within ninety days after being notified by ASRS of the amount due, the
2 unpaid amount accrues interest until the amount is paid in full. The
3 interest rate is the interest rate assumption that is approved by the
4 board for actuarial equivalency for the period in question to the date
5 payment is received.

6 4. On satisfaction of the requirements of this subsection, the
7 member's salary history on the records of ASRS shall be adjusted and any
8 additional service credits acquired by the member shall be reinstated.

9 5. If the member retires before all contributions are made pursuant
10 to this subsection, the member's benefits shall be calculated only based
11 on the contributions actually made.

12 6. Annual additions shall be determined as provided in section
13 38-747, subsection 0.

14 7. The initiator of the request for correction of salary history
15 and service credits on records of ASRS is responsible for providing
16 credible evidence of past employment and compensation to ASRS in a form or
17 forms that would lead a reasonable person to conclude that a period of
18 employment occurred under circumstances that made the employee eligible
19 for membership in ASRS during that period. A determination of eligibility
20 by ASRS may be appealed to the ASRS board in a manner prescribed by the
21 board.

22 8. A member who previously received a return of contributions
23 pursuant to section 38-740 may receive an adjustment of employer
24 contributions or service credits pursuant to this section only for
25 qualifying employment and compensation that occurred after the member's
26 most recent return of contributions pursuant to section 38-740.

27 C. Subsection B of this section applies to eligible verified
28 service that occurred less than or equal to fifteen years before the date
29 the initiator of the request for correction of salary history and service
30 credits on the records of ASRS provides ASRS with credible evidence in
31 writing that less than the correct amount of contributions was paid into
32 ASRS or ASRS otherwise determines that less than the correct amount of
33 contributions was made.

34 D. Eligible verified service that is more than fifteen years before
35 the date the initiator of the request for correction of salary history and
36 service credits on the records of ASRS provides ASRS with credible
37 evidence in writing that less than the correct amount of contributions was
38 paid into ASRS or ASRS otherwise determines that less than the correct
39 amount of contributions was made is considered public service credit. The
40 member may purchase this service pursuant to section 38-743.

41 E. Notwithstanding any other law, an employer may correct a
42 contributions error pursuant to subsection B of this section by making
43 payment adjustments through the employer's payroll reporting for the
44 contributions that were not submitted if both of the following apply:

1 1. The adjustment is made within the same fiscal year that the
2 contributions were due to ASRS.

3 2. The employer obtains written consent from the employee to make
4 the adjustment to the employee's paycheck.

5 F. NOTWITHSTANDING ANY OTHER LAW, IF LESS THAN THE CORRECT AMOUNT
6 OF EMPLOYER OR MEMBER CONTRIBUTIONS IS PAID INTO ASRS BY AN EMPLOYER, THE
7 CORRECT AMOUNT OF MEMBER CONTRIBUTIONS MAY NOT BE PAID TO ASRS AFTER THE
8 DEATH OF THE MEMBER.