

{As Amended by House Committee of the Whole}

Session of 2016

HOUSE BILL No. 2724

By Committee on Appropriations

3-9

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system **{and systems thereunder}**; limits on
3 calculations of members' benefits; amounts taxable under 409A and
4 457(f) plans; **{reporting requirements of participating employers;}**
5 amending K.S.A. 2015 Supp. 74-4902 and repealing the existing
6 section.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2015 Supp. 74-4902 is hereby amended to read as
10 follows: 74-4902. As used in articles 49 and 49a of chapter 74 of the
11 Kansas Statutes Annotated, and amendments thereto, unless otherwise
12 provided or the context otherwise requires:

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

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

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

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

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

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

31 (7) "beneficiary" means, subject to the provisions of K.S.A. 74-4927,
32 and amendments thereto, any natural person or persons, estate or trust, or
33 any combination thereof, named by a member to receive any benefits as
34 provided for by this act. Designations of beneficiaries by a member who is
35 a member of more than one retirement system made on or after July 1,
36 1987, shall be the basis of any benefits payable under all systems unless

1 otherwise provided by law. Except as otherwise provided by subsection
2 (33) of this section, if there is no named beneficiary living at the time of
3 the member's death, any benefits provided for by this act shall be paid to:
4 (A) The member's surviving spouse; (B) the member's dependent child or
5 children; (C) the member's dependent parent or parents; (D) the member's
6 nondependent child or children; (E) the member's nondependent parent or
7 parents; *or* (F) the estate of the deceased member; in the order of
8 preference as specified in this subsection;

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

12 (9) "compensation" means, except as otherwise provided, all salary,
13 wages and other remuneration payable to a member for personal services
14 performed for a participating employer, including maintenance or any
15 allowance in lieu thereof provided a member as part of compensation, but
16 not including reimbursement for travel or moving expenses or on and after
17 July 1, 1994, payment pursuant to an early retirement incentive program
18 made prior to the retirement of the member. Beginning with the employer's
19 fiscal year which begins in calendar year 1991 or for employers other than
20 the state of Kansas, beginning with the fiscal year which begins in
21 calendar year 1992, when the compensation of a member who remains in
22 substantially the same position during any two consecutive years of
23 participating service used in calculating final average salary is increased
24 by an amount which exceeds 15%, then the amount of such increase which
25 exceeds 15% shall not be included in compensation, except that: (A) Any
26 amount of compensation for accumulated sick leave or vacation or annual
27 leave paid to the member; (B) any increase in compensation for any
28 member due to a reclassification or reallocation of such member's position
29 or a reassignment of such member's job classification to a higher range or
30 level; and (C) any increase in compensation as provided in any contract
31 entered into prior to January 1, 1991, and still in force on the effective date
32 of this act, pursuant to an early retirement incentive program as provided
33 in K.S.A. 72-5395 et seq., and amendments thereto, shall be included in
34 the amount of compensation of such member used in determining such
35 member's final average salary and shall not be subject to the 15%
36 limitation provided in this subsection. Any contributions by such member
37 on the amount of such increase which exceeds 15% which is not included
38 in compensation shall be returned to the member. Unless otherwise
39 provided by law, beginning with the employer's fiscal year coinciding with
40 or following July 1, 1985, compensation shall include any amounts for tax
41 sheltered annuities or deferred compensation plans. Beginning with the
42 employer's fiscal year which begins in calendar year 1991, compensation
43 shall include amounts under sections 403b, 457(b) and 125 of the federal

1 internal revenue code of 1986 and, as the board deems appropriate, any
2 other section of the federal internal revenue code of 1986 which defers or
3 excludes amounts from inclusion in income. *Beginning July 1, 2016,*
4 *"compensation" shall not include amounts taxable under sections 409A or*
5 *457(f) of the federal internal revenue code.* For purposes of applying limits
6 under the federal internal revenue code "compensation" shall have the
7 meaning as provided in K.S.A. 74-49,123, and amendments thereto. For
8 purposes of this subsection and application to the provisions of ~~subsection~~
9 ~~(4)~~ of K.S.A. 74-4927(4), and amendments thereto, "compensation" shall
10 not include any payments made by the state board of regents pursuant to
11 the provisions of ~~subsection (5)~~ of K.S.A. 74-4927a(5), and amendments
12 thereto, to a member of the faculty or other person defined in ~~subsection~~
13 ~~(1)(a)~~ of K.S.A. 74-4925(1)(a), and amendments thereto;

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

18 (11) "dependent" means a parent or child of a member who is
19 dependent upon the member for at least $\frac{1}{2}$ of such parent or child's
20 support;

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

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

32 (14) "employee" means any appointed or elective officer or employee
33 of a participating employer whose employment is not seasonal or
34 temporary and whose employment requires at least 1,000 hours of work
35 per year, and any such officer or employee who is concurrently employed
36 performing similar or related tasks by two or more participating
37 employers, who each remit employer and employee contributions on
38 behalf of such officer or employee to the system, and whose combined
39 employment is not seasonal or temporary, and whose combined
40 employment requires at least 1,000 hours of work per year, but not
41 including: (A) Any employee who is a contributing member of the United
42 States civil service retirement system; (B) any employee who is a
43 contributing member of the federal employees retirement system; (C) any

1 employee who is a leased employee as provided in section 414 of the
2 federal internal revenue code of a participating employer; and (D) any
3 employee or class of employees specifically exempted by law. After June
4 30, 1975, no person who is otherwise eligible for membership in the
5 Kansas public employees retirement system shall be barred from such
6 membership by reason of coverage by, eligibility for or future eligibility
7 for a retirement annuity under the provisions of K.S.A. 74-4925, and
8 amendments thereto, except that no person shall receive service credit
9 under the Kansas public employees retirement system for any period of
10 service for which benefits accrue or are granted under a retirement annuity
11 plan under the provisions of K.S.A. 74-4925, and amendments thereto.
12 After June 30, 1982, no person who is otherwise eligible for membership
13 in the Kansas public employees retirement system shall be barred from
14 such membership by reason of coverage by, eligibility for or future
15 eligibility for any benefit under another retirement plan authorized under
16 any law of this state, except that no such person shall receive service credit
17 under the Kansas public employees retirement system for any period of
18 service for which any benefit accrues or is granted under any such
19 retirement plan. Employee shall include persons who are in training at or
20 employed by, or both, a sheltered workshop for the blind operated by the
21 secretary for children and families. The entry date for such persons shall
22 be the beginning of the first pay period of the fiscal year commencing in
23 calendar year 1986. Such persons shall be granted prior service credit in
24 accordance with K.S.A. 74-4913, and amendments thereto. However, such
25 persons classified as home industry employees shall not be covered by the
26 retirement system. Employees shall include any member of a board of
27 county commissioners of any county and any council member or
28 commissioner of a city whose compensation is equal to or exceeds \$5,000
29 per year;

30 (15) "entry date" means the date as of which an eligible employer
31 joins the system. The first entry date pursuant to this act is January 1,
32 1962;

33 (16) "executive director" means the managing officer of the system
34 employed by the board under this act;

35 (17) "final average salary" means in the case of a member who retires
36 prior to January 1, 1977, and in the case of a member who retires after
37 January 1, 1977, and who has less than five years of participating service
38 after January 1, 1967, the average highest annual compensation paid to
39 such member for any five years of the last 10 years of participating service
40 immediately preceding retirement or termination of employment, or in the
41 case of a member who retires on or after January 1, 1977, and who has five
42 or more years of participating service after January 1, 1967, the average
43 highest annual compensation paid to such member on or after January 1,

1 1967, for any five years of participating service preceding retirement or
2 termination of employment, or, in any case, if participating service is less
3 than five years, then the average annual compensation paid to the member
4 during the full period of participating service, or, in any case, if the
5 member has less than one calendar year of participating service such
6 member's final average salary shall be computed by multiplying such
7 member's highest monthly salary received in that year by 12; in the case of
8 a member who became a member under ~~subsection (3)~~ of K.S.A. 74-
9 4925(3), and amendments thereto, or who became a member with a
10 participating employer as defined in ~~subsection (3)~~ of K.S.A. 74-4931(3),
11 and amendments thereto, and who elects to have compensation paid in
12 other than 12 equal installments, such compensation shall be annualized as
13 if the member had elected to receive 12 equal installments for any such
14 periods preceding retirement; in the case of a member who retires after
15 July 1, 1987, the average highest annual compensation paid to such
16 member for any four years of participating service preceding retirement or
17 termination of employment; in the case of a member who retires on or
18 after July 1, 1993, whose date of membership in the system is prior to July
19 1, 1993, and any member who is in such member's membership waiting
20 period on July 1, 1993, and whose date of membership in the system is on
21 or after July 1, 1993, the average highest annual compensation, as defined
22 in subsection (9), paid to such member for any four years of participating
23 service preceding retirement or termination of employment or the average
24 highest annual salary, as defined in ~~subsection (34)(33)~~, paid to such
25 member for any three years of participating service preceding retirement
26 or termination of employment, whichever is greater; and in the case of a
27 member who retires on or after July 1, 1993, and whose date of
28 membership in the system is on or after July 1, 1993, the average highest
29 annual salary, as defined in ~~subsection (34) (33)~~, paid to such member for
30 any three years of participating service preceding retirement or termination
31 of employment. Final average salary shall not include any purchase of
32 participating service credit by a member as provided in ~~subsection (2)~~ of
33 K.S.A. 74-4919h(2), and amendments thereto, which is completed within
34 five years of retirement. For any application to purchase or repurchase
35 service credit for a certain period of service as provided by law received
36 by the system after May 17, 1994, for any member who will have
37 contributions deducted from such member's compensation at a percentage
38 rate equal to two or three times the employee's rate of contribution or will
39 begin paying to the system a lump-sum amount for such member's
40 purchase or repurchase and such deductions or lump-sum payment
41 commences after the commencement of the first payroll period in the third
42 quarter, "final average salary" shall not include any amount of
43 compensation or salary which is based on such member's purchase or

1 repurchase. Any application to purchase or repurchase multiple periods of
2 service shall be treated as multiple applications. For purposes of this
3 subsection, the date that such member is first hired as an employee for
4 members who are employees of employers that elected to participate in the
5 system on or after January 1, 1994, shall be the date that such employee's
6 employer elected to participate in the system. In the case of any former
7 member who was eligible for assistance pursuant to K.S.A. 74-4925, and
8 amendments thereto, prior to July 1, 1998, for the purpose of calculating
9 final average salary of such member, such member's final average salary
10 shall be based on such member's salary while a member of the system or
11 while eligible for assistance pursuant to K.S.A. 74-4925, and amendments
12 thereto, whichever is greater;

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

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

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

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

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

43 (23) "normal retirement date" means the date on or after which a

1 member may retire with full retirement benefits pursuant to K.S.A. 74-
2 4914, and amendments thereto;

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

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

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

9 (27) "prior service annual salary" means the highest annual salary, not
10 including any amounts received as payment for overtime or as
11 reimbursement for travel or moving expense, received for personal
12 services by the member from the current employer in any one of the three
13 calendar years immediately preceding January 1, 1962, or the entry date of
14 the employer, whichever is later, except that if a member entered the
15 employment of the state during the calendar year 1961, the prior service
16 annual salary shall be computed by multiplying such member's highest
17 monthly salary received in that year by 12;

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

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

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

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

33 (32) "trust" means an express trust, created by a trust instrument,
34 including a will, designated by a member to receive payment of the
35 insured death benefit under K.S.A. 74-4927, and amendments thereto, and
36 payment of the member's accumulated contributions under ~~subsection (1)~~
37 ~~of K.S.A. 74-4916(1)~~, and amendments thereto. A designation of a trust
38 shall be filed with the board. If no will is admitted to probate within six
39 months after the death of the member or no trustee qualifies within such
40 six months or if the designated trust fails, for any reason whatsoever, the
41 insured death benefit under K.S.A. 74-4927, and amendments thereto, and
42 the member's accumulated contributions under ~~subsection (1)~~ of K.S.A.
43 74-4916(1), and amendments thereto, shall be paid in accordance with the

1 provisions of subsection (7) ~~of this section~~ as in other cases where there is
2 no named beneficiary living at the time of the member's death and any
3 payments so made shall be a full discharge and release to the system from
4 any further claims;

5 (33) "salary" means all salary and wages payable to a member for
6 personal services performed for a participating employer, including
7 maintenance or any allowance in lieu thereof provided a member as part of
8 salary. Salary shall not include reimbursement for travel or moving
9 expenses, payment for accumulated sick leave or vacation or annual leave,
10 severance pay or any other payments to the member determined by the
11 board to not be payments for personal services performed for a
12 participating employer constituting salary or on and after July 1, 1994,
13 payment pursuant to an early retirement incentive program made prior to
14 the retirement of the member. When the salary of a member who remains
15 in substantially the same position during any two consecutive years of
16 participating service used in calculating final average salary is increased
17 by an amount which exceeds 15%, then the amount of such increase which
18 exceeds 15% shall not be included in salary. Any contributions by such
19 member on the amount of such increase which exceeds 15% which is not
20 included in compensation shall be returned to the member. Unless
21 otherwise provided by law, salary shall include any amounts for tax
22 sheltered annuities or deferred compensation plans. Salary shall include
23 amounts under sections 403b, 457(b) and 125 of the federal internal
24 revenue code of 1986 and, as the board deems appropriate, any other
25 section of the federal internal revenue code of 1986 which defers or
26 excludes amounts from inclusion in income. *Beginning July 1, 2016,*
27 *"salary" shall not include amounts taxable under sections 409A or 457(f)*
28 *of the federal internal revenue code.* For purposes of applying limits under
29 the federal internal revenue code "salary" shall have the meaning as
30 provided in K.S.A. 74-49,123, and amendments thereto. In any case, if
31 participating service is less than three years, then the average annual salary
32 paid to the member during the full period of participating service, or, in
33 any case, if the member has less than one calendar year of participating
34 service such member's final average salary shall be computed by
35 multiplying such member's highest monthly salary received in that year by
36 12;

37 (34) "federal internal revenue code" means the federal internal
38 revenue code of 1954 or 1986, as in effect on July 1, 2008, and as
39 applicable to a governmental plan; and

40 (35) "USERRA" means the federal uniformed services employment
41 and reemployment rights act of 1994 as in effect on July 1, 2008.

42 **{New Sec. 2. (a) Each participating employer shall report to the**
43 **system the amount of vacation leave and sick leave each member has**

1 accumulated and the member's rate of compensation, as of July 1,
2 2016. Upon request of the executive director, any state agency or
3 participating employer shall provide such additional information as
4 may be needed by the executive director to carry out the provisions of
5 this section. Such report shall be made to the system by September 1,
6 2016.

7 (b) The provisions of this section shall apply to participating
8 employers in the Kansas police and firemen's retirement system,
9 K.S.A. 74-4951 et seq., and amendments thereto.

10 (c) The provisions of this section shall be part of and
11 supplemental to the provisions of K.S.A. 74-4901 et seq., and
12 amendments thereto.

13 ~~Sec. 2. {3.}~~ K.S.A. 2015 Supp. 74-4902 is hereby repealed.

14 ~~Sec. 3. {4.}~~ This act shall take effect and be in force from and after its
15 publication in the statute book.