

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2203

By Committee on Financial Institutions and Pensions

2-7

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employee retirement system; employment after retirement; exempting
3 individuals employed by the Kansas academies of the United States
4 department of defense STARBASE program; **certain retirants from**
5 **penalties; authorizing reimbursement of certain suspended**
6 **retirement benefits;** amending K.S.A. 74-4914 and repealing the
7 existing section.
8

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

10 Section 1. K.S.A. 74-4914 is hereby amended to read as follows: 74-
11 4914. (1) The normal retirement date for a member of the system shall be
12 the first day of the month coinciding with or following termination of
13 employment with any participating employer not followed by employment
14 with any participating employer within 60 days, or 180 days as provided in
15 subsection (10), and without any prearranged agreement for employment
16 with any participating employer, and the attainment of age 65 or,
17 commencing July 1, 1993, age 62 with the completion of 10 years of
18 credited service or the first day of the month coinciding with or following
19 the date that the total of the number of years of credited service and the
20 number of years of attained age of the member is equal to or more than 85.
21 In no event shall a normal retirement date for a member be before six
22 months after the entry date of the participating employer by whom such
23 member is employed. A member may retire on the normal retirement date
24 or on the first day of any month thereafter upon the filing with the office of
25 the retirement system of an application in such form and manner as the
26 board shall prescribe. Such application shall contain a certification by the
27 member that the member will not be employed with any participating
28 employer within 60 days, or 180 days as provided in subsection (10), of
29 retirement and the member has not entered into a prearranged agreement
30 for employment with any participating employer. Nothing herein shall
31 prevent any person, member or retirant from being employed, appointed or
32 elected as an employee, appointee, officer or member of the legislature.
33 Elected officers may retire from the system on any date on or after the
34 attainment of the normal retirement date, but no retirement benefits
35 payable under this act shall be paid until the member has terminated such
36 member's office.

1 (2) No retirant shall make contributions to the system or receive
2 service credit for any service after the date of retirement.

3 (3) Any member who is an employee of an affiliating employer
4 pursuant to K.S.A. 74-4954b, and amendments thereto, and has not
5 withdrawn such member's accumulated contributions from the Kansas
6 police and firemen's retirement system may retire before such member's
7 normal retirement date on the first day of any month coinciding with or
8 following the attainment of age 55.

9 (4) Any member may retire before such member's normal retirement
10 date on the first day of any month coinciding with or following
11 termination of employment with any participating employer not followed
12 by employment with any participating employer within 60 days, or 180
13 days as provided in subsection (10), and the attainment of age 55 with the
14 completion of 10 years of credited service, but in no event before six
15 months after the entry date, upon the filing with the office of the retirement
16 system of an application for retirement in such form and manner as the
17 board shall prescribe. The member's application for retirement shall
18 contain a certification by the member that the member will not be
19 employed with any participating employer within 60 days, or 180 days as
20 provided in subsection (10), of retirement and the member has not entered
21 into a prearranged agreement for employment with any participating
22 employer.

23 (5) Except as provided in subsections (7) and (10), on or after July 1,
24 2006, through December 31, 2017, for any retirant who is first employed
25 or appointed in or to any position or office by a participating employer
26 other than a participating employer for which such retirant was employed
27 or appointed during the final two years of such retirant's participation, and,
28 on or after April 1, 2009, for any retirant who is employed by a third-party
29 entity who contracts services with a participating employer other than a
30 participating employer for which such retirant was employed or appointed
31 during the final two years of such retirant's participation to fill a position
32 covered under K.S.A. 72-5410(a), and amendments thereto, with such
33 retirant, such participating employer shall pay to the system the actuarially
34 determined employer contribution and the statutorily prescribed employee
35 contribution based on the retirant's compensation during any such period
36 of employment or appointment. If a retirant is employed or appointed in or
37 to any position or office for which compensation for service is paid in an
38 amount equal to \$25,000 or more in any one calendar year between July 1,
39 2016, and January 1, 2018, by any participating employer for which such
40 retirant was employed or appointed during the final two years of such
41 retirant's participation, and, on or after April 1, 2009, by any third-party
42 entity who contracts services to fill a position covered under K.S.A. 72-
43 5410(a), and amendments thereto, with such retirant with a participating

1 employer for which such retirant was employed or appointed during the
2 final two years of such retirant's participation, such retirant shall not
3 receive any retirement benefit for any month for which such retirant serves
4 in such position or office. The participating employer who employs such
5 retirant whether by contract directly with the retirant or through an
6 arrangement with a third-party entity shall report to the system within 30
7 days of when the compensation paid to the retirant is equal to or exceeds
8 any limitation provided by this section. Any participating employer who
9 contracts services with any such third-party entity to fill a position covered
10 under K.S.A. 72-5410(a), and amendments thereto, shall include in such
11 contract a provision or condition which requires the third-party entity to
12 provide the participating employer with the necessary compensation paid
13 information related to any such position filled by the third-party entity
14 with a retirant to enable the participating employer to comply with
15 provisions of this subsection relating to the payment of contributions and
16 reporting requirements. The provisions and requirements provided for in
17 amendments made in this act which relate to positions filled with a retirant
18 or employment of a retirant by a third-party entity shall not apply to any
19 contract for services entered into prior to April 1, 2009, between a
20 participating employer and third-party entity as described in this
21 subsection. Any retirant employed by a participating employer or a third-
22 party entity as provided in this subsection shall not make contributions nor
23 receive additional credit under such system for such service except as
24 provided by this section. Upon request of the executive director of the
25 system, the secretary of revenue shall provide such information as may be
26 needed by the executive director to carry out the provisions of this act. The
27 provisions of this subsection shall not apply to retirants employed as
28 substitute teachers without a contract or officers, employees or appointees
29 of the legislature. The provisions of this subsection shall not apply to
30 members of the legislature. The provisions of this subsection shall not
31 apply to any other elected officials. Commencing July 1, 2005, the
32 provisions of this subsection shall not apply to retirants who either retired
33 under the provisions of subsection (1), or, if they retired under the
34 provisions of subsection (4), were retired more than 30 days prior to the
35 effective date of this act and are licensed professional nurses or licensed
36 practical nurses employed by the state of Kansas in an institution as
37 defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302(k), and amendments
38 thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing
39 in this subsection shall be construed to create any right, or to authorize the
40 creation of any right, which is not subject to amendment or nullification by
41 act of the legislature. The participating employer of such retirant shall pay
42 to the system the actuarially determined employer contribution based on
43 the retirant's compensation during any such period of employment. The

1 provisions of the subsection shall expire on January 1, 2018.

2 (6) For purposes of this section, any employee of a local
3 governmental unit which has its own pension plan who becomes an
4 employee of a participating employer as a result of a merger or
5 consolidation of services provided by local governmental units, which
6 occurred on January 1, 1994, may count service with such local
7 governmental unit in determining whether such employee has met the
8 years of credited service requirements contained in this section.

9 (7) (a) (i) Except as provided in K.S.A. 74-4937(3), (4), or (5), and
10 amendments thereto, and the provisions of this subsection, commencing
11 July 1, 2016, and ending January 1, 2018, any retirant who is employed or
12 appointed in or to any position by a participating employer, an independent
13 contractor or a third-party entity who contracts services with a
14 participating employer to fill a position, without any prearranged
15 agreement with such participating employer and not prior to 60 days after
16 such retirant's retirement date, shall not receive any retirement benefit for
17 any month in any calendar year in which the retirant receives
18 compensation in an amount equal to \$25,000 or more, pursuant to this
19 subsection. Any participating employer who hires a retirant covered by this
20 subsection shall pay to the system the statutorily prescribed employer
21 contribution rate for such retirant, without regard to whether the retirant is
22 receiving benefits.

23 (ii) Commencing January 1, 2018, for all retirements that occurred
24 prior to such date, any retirant who is employed or appointed in or to any
25 position by a participating employer, an independent contractor or a third-
26 party entity who contracts services with a participating employer to fill a
27 position, without any prearranged agreement with such participating
28 employer and not prior to 60 days after such retirant's retirement date, shall
29 not be subject to an earnings limitation that when met or exceeded requires
30 that the retirant not receive a retirement benefit for any month for which
31 such retirant serves in such position. If a retirant is employed in a covered
32 position, as defined in K.S.A. 74-49,202, and amendments thereto, the
33 participating employer of such retirant shall pay to the system the
34 statutorily prescribed employer contribution rate on the first \$25,000 of
35 such retirant's compensation in a calendar year and a 30% employer
36 contribution on any compensation in excess of \$25,000 in a calendar year
37 during any such period of employment. If a retirant is employed by more
38 than one participating employer or performing duties in more than one
39 position, contributions shall be made on compensation from all such
40 employment for that calendar year. If a retirant is employed in a non-
41 covered position, no employer contribution shall be paid to the system.

42 (b) The provisions of this subsection shall not apply, except as
43 specifically provided in this subsection, to retirants who are:

1 (i) Licensed professional nurses or licensed practical nurses employed
2 by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or
3 38-2302(k), and amendments thereto, the Kansas soldiers' home or the
4 Kansas veterans' home. The participating employer of such retirant shall
5 pay to the system the actuarially determined employer contribution based
6 on the retirant's compensation and the statutorily prescribed employee
7 contribution during any such period of employment;

8 (ii) employed by a school district in a position as provided in K.S.A.
9 74-4937(3), (4) or (5), and amendments thereto;

10 (iii) certified law enforcement officers employed by the law
11 enforcement training center. Such law enforcement officers shall receive
12 their benefits notwithstanding this subsection. The law enforcement
13 training center shall pay to the system the actuarially determined employer
14 contribution and the statutorily prescribed employee contribution based on
15 the retirant's compensation during any such period of employment;

16 (iv) members of the Kansas police and firemen's retirement system
17 pursuant to K.S.A. 74-4951 et seq., and amendments thereto, members of
18 the retirement system for judges pursuant to K.S.A. 20-2601 et seq., and
19 amendments thereto, or members of the state board of regents retirement
20 plan pursuant to K.S.A. 74-4925 et seq., and amendments thereto;

21 (v) employed as substitute teachers without a contract or officers,
22 employees or appointees of the legislature;

23 (vi) a poll worker hired to work an election day for a county election
24 officer responsible for conducting all official elections held in the county;

25 (vii) employed by, or have accepted employment from, a participating
26 employer prior to May 1, 2015. Any break in continuous employment by a
27 retirant or move to a different position by a retirant during the effective
28 period of this subsection shall be deemed new employment and shall
29 subject the retirant to the provisions of this subsection. Commencing
30 January 1, 2018, the participating employer of a retirant described in this
31 subsection (7)(b)(vii) who is employed in a covered position, as defined in
32 K.S.A. 74-49,202, and amendments thereto, shall pay to the system the
33 statutorily prescribed employer contribution rate on the first \$25,000 of
34 such retirant's compensation in a calendar year and a 30% employer
35 contribution on any compensation in excess of \$25,000 in a calendar year
36 during any such period of employment. If a retirant is employed by more
37 than one participating employer or performing duties in more than one
38 position, contributions shall be made on compensation from all such
39 employment for that calendar year. If a retirant is employed in a non-
40 covered position, no employer contribution shall be paid to the system; ~~or~~

41 (viii) state or local elected officials. A retirant shall not be employed
42 in an elected office within 30 days of such retirant's retirement, except that
43 if a retirant is filling a vacant elected office, no waiting period shall be

1 required; or

2 (ix) *employed by the Kansas academies of the United States*
3 *department of defense STARBASE program.*

4 (c) The participating employer shall enroll all retirants, including
5 retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to
6 the system when compensation is paid to a retirant as provided in this
7 subsection. Such report shall contain a certification by the appointing
8 authority of the participating employer that any hired retirant has not been
9 employed by the participating employer within 60 days of such retirant's
10 retirement and that there was no prearranged agreement for employment
11 between the participating employer and the hired retirant. Upon request of
12 the executive director of the system, the participating employer shall
13 provide such information as may be needed by the executive director to
14 carry out the provisions of this subsection. No retirant shall make
15 contributions to the system or receive credit for service while employed
16 under the provisions of this subsection.

17 (d) A participating employer may employ a retirant without regard to
18 the compensation limitation in this subsection for a period of one calendar
19 year or one school year, as the case may be, if the following requirements
20 are met:

21 (i) The employer certifies to the board that the position being filled
22 has been vacated due to an unexpected emergency or the employer has
23 been unsuccessful in filling the position;

24 (ii) the employer pays to the system a 30% employer contribution
25 based on the retirant's compensation during any such period of
26 employment; and

27 (iii) the employer maintains documentation of its efforts to fill the
28 position with a non-retirant and provides such documentation to the joint
29 committee on pensions, investments and benefits upon request of the
30 committee.

31 The provisions of this paragraph shall expire on January 1, 2018.

32 (e) An employer may submit a written assurance protocol to the
33 system to extend the exception provided for in subsection (7)(d) by one-
34 year increments for a total extension not to exceed three years. A written
35 assurance protocol shall be submitted to the system for each one-year
36 increment extension. If a school district submits a written assurance
37 protocol, such written assurance protocol shall be signed by the
38 superintendent and the board president of such school district. If a
39 municipality, as defined in K.S.A. 75-1117, and amendments thereto, other
40 than a school district, submits a written assurance protocol, such written
41 assurance protocol shall be signed by the governing body or such
42 governing body's designee for such municipality. Such written assurance
43 protocol shall state that the position was advertised on multiple platforms

1 for a minimum of 30 calendar days and that at least one of the following
2 conditions occurred:

- 3 (i) No applications were submitted for the position;
4 (ii) if applications were submitted, none of the applicants met the
5 reference screening criteria of the employer; or
6 (iii) if applications were submitted, none of the applicants possessed
7 the appropriate licensure, certification or other necessary credentials for
8 the position.

9 The provisions of this paragraph shall expire on January 1, 2018.

10 (f) Retirants who are independent contractors or employees of third-
11 party entities who contract with a participating employer, shall not be
12 subject to the compensation limitation or employer contribution
13 requirements in this subsection or the requirements of subsection (7)(c)
14 regarding enrollment and reporting to the system, so long as all of the
15 following apply:

16 (A) The contractual relationship was not created to allow the retirant
17 to continue employment with the participating employer after retirement in
18 a position similar to the one such retirant held prior to retirement;

19 (B) the activities performed by the independent contractor or third-
20 party entity are not normally performed exclusively by employees of that
21 participating employer; and

22 (C) the retirant meets the classification of independent contractor as
23 provided in K.S.A. 2018 Supp. 44-768, and amendments thereto, or
24 activities performed by the third-party entity that employs the retirant are
25 performed on a limited-term basis and the third-party entity is not a
26 participating employer in the system.

27 (g) Nothing in this subsection shall be construed to create any right,
28 or to authorize the creation of any right, which is not subject to
29 amendment or nullification by act of the legislature.

30 (8) (a) **Except as provided in subsection (8)(b)**, if determined by the
31 retirement system that a retirant entered into a prearranged agreement for
32 employment with a participating employer prior to such retirant's
33 retirement and prior to the end of the subsequent 60-day waiting period, or
34 the 180-day waiting period under subsection (10), the monthly retirement
35 benefit of such retirant shall be suspended during the period that begins on
36 the month in which the retirant is re-employed and ends six months after
37 the retirant's termination of such employment. The retirant shall repay to
38 the retirement system all monthly retirement benefits paid to the retirant by
39 the retirement system that the retirant received after such employment
40 began. The participating employer which hired such retirant shall be
41 required to pay to the system any fees, fines, penalties or any other cost
42 imposed by the internal revenue service and indemnify the system for any
43 cost incurred by the system to defend any action brought by the internal

1 revenue service based on in-service distributions which are a result of any
2 determined prearranged agreement and for any cost incurred by the system
3 to collect any monthly retirement benefit required to be repaid by such
4 retirant pursuant to this subsection.

5 **(b) For members who retired on and after July 1, 2016, and on or**
6 **before July 1, 2019, if determined by the retirement system that a**
7 **retirant entered into a prearranged agreement for employment with a**
8 **participating employer prior to such retirant's retirement date and the**
9 **subsequent 60-day waiting period, or the 180-day waiting period**
10 **under subsection (10), and upon being notified of the violation, the**
11 **retirant terminated such employment, the provisions of subsection (a)**
12 **shall not apply. If any retirant had benefits suspended prior to July 1,**
13 **2019, such benefits shall be reimbursed by the retirement system, if**
14 **the retirant terminated such prearranged employment in accordance**
15 **with the provisions of this act.**

16 (9) For the purposes of this section a prearranged agreement for
17 employment may be determined by whether the facts and circumstances of
18 the situation indicate that the employer and employee reasonably
19 anticipated that further services would be performed after the employee's
20 retirement.

21 (10) (a) Notwithstanding the provisions of subsection (5) or (7) to the
22 contrary, commencing January 1, 2018, any retirant who is retired more
23 than 60 days, if such retirant's age on the date of retirement is 62 or older,
24 or is retired more than 180 days, if such retirant's age on the date of
25 retirement is less than 62, and who is subsequently hired without any
26 prearranged agreement with the participating employer in a covered
27 position, as defined in K.S.A. 74-49,202, and amendments thereto, or an
28 independent contractor or a third-party entity who contracts service to fill
29 such covered position shall not be subject to an earnings limitation that
30 when met or exceeded requires that the retirant not receive a retirement
31 benefit for any month for which such retirant serves in such covered
32 position. The participating employer of such retirant shall pay to the
33 system the statutorily prescribed employer contribution rate on the first
34 \$25,000 of such retirant's compensation in a calendar year and a 30%
35 employer contribution on any compensation in excess of \$25,000 in a
36 calendar year during any such period of employment. If a retirant is
37 employed by more than one participating employer or performing duties in
38 more than one position, contributions shall be made on compensation from
39 all such employment for that calendar year.

40 (b) Notwithstanding the provisions of subsection (5) or (7) to the
41 contrary, commencing January 1, 2018, any retirant who is retired more
42 than 60 days, if such retirant's age on the date of retirement is 62 or older,
43 or is retired more than 180 days, if such retirant's age on the date of

1 retirement is less than 62, and who is subsequently hired without any
2 prearranged agreement with the participating employer in a non-covered
3 position, or an independent contractor or a third-party entity who contracts
4 service to fill such non-covered position, shall not be subject to an
5 earnings limitation that when met or exceeded requires that the retirant not
6 receive a retirement benefit for any month for which such retirant serves in
7 such non-covered position. No employer contribution shall be paid to the
8 system on compensation paid to a retirant hired in a non-covered position.

9 (c) The participating employer shall enroll all retirants, including
10 retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to
11 the system when compensation is paid to a retirant as provided in this
12 subsection. Such report shall contain a certification by the appointing
13 authority of the participating employer that any hired retirant has not been
14 employed by the participating employer within 60 days of such retirant's
15 retirement in the case of a retirant whose age on the date of retirement is
16 62 or older, or within 180 days of such retirant's retirement in the case of a
17 retirant whose age on the date of retirement is less than 62, and that there
18 was no prearranged agreement for employment between the participating
19 employer and the hired retirant. Upon request of the executive director of
20 the system, the participating employer shall provide such information as
21 may be needed by the executive director to carry out the provisions of this
22 subsection. No retirant shall make contributions to the system or receive
23 credit for service while employed under the provisions of this subsection.

24 (d) The provisions of this subsection relating to an earnings limitation
25 and employer contributions shall not apply to any retirant described in
26 subsection (7)(b) or to retirants who are independent contractors or
27 employees of third-party entities who contract with a participating
28 employer as described in subsection (7)(f), except as specifically provided
29 in this subsection.

30 (e) Nothing in this subsection shall be construed to create any right,
31 or to authorize the creation of any right that is not subject to amendment or
32 nullification by act of the legislature.

33 Sec. 2. K.S.A. 74-4914 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its
35 publication in the statute book.