

Senate Substitute for HOUSE BILL No. 2621

AN ACT concerning retirement; relating to the Kansas public employees retirement system and systems thereunder; benefits; eligibility; purchase of participating service; rollover of distributions; retirement plans and accounts, contributions; death and disability benefits; amending K.S.A. 72-8603, 74-4927g and 75-5524 and K.S.A. 2001 Supp. 74-4902, 74-4919m, 74-4927, 74-4927b, 74-4927f, 74-4966 and 74-49,123 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 74-4919t.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 72-8603 is hereby amended to read as follows: 72-8603. (a) The board of education of any school district or the board of trustees of any community ~~junior~~ college shall contract with any of its employees ~~so requesting, upon request,~~ for reductions in compensation and the contribution thereof for tax sheltered ~~annuities~~ *accounts and annuities or deferred compensation plans* as permitted under *section 403(b) or section 457 of the United States internal revenue code*, for the benefit of such employees. Any employee desiring to contract under the provisions of this section shall ~~express his or her wishes in writing to his or her~~ *send written notice of such desire to such employee's* employer within semiannual thirty-day periods in accordance with rules and regulations of such employer.

(b) *The board of education of any school district and the board of trustees of any community college may contribute to a participant's 403(b) account or annuity or 457 plan contracted for under the provisions of subsection (a).*

Sec. 2. K.S.A. 2001 Supp. 74-4902 is hereby amended to read as follows: 74-4902. As used in articles 49 and 49a of chapter 74 and amendments thereto, unless otherwise provided or the context otherwise requires:

(1) "Accumulated contributions" means the sum of all contributions by a member to the system which are credited to the member's account, with interest allowed thereon;

(2) "acts" means the provisions of articles 49 and 49a of the Kansas Statutes Annotated and amendments thereto;

(3) "actuarial equivalent" means an annuity or benefit of equal value to the accumulated contributions, annuity or benefit, when computed upon the basis of the actuarial tables in use by the system. Whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, the assumptions shall be specified in a way that precludes employer discretion;

(4) "actuarial tables" means the actuarial tables approved and in use by the board at any given time;

(5) "actuary" means the actuary or firm of actuaries employed or retained by the board at any given time;

(6) "agent" means the individual designated by each participating employer through whom system transactions and communication are directed;

(7) "beneficiary" means any natural person or persons or estate named by a member to receive any benefits as provided for by this act. Designations of beneficiaries by a member who is a member of more than one retirement system made on or after July 1, 1987, shall be the basis of any benefits payable under all systems unless otherwise provided by law. Except as otherwise provided by subsection (33) of this section, if there is no named beneficiary living at time of member's death, any benefits provided for by this act shall be paid to: (A) The member's surviving spouse; (B) the member's dependent child or children; (C) the member's dependent parent or parents; (D) the member's nondependent child or children; (E) the member's nondependent parent or parents; (F) the estate of the deceased member; in the order of preference as specified in this subsection.

(8) "board of trustees," "board" or "trustees" means the managing body of the system which is known as the Kansas public employees retirement system board of trustees;

(9) "compensation" means, except as otherwise provided, all salary, wages and other remuneration payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of compensation, but not including reimbursement for travel or moving expenses or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. Beginning with

the employer's fiscal year which begins in calendar year 1991 or for employers other than the state of Kansas, beginning with the fiscal year which begins in calendar year 1992, when the compensation of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in compensation, except that (A) any amount of compensation for accumulated sick leave or vacation or annual leave paid to the member, (B) any increase in compensation for any member due to a reclassification or reallocation of such member's position or a reassignment of such member's job classification to a higher range or level and (C) any increase in compensation as provided in any contract entered into prior to January 1, 1991, and still in force on the effective date of this act, pursuant to an early retirement incentive program as provided in K.S.A. 72-5395 *et seq.* and amendments thereto, shall be included in the amount of compensation of such member used in determining such member's final average salary and shall not be subject to the 15% limitation provided in this subsection. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, beginning with the employer's fiscal year coinciding with or following July 1, 1985, compensation shall include any amounts for tax sheltered annuities or deferred compensation plans. Beginning with the employer's fiscal year which begins in calendar year 1991, compensation shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "compensation" shall have the meaning as provided in K.S.A. 2001 Supp. 74-49,123 and amendments thereto;

(10) "credited service" means the sum of participating service and prior service and in no event shall credited service include any service which is credited under another retirement plan authorized under any law of this state;

(11) "dependent" means a parent or child of a member who is dependent upon the member for at least ½ of such parent or child's support;

(12) "effective date" means the date upon which the system becomes effective by operation of law;

(13) "eligible employer" means the state of Kansas, and any county, city, township, special district or any instrumentality of any one or several of the aforementioned or any noncommercial public television or radio station located in this state which receives state funds allocated by the Kansas public broadcasting commission whose employees are covered by social security. If a class or several classes of employees of any above defined employer are not covered by social security, such employer shall be deemed an eligible employer only with respect to such class or those classes of employees who are covered by social security;

(14) "employee" means any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year, *and any such officer or employee who is concurrently employed performing similar or related tasks by two or more participating employers, who each remit employer and employee contributions on behalf of such officer or employee to the system, and whose combined employment is not seasonal or temporary, and whose combined employment requires at least 1,000 hours of work per year*, but not including: (A) Any employee who is a contributing member of the United States civil service retirement system; (B) any employee who is a contributing member of the federal employees retirement system; (C) any employee who is a leased employee *as provided in section 414 of the federal internal revenue code of a participating employer.* ~~"Leased employee" means the same as provided in section 414 of the federal internal revenue code;~~ and (D) any employee or class of employees specifically exempted by law. After June 30, 1975, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for a retirement annuity under the provisions of K.S.A. 74-4925 and amendments thereto,

except that no person shall receive service credit under the Kansas public employees retirement system for any period of service for which benefits accrue or are granted under a retirement annuity plan under the provisions of K.S.A. 74-4925 and amendments thereto. After June 30, 1982, no person who is otherwise eligible for membership in the Kansas public employees retirement system shall be barred from such membership by reason of coverage by, eligibility for or future eligibility for any benefit under another retirement plan authorized under any law of this state, except that no such person shall receive service credit under the Kansas public employees retirement system for any period of service for which any benefit accrues or is granted under any such retirement plan. Employee shall include persons who are in training at or employed by, or both, a sheltered workshop for the blind operated by the secretary of social and rehabilitation services. The entry date for such persons shall be the beginning of the first pay period of the fiscal year commencing in calendar year 1986. Such persons shall be granted prior service credit in accordance with K.S.A. 74-4913 and amendments thereto. However, such persons classified as home industry employees shall not be covered by the retirement system. Employees shall include any member of a board of county commissioners of any county and any council member or commissioner of a city whose compensation is equal to or exceeds \$5,000 per year;

(15) “entry date” means the date as of which an eligible employer joins the system. The first entry date pursuant to this act is January 1, 1962;

(16) “executive director” means the managing officer of the system employed by the board under this act;

(17) “final average salary” means in the case of a member who retires prior to January 1, 1977, and in the case of a member who retires after January 1, 1977, and who has less than five years of participating service after January 1, 1967, the average highest annual compensation paid to such member for any five years of the last 10 years of participating service immediately preceding retirement or termination of employment, or in the case of a member who retires on or after January 1, 1977, and who has five or more years of participating service after January 1, 1967, the average highest annual compensation paid to such member on or after January 1, 1967, for any five years of participating service preceding retirement or termination of employment, or, in any case, if participating service is less than five years, then the average annual compensation paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member’s final average salary shall be computed by multiplying such member’s highest monthly salary received in that year by 12; in the case of a member who became a member under subsection (3) of K.S.A. 74-4925 and amendments thereto, or who became a member with a participating employer as defined in subsection (3) of K.S.A. 74-4931 and amendments thereto and who elects to have compensation paid in other than 12 equal installments, such compensation shall be annualized as if the member had elected to receive 12 equal installments for any such periods preceding retirement; in the case of a member who retires after July 1, 1987, the average highest annual compensation paid to such member for any four years of participating service preceding retirement or termination of employment; in the case of a member who retires on or after July 1, 1993, ~~who was first hired as an employee, as defined in subsection (14) of K.S.A. 74-4902 and amendments thereto, prior to July 1, 1993~~ *whose date of membership in the system is prior to July 1, 1993, and any member who is in such member’s membership waiting period on July 1, 1993, and whose date of membership in the system is on or after July 1, 1993,* the average highest annual compensation, as defined in subsection (9), paid to such member for any four years of participating service preceding retirement or termination of employment or the average highest annual salary, as defined in subsection (34), paid to such member for any three years of participating service preceding retirement or termination of employment, whichever is greater; and in the case of a member who retires on or after July 1, 1993, ~~and who is first hired as an employee, as defined in subsection (14) of K.S.A. 74-4902 and amendments thereto, on or after July 1, 1993~~ *whose date of membership in the system is on or after July 1, 1993,* the average highest annual salary, as

defined in subsection (34), paid to such member for any three years of participating service preceding retirement or termination of employment. Final average salary shall not include any purchase of participating service credit by a member as provided in subsection (2) of K.S.A. 74-4919h and amendments thereto which is completed within five years of retirement. For any application to purchase or repurchase service credit for a certain period of service as provided by law received by the system after May 17, 1994, for any member who will have contributions deducted from such member's compensation at a percentage rate equal to two or three times the employee's rate of contribution or will begin paying to the system a lump-sum amount for such member's purchase or repurchase and such deductions or lump-sum payment commences after the commencement of the first payroll period in the third quarter, "final average salary" shall not include any amount of compensation or salary which is based on such member's purchase or repurchase. Any application to purchase or repurchase multiple periods of service shall be treated as multiple applications. For purposes of this subsection, the date that such member is first hired as an employee for members who are employees of employers that elected to participate in the system on or after January 1, 1994, shall be the date that such employee's employer elected to participate in the system. In the case of any former member who was eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto prior to July 1, 1998, for the purpose of calculating final average salary of such member, such member's final average salary shall be based on such member's salary while a member of the system or while eligible for assistance pursuant to K.S.A. 74-4925 and amendments thereto, whichever is greater;

(18) "fiscal year" means, for the Kansas public employees retirement system, the period commencing July 1 of any year and ending June 30 of the next;

(19) "Kansas public employees retirement fund" means the fund created by this act for payment of expenses and benefits under the system and referred to as the fund;

(20) "leave of absence" means a period of absence from employment without pay, authorized and approved by the employer, and which after the effective date does not exceed one year;

(21) "member" means an eligible employee who is in the system and is making the required employee contributions; any former employee who has made the required contributions to the system and has not received a refund if such member is within five years of termination of employment with a participating employer; or any former employee who has made the required contributions to the system, has not yet received a refund and has been granted a vested benefit;

(22) "military service" means service in the uniformed forces of the United States, for which retirement benefit credit must be given under the provisions of USERRA or service in the armed forces of the United States or in the commissioned corps of the United States public health service, which service is immediately preceded by a period of employment as an employee or by the entering into of an employment contract with a participating employer and is followed by return to employment as an employee with the same or another participating employer within 12 months immediately following discharge from such military service, except that if the board determines that such return within 12 months was made impossible by reason of a service-connected disability, the period within which the employee must return to employment with a participating employer shall be extended not more than two years from the date of discharge or separation from military service;

(23) "normal retirement date" means the date on or after which a member may retire with full retirement benefits pursuant to K.S.A. 74-4914 and amendments thereto;

(24) "participating employer" means an eligible employer who has agreed to make contributions to the system on behalf of its employees;

(25) "participating service" means the period of employment after the entry date for which credit is granted a member;

(26) "prior service" means the period of employment of a member prior to the entry date for which credit is granted a member under this act;

(27) "prior service annual salary" means the highest annual salary, not including any amounts received as payment for overtime or as re-

imbursement for travel or moving expense, received for personal services by the member from the current employer in any one of the three calendar years immediately preceding January 1, 1962, or the entry date of the employer, whichever is later, except that if a member entered the employment of the state during the calendar year 1961, the prior service annual salary shall be computed by multiplying such member's highest monthly salary received in that year by 12;

(28) "retirant" means a member who has retired under this system;

(29) "retirement benefit" means a monthly income or the actuarial equivalent thereof paid in such manner as specified by the member pursuant to this act or as otherwise allowed to be paid at the discretion of the board, with benefits accruing from the first day of the month coinciding with or following retirement and ending on the last day of the month in which death occurs. Upon proper identification a surviving spouse may negotiate the warrant issued in the name of the retirant. If there is no surviving spouse, the last warrant shall be payable to the designated beneficiary;

(30) "retirement system" or "system" means the Kansas public employees retirement system as established by this act and as it may be amended;

(31) "social security" means the old age, survivors and disability insurance section of the federal social security act;

(32) "total disability" means a physical or mental disability which prevents the member from engaging, for remuneration or profit, in any occupation for which the member is reasonably suited by education, training or experience;

(33) "trust" means an express trust, created by a trust instrument, including a will, designated by a member to receive payment of the insured death benefit under K.S.A. 74-4927 and amendments thereto and payment of the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto. A designation of a trust shall be filed with the board. If there is a designated trust at the time of the member's death, the insured death benefit for the member under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid to the trust in lieu of the member's beneficiary. If no will is admitted to probate within six months after the death of the member or no trustee qualifies within such six months or if the designated trust fails, for any reason whatsoever, the insured death benefit under K.S.A. 74-4927 and amendments thereto and the member's accumulated contributions under subsection (1) of K.S.A. 74-4916 and amendments thereto shall be paid in accordance with the provisions of subsection (7) of this section as in other cases where there is no named beneficiary living at the time of the member's death and any payments so made shall be a full discharge and release to the system from any further claims;

(34) "salary" means all salary and wages payable to a member for personal services performed for a participating employer, including maintenance or any allowance in lieu thereof provided a member as part of salary. Salary shall not include reimbursement for travel or moving expenses, payment for accumulated sick leave or vacation or annual leave, severance pay or any other payments to the member determined by the board to not be payments for personal services performed for a participating employer constituting salary or on and after July 1, 1994, payment pursuant to an early retirement incentive program made prior to the retirement of the member. When the salary of a member who remains in substantially the same position during any two consecutive years of participating service used in calculating final average salary is increased by an amount which exceeds 15%, then the amount of such increase which exceeds 15% shall not be included in salary. Any contributions by such member on the amount of such increase which exceeds 15% which is not included in compensation shall be returned to the member. Unless otherwise provided by law, salary shall include any amounts for tax sheltered annuities or deferred compensation plans. Salary shall include amounts under sections 403b, 457 and 125 of the federal internal revenue code of 1986 and, as the board deems appropriate, any other section of the federal internal revenue code of 1986 which defers or excludes amounts from inclusion in income. For purposes of applying limits under the federal internal revenue code "salary" shall have the meaning as pro-

vided in K.S.A. 2001 Supp. 74-49,123 and amendments thereto. In any case, if participating service is less than three years, then the average annual salary paid to the member during the full period of participating service, or, in any case, if the member has less than one calendar year of participating service such member's final average salary shall be computed by multiplying such member's highest monthly salary received in that year by 12;

(35) "federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as in effect on July 1, 1998, and as applicable to a governmental plan; and

(36) "USERRA" means the federal uniformed services employment and reemployment rights act of 1994 as in effect on July 1, 1998.

Sec. 3. K.S.A. 2001 Supp. 74-4919m is hereby amended to read as follows: 74-4919m. (1) Except as otherwise provided, any active contributing member of the retirement system who at one time had the state board of regents assist such member in the purchase of retirement annuities as provided in K.S.A. 74-4925 and amendments thereto and who withdrew such member's accumulated contributions upon the termination of such employment as provided in K.S.A. 74-4925 and amendments thereto may purchase such participating service credit for such service, *and any active contributing member of the retirement system may purchase participating service credit for any waiting period required pursuant to K.S.A. 74-4925, and amendments thereto, regardless of whether the state board of regents assisted such member in the purchase of retirement annuities as provided in K.S.A. 74-4925, and amendments thereto.* Such member may purchase, subject to the provisions of K.S.A. 2001 Supp. 74-49,123 and amendments thereto such service credit by submitting proof of such service acceptable to the board of trustees and electing in writing to have employee contributions deducted as provided in K.S.A. 74-4919 and amendments thereto from such member's compensation at an additional rate of contribution, in addition to the employee's rate of contribution as provided in K.S.A. 74-4919 and amendments thereto, based upon the member's attained age at the time of purchase and using actuarial assumptions and tables in use by the retirement system at such time of purchase for such periods of service. Such additional rate of contribution shall commence at the beginning of the quarter following such election and shall remain in effect until all of the full quarters of such service have been purchased.

(2) Any member of the Kansas public employees retirement system who has not retired may purchase, subject to the provisions of K.S.A. 2001 Supp. 74-49,123 and amendments thereto participating service credit for such service as described in this section with a participating employer by making a single lump-sum payment in lieu of employee contributions as provided in this section. The lump-sum payment shall be in an amount determined by the actuary using (a) the member's then current annual rate of compensation, (b) the actuarial assumptions and tables currently in use by the system and (c) the member's attained age.

Sec. 4. K.S.A. 2001 Supp. 74-4927 is hereby amended to read as follows: 74-4927. (1) The board may establish a plan of death and long-term disability benefits to be paid to the members of the retirement system as provided by this section. The long-term disability benefit shall not be payable until the member has been prevented from carrying out each and every duty pertaining to the member's employment as a result of sickness or injury for a period of 180 days and the annual benefit shall not exceed an amount equal to 66 $\frac{2}{3}$ % of the member's annual rate of compensation on the date such disability commenced and shall be payable in equal monthly installments. In the event that a member's compensation is not fixed at an annual rate but on an hourly, weekly, biweekly, monthly or any other basis than annual, the board shall prescribe by rule and regulation a formula for establishing a reasonable rate of annual compensation to be used in determining the amount of the death or long-term disability benefit for such member. Such plan shall provide that:

(A) For deaths occurring prior to January 1, 1987, the right to receive such death benefit shall cease upon the member's attainment of age 70 or date of retirement whichever first occurs. The right to receive such long-term disability benefit shall cease (i) for a member who becomes eligible for such benefit before attaining age 60, upon the date that such

member attains age 65 or the date of such member's retirement, whichever first occurs, (ii) for a member who becomes eligible for such benefit at or after attaining age 60, the date that such member has received such benefit for a period of five years, upon the date that such member attains age 70, or upon the date of such member's retirement, whichever first occurs, (iii) for all disabilities incurred on or after January 1, 1987, for a member who becomes eligible for such benefit at or after attaining age 70, the date that such member has received such benefit for a period of 12 months or upon the date of such member's retirement, whichever first occurs, and (iv) for all disabilities incurred on or after January 1, 1987, for a member who becomes eligible for such benefit at or after attaining age 75, the date that such member has received such benefit for a period of six months or upon the date of such member's retirement, whichever first occurs.

(B) Long-term disability benefit payments shall be in lieu of any accidental total disability benefit that a member may be eligible to receive under subsection (3) of K.S.A. 74-4916 and amendments thereto. The member must make an initial application for social security disability benefits and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Such plan may provide that any amount which a member receives as a social security benefit or a disability benefit or compensation from any source by reason of any employment including, but not limited to, workers compensation benefits may be deducted from the amount of long-term disability benefit payments under such plan. During the period in which such member is pursuing such administrative remedies prior to a final decision of the social security administration, social security disability benefits may be estimated and may be deducted from the amount of long-term disability benefit payments under such plan. Such long-term disability payments shall accrue from the later of the 181st day of total disability or the first day upon which the member ceases to draw compensation from the employer. If the social security benefit, workers compensation benefit, other income or wages or other disability benefit by reason of employment, or any part thereof, is paid in a lump-sum, the amount of the reduction shall be calculated on a monthly basis over the period of time for which the lump-sum is given. In no case shall a member who is entitled to receive long-term disability benefits receive less than \$50 per month. As used in this section, "workers compensation benefits" means the total award of disability benefit payments under the workers compensation act notwithstanding any payment of attorney fees from such benefits as provided in the workers compensation act.

(C) The plan may include other provisions relating to qualifications for benefits; schedules and graduation of benefits; limitations of eligibility for benefits by reason of termination of employment or membership; conversion privileges; limitations of eligibility for benefits by reason of leaves of absence, military service or other interruptions in service; limitations on the condition of long-term disability benefit payment by reason of improved health; requirements for medical examinations or reports; or any other reasonable provisions as established by rule and regulation of uniform application adopted by the board.

(D) On and after April 30, 1981, the board may provide under the plan for the continuation of long-term disability benefit payments to any former member who forfeits the entitlement to continued service credit under the retirement system or continued assistance in the purchase of retirement annuities under K.S.A. 74-4925 and amendments thereto and to continued long-term disability benefit payments and continued death benefit coverage, by reason of the member's withdrawal of contributions from the retirement system or the repurchase of retirement annuities which were purchased with assistance received under K.S.A. 74-4925 and amendments thereto. Such long-term disability benefit payments may be continued until such individual dies, attains age 65 or is no longer disabled, whichever occurs first.

(E) Any visually impaired person who is in training at and employed by a sheltered workshop for the blind operated by the secretary of social and rehabilitation services and who would otherwise be eligible for the long-term disability benefit as described in this section shall not be eli-

gible to receive such benefit due to visual impairment as such impairment shall be determined to be a preexisting condition.

(2) (A) In the event that a member becomes eligible for a long-term disability benefit under the plan authorized by this section such member shall be given participating service credit for the entire period of such disability. Such member's final average salary shall be computed in accordance with subsection (17) of K.S.A. 74-4902 and amendments thereto except that the years of participating service used in such computation shall be the years of salaried participating service.

(B) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding retirement, such member's final average salary shall be adjusted upon retirement by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's final average salary shall be adjusted upon retirement by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's final average salary shall be adjusted upon retirement by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers as published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of retirement, for each year of disability after July 1, 1998.

(C) In the event that a member eligible for a long-term disability benefit under the plan authorized by this section shall be disabled for a period of five years or more immediately preceding death, such member's current annual rate shall be adjusted by the actuarial salary assumption rates in existence during such period of disability. Effective July 1, 1993, such member's current annual rate shall be adjusted upon death by 5% for each year of disability after July 1, 1993, but before July 1, 1998. Effective July 1, 1998, such member's current annual rate shall be adjusted upon death by an amount equal to the lesser of: (i) The percentage increase in the consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor minus 1%; or (ii) four percent per annum, measured from the member's last day on the payroll to the month that is two months prior to the month of death, for each year of disability after July 1, 1998.

(3) (A) To carry out the legislative intent to provide, within the funds made available therefor, the broadest possible coverage for members who are in active employment or involuntarily absent from such active employment, the plan of death and long-term disability benefits shall be subject to adjustment from time to time by the board within the limitations of this section. The plan may include terms and provisions which are consistent with the terms and provisions of group life and long-term disability policies usually issued to those employers who employ a large number of employees. The board shall have the authority to establish and adjust from time to time the procedures for financing and administering the plan of death and long-term disability benefits authorized by this section. Either the insured death benefit or the insured disability benefit or both such benefits may be financed directly by the system or by one or more insurance companies authorized and licensed to transact group life and group accident and health insurance in this state.

(B) The board may contract with one or more insurance companies, which are authorized and licensed to transact group life and group accident and health insurance in Kansas, to underwrite or to administer or to both underwrite and administer either the insured death benefit or the long-term disability benefit or both such benefits. Each such contract with an insurance company under this subsection shall be entered into on the basis of competitive bids solicited and administered by the board. Such competitive bids shall be based on specifications prepared by the board.

(i) In the event the board purchases one or more policies of group insurance from such company or companies to provide either the insured death benefit or the long-term disability benefit or both such benefits, the board shall have the authority to subsequently cancel one or more of such policies and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves estab-

lished by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund.

(ii) In addition, the board shall have the authority to cancel any policy or policies of group life and long-term disability insurance in existence on the effective date of this act and, notwithstanding any other provision of law, to release each company which issued any such canceled policy from any liability for future benefits under any such policy and to have the reserves established by such company under any such canceled policy returned to the system for deposit in the group insurance reserve of the fund. Notwithstanding any other provision of law, no premium tax shall be due or payable by any such company or companies on any such policy or policies purchased by the board nor shall any brokerage fees or commissions be paid thereon.

(4) (A) There is hereby created in the state treasury the group insurance reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. The cost of the plan of death and long-term disability benefits shall be paid from the group insurance reserve fund, which shall be administered by the board. Except as otherwise provided by this subsection, each participating employer shall appropriate and pay to the system in such manner as the board shall prescribe in addition to the employee and employer retirement contributions an amount equal to .6% of the amount of compensation on which the members' contributions to the Kansas public employees retirement system are based for deposit in the group insurance reserve fund. Notwithstanding the provisions of this subsection, no participating employer shall appropriate and pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, 2000, and ending on December 31, 2001, *or for the period commencing July 1, 2002, and ending December 31, 2002.*

(B) The director of the budget and the governor shall include in the budget and in the budget request for appropriations for personal services a sum to pay the state's contribution to the group insurance reserve fund as provided by this section and shall present the same to the legislature for allowances and appropriation.

(C) The provisions of subsection (4) of K.S.A. 74-4920 and amendments thereto shall apply for the purpose of providing the funds to make the contributions to be deposited to the group insurance reserve fund.

(D) Any dividend or retrospective rate credit allowed by an insurance company or companies shall be credited to the group insurance reserve fund and the board may take such amounts into consideration in determining the amounts of the benefits under the plan authorized by this section.

(5) The death benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as insured death benefit. The long-term disability benefit provided under the plan of death and long-term disability benefits authorized by this section shall be known and referred to as long-term disability benefit.

(6) The board is hereby authorized to establish an optional death benefit plan. Except as provided in subsection (7), such optional death benefit plan shall be made available to all employees who are covered or may hereafter become covered by the plan of death and long-term disability benefits authorized by this section. The cost of the optional death benefit plan shall be paid by the applicant either by means of a system of payroll deductions or direct payment to the board. The board shall have the authority and discretion to establish such terms, conditions, specifications and coverages as it may deem to be in the best interest of the state of Kansas and its employees which should include term death benefits for the person's period of active state employment regardless of age, but in no case, on and after January 1, 1989, shall the maximum allowable coverage be less than \$200,000. The cost of the optional death benefit plan shall not be established on such a basis as to unreasonably discriminate against any particular age group. The board shall have full administrative responsibility, discretion and authority to establish and continue such optional death benefit plan and the director of accounts and reports of the department of administration shall when requested by the board and from funds appropriated or available for such purpose establish a system to make periodic deductions from state payrolls to cover the cost

of the optional death benefit plan coverage under the provisions of this subsection (6) and shall remit all deductions together with appropriate accounting reports to the system. There is hereby created in the state treasury the optional death benefit plan reserve fund. Investment income of the fund shall be added or credited to the fund as provided by law. All funds received by the board, whether in the form of direct payments, payroll deductions or otherwise, shall be accounted for separately from all other funds of the retirement system and shall be paid into the optional death benefit plan reserve fund, from which the board is authorized to make the appropriate payments and to pay the ongoing costs of administration of such optional death benefit plan as may be incurred in carrying out the provisions of this subsection (6).

(7) Any employer other than the state of Kansas which is currently a participating employer of the Kansas public employees retirement system or is in the process of affiliating with the Kansas public employees retirement system may also elect to affiliate for the purposes of subsection (6). All such employers shall make application for affiliation with such system, to be effective on January 1 next following application. Such optional death benefit plan shall not be available for employees of employers specified under this subsection until after July 1, 1988.

Sec. 5. K.S.A. 2001 Supp. 74-4927b is hereby amended to read as follows: 74-4927b. (1) For the purposes of providing the “insured death benefit” and “insured disability benefit” as prescribed in K.S.A. 74-4927, and amendments thereto, *and for the purposes of providing the “accidental death benefit” as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto*, to those members of the faculty and other persons employed by educational institutions under the management of the state board of education who are receiving assistance in the purchase of retirement annuities as provided in K.S.A. 74-4925, and amendments thereto, the term “member” as used *in subsection (2) of K.S.A. 74-4916, and amendments thereto, and in K.S.A. 74-4927, and amendments thereto*, shall include the aforementioned members of the faculty and other persons employed by educational institutions under the management of the state board of education and who are receiving such assistance.

(2) Each institution under the state board of education furnishing such assistance shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe each payroll period an amount sufficient to pay the employer’s contribution to the group insurance reserve as provided in K.S.A. 74-4927, and amendments thereto, *and an amount sufficient to pay the amount of the employer’s contribution attributable to the accidental death benefit as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto*. Subsection (2) of K.S.A. 74-4932, and amendments thereto, shall also apply in determining such contributions and benefits.

(3) Each such institution under the state board of education shall maintain a file of the beneficiaries named by the persons covered under the provisions of this act in the form and manner as prescribed by the board of trustees.

(4) In the event that a member of the faculty or other person as herein defined becomes eligible for the insured disability benefit, the respective educational institutions under the board of education hereinbefore described shall continue to provide the assistance including the payment of employers and employees contributions in the purchase of the retirement annuities provided in K.S.A. 74-4925, and amendments thereto, until the date of retirement.

Sec. 6. K.S.A. 2001 Supp. 74-4927f is hereby amended to read as follows: 74-4927f. (a) For the purposes of providing the “insured death benefit” as prescribed in K.S.A. 74-4927 and amendments thereto, to all persons who are members of the retirement system for judges, the term “member” as used in K.S.A. 74-4927 and amendments thereto, and as used in this section shall include members of the retirement system for judges.

(b) Except as otherwise provided by this subsection, the employer of any member who is a member of the retirement system for judges shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe, an amount equal to .4% of the

amount of compensation on which the member's contributions to the retirement system for judges are based for deposit in the group insurance reserve of the Kansas public employees retirement fund, in lieu of the amount required to be paid under subsection (4) of K.S.A. 74-4927 and amendments thereto. Notwithstanding the provisions of this subsection, no employer shall pay to the system any amount provided for by this subsection for deposit in the group insurance reserve fund for the period commencing on April 1, 2000, and ending on December 31, 2001, *or for the period commencing July 1, 2002, and ending on December 31, 2002.*

Sec. 7. K.S.A. 74-4927g is hereby amended to read as follows: 74-4927g. (1) For the purposes of providing the "insured death benefit" and "long-term disability benefit" as prescribed in K.S.A. 74-4927, and amendments thereto, *and for the purposes of providing the "accidental death benefit" as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto,* to all employees employed by the state board of regents or by educational institutions under the state board of regents who are fulfilling the ~~two-year~~ service requirement under subsection (a) of K.S.A. 74-4925, and amendments thereto, on and after the first day of the first payroll period of the fiscal year ending June 30, 1985, the term "member" as used in *subsection (2) of K.S.A. 74-4916, and amendments thereto,* and K.S.A. 74-4927a, and amendments thereto, and ~~as used~~ in this section, shall include the aforementioned employees.

(2) The employer of any member shall pay to the Kansas public employees retirement system in such manner as the board of trustees shall prescribe, ~~beginning with the first day of the first payroll period of the fiscal year ending June 30, 1985, and each payroll period thereafter,~~ *an amount sufficient to pay the amount of the employer's contribution attributable to the accidental death benefit as prescribed in subsection (2) of K.S.A. 74-4916, and amendments thereto,* and an amount sufficient to pay the employer's contribution to the group insurance reserve as provided in subsection (4) of K.S.A. 74-4927, and amendments thereto.

(3) The employer of any member shall maintain a file of the beneficiaries named by the persons covered under this section in the form and manner as prescribed by the board of trustees.

~~(4) Coverage under the plan of death and long-term disability benefits shall begin with the first day of the first payroll period of the fiscal year ending June 30, 1985, for such member and other persons as defined in this section.~~

Sec. 8. K.S.A. 2001 Supp. 74-4966 is hereby amended to read as follows: 74-4966. (a) In the case of any member whose employment shall be covered by social security and who is a member of the class certified in the case of *Brazelton v. Kansas public employees retirement system*, 227 K. 443, 607 P.2d 510 (1980), any benefits payable under the provisions of K.S.A. 74-4958, 74-4959 and 74-4960, *and amendments thereto,* shall be reduced by an amount equal to ½ of the original social security benefits accruing from employment with the participating employer at the time the member retired. *The actuarial calculation of such benefit and the social security reduction shall include an assumption that the member first commences receiving such member's benefit payments pursuant to social security at the age such member is first eligible for unreduced social security benefits or such member's actual retirement age, whichever occurs later.* For any member already retired on the effective date of this act, no reduction of the original social security benefits shall be applicable to benefits paid prior to the effective date of this act. The member must make an initial application for social security benefits from employment with the participating employer and, if denied such benefits, the member must pursue and exhaust all administrative remedies of the social security administration which include, but are not limited to, reconsideration and hearings. Until such initial application for benefits has been approved by the social security administration, social security benefits may be estimated and may be deducted from the amount of any benefits payable as provided in this subsection.

(b) For any member other than a member who is a member of the class certified in the case of *Brazelton v. Kansas public employees retirement system*, 227 K. 443, 607 P.2d 510 (1980), no benefits shall be reduced because of social security benefits. Any benefits which first become payable on or after January 1, 1976, by reason of employment with a

participating employer participating in the Kansas police and firemen's retirement system, which employment was also covered by social security, shall be reduced by an amount equal to the value of the difference between contributions actually made by the member and contributions which would have been made had there been no reduction for contributions to social security. The amount of reduction shall be made by the board upon the advice of the actuary at the time benefits become payable and shall continue until benefits are no longer payable. Should a member, whose employment prior to January 1, 1976, with a participating employer participating in the Kansas police and firemen's retirement system, such employment also being covered by social security, repay in a lump-sum prior to January 1, 1977, or on date of retirement, whichever is earlier, an amount equal to the difference between contributions actually made by the member and contributions which would have been made had there been no reduction for contributions to social security, there shall be no reduction as heretofore provided. If the payment is made after January 1, 1977, but prior to retirement, the member will pay the actual amount plus interest which shall accrue from January 1, 1976, at a rate specified by the board of trustees.

Sec. 9. K.S.A. 2001 Supp. 74-49,123 is hereby amended to read as follows: 74-49,123. (a) This section applies to the Kansas public employees retirement system and to all other public retirement plans administered by the board of trustees.

(b) As used in this section:

(1) "Federal internal revenue code" means the federal internal revenue code of 1954 or 1986, as amended and as applicable to a governmental plan as in effect on July 1, 1998; and

(2) "retirement plan" includes the Kansas public employees retirement system and all other Kansas public retirement plans and benefit structures, which are administered by the board.

(c) In addition to the federal internal revenue code provisions otherwise noted in each retirement plan's law, and in order to satisfy the applicable requirements under the federal internal revenue code, the retirement plans shall be subject to the following provisions, notwithstanding any other provision of the retirement plan's law:

(1) The board shall distribute the corpus and income of the retirement plan to the members and their beneficiaries in accordance with the retirement plan's law. At no time prior to the satisfaction of all liabilities with respect to members and their beneficiaries shall any part of the corpus and income be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, death or for any other reason may not be applied to increase the benefits any member would otherwise receive under the retirement plan's law. However, forfeitures may be used to reduce an employer's contribution.

(3) All benefits paid from the retirement plan shall be distributed in accordance with the requirements of section 401(a)(9) of the federal internal revenue code and the regulations under that section. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions: (A) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a participant attains age 70½ or the April 1 of the year following the calendar year in which the member retires;

(B) the life expectancy of a member or the member's spouse may not be recalculated after the benefits commence;

(C) if a member dies before the distribution of the member's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died, except as provided in subsection (6) of K.S.A. 74-4918 and amendments thereto; and

(D) the amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the federal internal revenue code.

(4) Distributions from the retirement plans may be made only upon retirement, separation from service, disability or death.

(5) The board or its designee may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries, in a manner that discriminates in favor of members who are considered officers, supervisors or highly compensated, as prohibited under section 401(a)(4) of the federal internal revenue code.

(6) Subject to the provisions of this subsection, benefits paid from, and employee contributions made to, the retirement plans shall not exceed the maximum benefits and the maximum annual additions, respectively, permissible under section 415 of the federal internal revenue code.

(A) Beginning January 1, 1995, a participant may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the federal internal revenue code, subject to the applicable adjustments in section 415 of the federal internal revenue code, except as provided in clause (C) of this subsection.

(B) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the retirement plans if the amount of the contribution would exceed the limits under section 415(c) or 415(n) of the federal internal revenue code subject to the following:

(i) Where the retirement plan's law requires a lump-sum payment, for the purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code.

(ii) An eligible participant in a retirement plan, as defined by section 1526 of the federal taxpayer relief act of 1997, may purchase service credit without regard to the limitations of section 415 (c)(1) of the federal internal revenue code as provided by state law in effect on August 5, 1997.

If the board's option under subdivision (i) will not avoid a contribution in excess of the limits under section 415(c) or 415(n) of the federal internal revenue code, the board shall reduce or deny the contribution.

(C) Subject to approval by the internal revenue service, the board shall maintain a qualified governmental excess benefit arrangement under section 415(m) of the federal internal revenue code. The board shall establish the necessary and appropriate procedures for the administration of such benefit arrangement under the federal internal revenue code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be paid from this benefit arrangement. The amount of any contribution that would exceed the limitations imposed by section 415 of the federal internal revenue code shall be credited to this benefit arrangement. The qualified excess benefit arrangement shall be a separate portion of the retirement plan. The qualified excess benefit arrangement is subject to the following requirements:

(i) The benefit arrangement shall be maintained solely for the purpose of providing to participants in the retirement plans that part of the participant's annual benefit otherwise payable under the terms of the act that exceeds the limitations on benefits imposed by section 415 of the federal internal revenue code; and

(ii) participants do not have an election, directly or indirectly, to defer compensation to the excess benefit arrangement.

(D) Prior to January 1, 1998, the definition of compensation, wages, salary or other similar term when used for purposes of determining compliance with section 415 of the federal internal revenue code does not include the amount of any elective deferral, as defined in section 402(g)(3) of the federal internal revenue code, or any contribution which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of section 125 or 457 of the federal internal revenue code.

(7) The board may not engage in a transaction prohibited by section 503(b) of the federal internal revenue code.

(8) To the extent required by section 401(a)(31) of the federal internal revenue code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan. Notwithstanding any law to the contrary, the board may accept a direct or indirect rollover of eligible distributions for the purpose of the purchase of service credit. *In addition, the board may accept a direct trustee to trustee transfer from a deferred compensation plan under section 457(b) of the federal internal revenue code or a tax sheltered an-*

nuity under section 403(b) of the federal internal revenue code for: (A) The purchase of permissive service credit, as defined under section 415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to which section 415 of the federal internal revenue code does not apply pursuant to section 415(k)(3) of the federal internal revenue code. Any such transfer shall be allowed as provided in this subsection to the extent permitted by law, subject to any conditions, proofs or acceptance established or required by the board or the board's designee.

(9) Where required by the act, an employer shall pick up and pay contributions that would otherwise be payable by members of a retirement plan in accordance with section 414(h)(2) of the federal internal revenue code as follows:

(A) The contributions, although designated as employee contributions, are being paid by the employer in lieu of contributions by the employee;

(B) the employee must not have been given the option of receiving the amounts directly instead of having them paid to the retirement plan; and

(C) the pickup shall apply to amounts that a member elects to contribute to receive credit for prior or participating service if the election is irrevocable and applies to amounts contributed before retirement.

(10) Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the federal internal revenue code.

(11) Upon the complete or partial termination of a retirement plan, the rights of members to benefits accrued to the date of termination, to the extent funded, or to the amounts in their accounts are nonforfeitable, and amounts in their accounts may be distributed to them.

(d) The plan year for the retirement plan begins on July 1.

(e) The limitation year for purposes of section 415 of the federal internal revenue code is the calendar year.

Sec. 10. K.S.A. 75-5524 is hereby amended to read as follows: 75-5524. (a) The director is authorized to enter into a voluntary agreement with any employee whereby the director agrees to defer and deduct each payroll period a portion of the employee's salary or compensation from the state in accordance with the Kansas public employees deferred compensation plan. Such agreement may require each participant to pay a service charge to defray all or part of any significant costs incurred and to be recovered by the state pursuant to subsection (c) of K.S.A. 75-5523, *and amendments thereto*, as a result of the administration of this act. Pursuant to this act and such agreements the director is authorized to deduct amounts authorized in such agreements from the salary or compensation of such employee each payroll period, as part of the system of regular payroll deduction. *On and after July 1, 2002, pursuant to section 401(a) of the federal internal revenue code, the director may establish a qualified plan under which the state may contribute a specified amount, subject to appropriations, to the deferred compensation plan for state employees who have entered into a voluntary agreement with the director under this section.*

(b) The minimum amount and the maximum amount which may be deferred in any one payroll period shall be established by rules and regulations adopted under K.S.A. 75-5529, *and amendments thereto*.

(c) The Kansas public employees deferred compensation plan shall exist and be in addition to, and shall not be a part of any retirement or pension system for employees. The state shall not be responsible for any loss incurred by an employee under the Kansas public employees deferred compensation plan established and approved pursuant to this act.

(d) Any amount of the employee's salary or compensation that is deferred under such authorized agreement shall continue to be included as regular compensation for all purposes of computing retirement and pension benefits earned by any such employee, but any sum deferred or deducted shall not be subject to any state or local income taxes for the year in which such sum is earned but shall be subject to applicable state and local income taxes for the year in which such sum is received by the employee.

(e) The director is hereby authorized to establish a deferred com-

pensation clearing fund in the state treasury in which shall be placed temporarily all compensation deferred ~~and~~, deducted *or contributed* in accordance with this act, as provided for in any agreement between an employee and the director.

Sec. 11. K.S.A. 72-8603, 74-4927g and 75-5524 and K.S.A. 2001 Supp. 74-4902, 74-4919m, 74-4919t, 74-4927, 74-4927b, 74-4927f, 74-4966 and 74-49,123 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.