CHAPTER 24

HOUSE BILL 2063

AMENDING SECTIONS 38-849 AND 38-884, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC RETIREMENT SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-849, Arizona Revised Statutes, is amended to read:

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

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

B. A person who knowingly makes any false statement or who falsifies or allows to be falsified any record of the system with an intent to defraud the system is guilty of a class 5 felony. If any change or error in the records results in any member or beneficiary receiving from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime specified in this subsection, section 13-713 applies.

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

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

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 The retirement fund is paid the total amount previously withdrawn pursuant to section 38-846.02 plus compound interest from the date of withdrawal to the date of repayment.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

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

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

E. If a retired member becomes reemployed in any capacity by the employer from which the member retired before twelve SIX months after the date of retirement or in the same position at any time following retirement:

1. The following apply:
   (a) Within ten days after the retired member is reemployed, the local board shall advise the system in writing of the retired member's reemployment.
   (b) The system shall not make pension payments to the retired member during the period of reemployment.
   (c) Employee contributions shall not be made on the retired member's account, nor shall any service be credited during the period of reemployment. On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. The employer shall pay the alternate contribution rate pursuant to section 38-843.05.
   (d) Any pension payments received by the retired member, who retired on or after July 1, 2009, during the period of reemployment are considered overpayments pursuant to section 38-850, unless subsection B of this section applies. If the board determines in the board's sole discretion, for a member who retired on or after July 1, 2009, that the retired member's reemployment during the twelve-month SIX-MONTH period and the failure of the employer or the local board to suspend the member's pension were not intentional to circumvent the requirements of this subsection, the pension payments received by the retired member after the retired member's reemployment are subject to repayment up to only the amount received between the date of the member's reemployment and the expiration of the twelve-month SIX-MONTH period.
2. The retired member, who retired on or after July 1, 2009 and who is reemployed terminates employment, may be subsequently reemployed with the employer from which the member retired and resume receiving pension payments after a period of twelve SIX months, less the period of time the retired member was not reemployed after retirement with the employer from which the member retired, if at least sixty days of the twelve SIX months are consecutive.

3. Paragraph 1, subdivisions (a), (b) and (d) of this subsection do not apply if any of the following occurs:
   (a) The retired member becomes reemployed after sixty consecutive days from the member's retirement date as a result of participating in an open competitive new hire process for an entry level, nonsupervisory position, except if the retired member is hired for the same position OR IF THE RETIRED MEMBER HAS A PREARRANGED REEMPLOYMENT AGREEMENT WITH THE EMPLOYER.
   (b) The retired member is hired as a fire inspector or arson investigator.
   (c) The retired member who is receiving an accidental disability, ordinary disability, catastrophic disability or temporary disability pension accepts a job reassignment as an accommodation in accordance with the Americans with disabilities act of 1990 due to a disability that is directly related to the retired member being awarded an accidental disability, ordinary disability, catastrophic disability or temporary disability benefit.

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

G. If after twelve SIX months after the date of retirement a retired member becomes reemployed by the employer from which the member retired in a position other than the same position from which the member retired, employee contributions shall not be made on the retired member's account, and any service shall not be credited during the period of reemployment. The employer shall pay the alternate contribution rate pursuant to section 38-843.05.

H. At any time following retirement, if the retired member becomes employed by an employer, other than the employer from which the member retired, in a position ordinarily filled by an employee of an eligible group, employee contributions shall not be made on the retired member's account, and any service shall not be credited during the period of reemployment. The employer shall pay the alternate contribution rate pursuant to section 38-843.05.
I. If a member who retired under an accidental or ordinary disability becomes reemployed as an employee of an eligible group, section 884 applies and a determination shall be made by the local board as to whether subsection E, F, G or H of this section applies.

J. The local board shall review all reemployment determinations and voluntary assignments as described in subsection F of this section. If the local board or the system is not provided the necessary information required by the system to make a reemployment determination, the local board and the system shall suspend pension payments until information is received and a determination is made regarding whether the reemployment meets the requirements of subsection E, F, G, H or I of this section.

K. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the board's written request is subject to civil suit by the system in the superior court in Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the system a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the system, plus interest at the rate prescribed by section 44-1201, until all amounts owed are paid to the system.

L. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the board and system and assessed against the member or survivor.

M. Notwithstanding any other provision of this article, a member who retires having met all of the qualifications for retirement and who subsequently becomes an elected official, by election or appointment, is not considered reemployed by the same employer.

N. For the purposes of this section, "same position" means a position in which the member performs substantially similar duties that were performed and exercises substantially similar authority that was exercised by the retired member before retirement.

Sec. 2. Section 884, Arizona Revised Statutes, is amended to read:

38-884. Membership of retirement plan; termination; credited service; redemption; reemployment

A. Each employee of a participating employer is a member of the plan unless the employee is receiving a pension from the plan. A person employed shall undergo a medical examination performed by a designated physician or a physician working in a clinic that is appointed by the
local board or, in the case of a state correctional officer who is
employed by the state department of corrections, complete a physical
examination pursuant to section 41-1822, subsection B. For the purposes
of subsection B of this section, the designated physician or a physician
working in a clinic that is appointed by the local board may be the
employer's regular employee or contractor.

B. The purpose of the medical examination authorized by this
section is to identify a member's physical or mental condition or injury
that existed or occurred before the member's date of membership in the
plan. Any employee who fails or refuses to submit to the medical
examination prescribed in this section is deemed to waive all rights to
disability benefits under this article. Medical examinations conducted
under this article shall be conducted by a physician and shall not be
conducted or used for purposes of hiring, advancement, discharge
DISCHARGING, job training or other terms, conditions and privileges of
employment unrelated to receipt or qualification for pension benefits or
service credits from the fund. This subsection does not affect or impair
the right of an employer to prescribe medical or physical standards for
employees or prospective employees.

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

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

2. If the member has five or more years of credited service with
the plan, the member may withdraw the member's accumulated contributions
plus an amount equal to the amount determined as follows:
   (a) 5.0 to 5.9 years of credited service, twenty-five percent of
all member contributions deducted from the member's salary pursuant to
section 38-891, subsection B.
   (b) 6.0 to 6.9 years of credited service, forty percent of all
member contributions deducted from the member's salary pursuant to section
38-891, subsection B.
   (c) 7.0 to 7.9 years of credited service, fifty-five percent of all
member contributions deducted from the member's salary pursuant to section
38-891, subsection B.
   (d) 8.0 to 8.9 years of credited service, seventy percent of all
member contributions deducted from the member's salary pursuant to section
38-891, subsection B.
(e) 9.0 to 9.9 years of credited service, eighty-five percent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

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

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

E. The accumulated member contributions of a member who ceases to be an employee for a reason other than death or retirement and who becomes a member of the plan:

1. On or after January 1, 2012 and before July 1, 2018 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.

2. For a member who has less than ten years of credited service with the plan, on or after July 1, 2018 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.

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

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

H. For distributions made from and after December 31, 2009, a
nonspouse designated beneficiary as defined in section 401(a)(9)(E) of the
internal revenue code may elect to directly roll over an eligible rollover
distribution to an individual retirement account under section 408(a) of
the internal revenue code or an individual retirement annuity under
section 408(b) of the internal revenue code that is established on behalf
of the designated beneficiary and that will be treated as an inherited
individual retirement plan pursuant to section 402(c)(11) of the internal
revenue code. In order to be able to roll over the distribution, the
distribution otherwise must satisfy the definition of an eligible rollover
distribution as defined in section 402(c)(4) of the internal revenue
code. In applying this subsection, a nonspouse rollover is subject to the
direct rollover requirements under section 401(a)(31) of the internal
revenue code, the rollover notice requirements under section 402(f) of the
internal revenue code and the mandatory withholding requirements under
section 3405(c) of the internal revenue code.

I. For plan years occurring before January 1, 2007, the period for
providing the rollover notice as required under section 402(f) of the
internal revenue code is not less than thirty days and not more than
ninety days before the date of distribution and, for plan years beginning
from and after December 31, 2006, the period for providing the rollover
notice as required under section 402(f) of the internal revenue code is
not less than thirty days and not more than one hundred eighty days before
the date of distribution.

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

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

L. If a former member becomes reemployed with the same employer
within two years after the former member's termination date, a member may
have forfeited credited service attributable to service rendered during a
prior period of service as an employee restored on satisfaction of each of
the following conditions:
1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.

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

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

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

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

N. A retired member may become employed by the employer from which the employee retired in a designated position and continue to receive a pension if the employment occurs at least twelve six months after retirement. The retired member shall not contribute to the fund and shall not accrue credited service. If a retired member becomes employed by the employer from which the employee retired in a designated position before twelve six months after retirement, the following apply:

1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.
2. The retired member shall not contribute to the fund and shall not accrue credited service.

3. Any pension payments received by a retired member, who retired on or after July 1, 2009, during a period of reemployment are considered overpayments pursuant to section 38-899. If the board determines in the board's sole discretion, for a member who retired on or after July 1, 2009, that the retired member's reemployment during the twelve-month period and the failure of the employer or the local board to suspend the member's pension were not intentional to circumvent the requirements of this subsection, the pension payments received by the retired member during reemployment are subject to repayment up to only the amount received between the date of the member's reemployment and the expiration of the twelve-month period.

4. If a retired member who retired on or after July 1, 2009 and who is reemployed terminates employment, the retired member may be subsequently reemployed with the employer from which the member retired in a designated position and resume receiving pension payments after a period of twelve months, less the period of time the retired member was not reemployed by the employer from which the member retired in a designated position after retirement, if at least sixty days of the twelve months are consecutive.

O. Notwithstanding any other provision of this article, a member who retires having met all of the qualifications for retirement and who subsequently becomes an elected official, by election or appointment, is not considered reemployed by the same employer.

APPROVED BY THE GOVERNOR MARCH 23, 2022.