

As Amended by House Committee

Session of 2021

SENATE BILL No. 86

By Joint Committee on Pensions, Investments and Benefits

1-27

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system and retirement systems thereunder;
3 conforming certain KPERS provisions with the federal CARES act;
4 amending K.S.A. 74-49,123 and repealing the existing section.
5

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

7 Section 1. K.S.A. 74-49,123 is hereby amended to read as follows:
8 74-49,123. (a) This section applies to the Kansas public employees
9 retirement system and to all other public retirement plans administered by
10 the board of trustees.

11 (b) As used in this section:

12 (1) "Federal internal revenue code" means the federal internal
13 revenue code of 1954 or 1986, as amended and as applicable to a
14 governmental plan as in effect on July 1, 2008; and

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

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

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

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

33 (3) All benefits paid from the retirement plan shall be distributed in
34 accordance with a good faith interpretation of the requirements of section
35 401(a)(9) of the federal internal revenue code and the regulations under
36 that section. Notwithstanding any other provision of these rules and

1 regulations, effective on and after January 1, 2003, the retirement plan is
2 subject to the following provisions:

3 (A) Benefits must begin by the required beginning date, which is the
4 later of April 1 of the calendar year following the calendar year in which
5 the member reaches ~~70⁺_½~~ 72 years of age, *or 70¹_½ if the member was born*
6 *before July 1, 1949*, or April 1 of the calendar year following the calendar
7 year in which the member terminates employment. If a member fails to
8 apply for retirement benefits by April 1 of the calendar year following the
9 calendar year in which such member reaches ~~70⁺_½~~ 72 years of age, *or 70¹_½*
10 *if the member was born before July 1, 1949*, or April 1 of the calendar year
11 following the calendar year in which such member terminates
12 employment, whichever is later, the board will begin distributing the
13 benefit as required by this section.

14 (B) The member's entire interest must be distributed over the
15 member's life or the lives of the member and a designated beneficiary, or
16 over a period not extending beyond the life expectancy of the member or
17 of the member and a designated beneficiary. Death benefits must be
18 distributed in accordance with section 401(a)(9) of the federal internal
19 revenue code, including the incidental death benefit requirement in section
20 401(a)(9)(G) of the federal internal revenue code, and the regulations
21 implementing that section.

22 (C) The life expectancy of a member, the member's spouse or the
23 member's beneficiary may not be recalculated after the initial
24 determination for purposes of determining benefits.

25 (D) If a member dies after the required distribution of benefits has
26 begun, the remaining portion of the member's interest must be distributed
27 at least as rapidly as under the method of distribution before the member's
28 death and no longer than the remaining period over which distributions
29 commenced.

30 (E) If a member dies before required distribution of the member's
31 benefits has begun, the member's entire interest must be either:

32 (i) In accordance with federal regulations, distributed over the life or
33 life expectancy of the designated beneficiary, with the distributions
34 beginning no later than December 31 of the calendar year immediately
35 following the calendar year of the member's death; or

36 (ii) distributed by December 31 of the calendar year containing the
37 fifth anniversary of the member's death.

38 (F) The amount of an annuity paid to a member's beneficiary may not
39 exceed the maximum determined under the incidental death benefit
40 requirement of the federal internal revenue code.

41 (G) The death and disability benefits provided by a retirement plan
42 are limited by the incidental benefit rule set forth in section 401(a)(9)(G)
43 of the federal internal revenue code and treasury regulation 1.401-1(b)(l)

1 (i).

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

4 (5) The board or its designee may not:

5 (A) Determine eligibility for benefits;

6 (B) compute rates of contribution; or

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

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

15 (A) Before January 1, 1995, a member may not receive an annual
16 benefit that exceeds the limits specified in section 415(b) of the federal
17 internal revenue code, subject to the applicable adjustments in that section.
18 Beginning January 1, 1995, a participant may not receive an annual benefit
19 that exceeds the dollar amount specified in section 415(b)(1)(A) of the
20 federal internal revenue code, subject to the applicable adjustments in
21 section 415 of the federal internal revenue code.

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

27 (i) Where the retirement plan's law requires a lump-sum payment, for
28 the purchase of service credit, the board may establish a periodic payment
29 plan in order to avoid a contribution in excess of the limits under section
30 415(c) or 415(n) of the federal internal revenue code.

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

34 (C) Effective for permissive service credit contributions made in
35 limitation years beginning after December 31, 1997, if an active member
36 makes one or more contributions to purchase permissive service credit
37 under a retirement plan, then the requirements of this section shall be
38 treated as met only if:

39 (i) The requirements of section 415(b) of the federal internal revenue
40 code are met, determined by treating the accrued benefit derived from all
41 such contributions as an annual benefit for purposes of such section; or

42 (ii) the requirements of section 415(c) of the federal internal revenue
43 code are met, determined by treating all such contributions as annual

1 additions for purposes of such section. For purposes of applying clause (i)
2 a retirement plan shall not fail to meet the reduced limit under section
3 415(b)(2)(C) of the federal internal revenue code solely by reason of this
4 subparagraph (C), and for purposes of applying clause (ii), a retirement
5 plan shall not fail to meet the percentage limitation under section 415(c)(1)
6 (B) of the federal internal revenue code solely by reason of this paragraph.

7 (iii) For purposes of this clause, the term "permissive service credit"
8 means service credit:

9 (a) Specifically recognized by a retirement plan's law for purposes of
10 calculating a member's benefit under that retirement plan;

11 (b) which such member has not received under a retirement plan; and

12 (c) which such member may receive under a retirement plan's law
13 only by making a voluntary additional contribution, in an amount
14 determined under the retirement plan's law and procedures established by
15 the board, which does not exceed the amount necessary to fund the benefit
16 attributable to such service credit.

17 (iv) A retirement plan shall fail to meet the requirements of this
18 clause if the retirement plan's law specifically provides for a purchase of
19 nonqualified service purchase, and if:

20 (a) More than five years of nonqualified service credit are taken into
21 account for purposes of this subclause; or

22 (b) any nonqualified service credit is taken into account under this
23 subclause before the member has at least five years of participation under
24 a retirement plan. For purposes of this subclause, effective for permissive
25 service credit contributions made in limitation years beginning after
26 December 31, 1997, the term "nonqualified service credit" means the same
27 as provided in section 415(n)(3)(C) of the federal internal revenue code.

28 (v) In the case of a trustee-to-trustee transfer after December 31,
29 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the federal
30 internal revenue code applies, without regard to whether the transfer is
31 made between plans maintained by the same employer:

32 (a) The limitations of clause (iv) shall not apply in determining
33 whether the transfer is for the purchase of permissive service credit; and

34 (b) the distribution rules applicable under federal law to a retirement
35 plan shall apply to such amounts and any benefits attributable to such
36 amounts.

37 (vi) For an eligible member, the limitation of section 415(c)(1) of the
38 federal internal revenue code shall not be applied to reduce the amount of
39 permissive service credit which may be purchased to an amount less than
40 the amount which was allowed to be purchased under the terms of the
41 statute as in effect on August 5, 1997. For purposes of this clause, an
42 eligible member is an individual who first became a member in the
43 retirement plan before January 1, 1998.

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

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

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

21 (E) For purposes of applying these limits only and for no other
22 purpose, the definition of compensation where applicable shall be
23 compensation actually paid or made available during a limitation year,
24 except as noted below and as permitted by treasury regulation section
25 1.415(c)-2. Specifically, compensation shall be defined as wages within
26 the meaning of section 3401(a) of the federal internal revenue code and all
27 other payments of compensation to an employee by an employer for which
28 the employer is required to furnish the employee a written statement under
29 sections 6041(d), 6051(a)(3) and 6052 of the federal internal revenue code.
30 Compensation shall be determined without regard to any rules under
31 section 3401(a) of the federal internal revenue code that limit the
32 remuneration included in wages based on the nature or location of the
33 employment or the services performed, such as the exception for
34 agricultural labor in section 3401(a)(2) of the federal internal revenue
35 code.

36 (i) However, for limitation years beginning after December 31, 1997,
37 compensation shall also include amounts that would otherwise be included
38 in compensation but for an election under sections 125(a), 402(e)(3),
39 402(h)(1)(B), 402(k) or 457(b) of the federal internal revenue code. For
40 limitation years beginning after December 30, 2000, compensation shall
41 also include any elective amounts that are not includable in the gross
42 income of the employee by reason of section 132(f)(4) of the federal
43 internal revenue code.

1 (ii) The definition of compensation shall exclude employee
2 contributions picked up under section 414(h)(2) of the federal internal
3 revenue code.

4 (iii) For limitation years beginning on and after January 1, 2007,
5 compensation for the limitation year will also include compensation paid
6 by the later of two and a half months after an employee's severance from
7 employment or the end of the limitation year that includes the date of the
8 employee's severance from employment if:

9 (a) The payment is regular compensation for services during the
10 employee's regular working hours or compensation for services outside the
11 employee's regular working hours, such as overtime or shift differential,
12 commissions, bonuses or other similar payments, and absent a severance
13 from employment, the payments would have been paid to the employee
14 while the employee continues in employment with the employer;

15 (b) the payment is for unused accrued bona fide sick, vacation or
16 other leave that the employee would have been able to use if employment
17 had continued; or

18 (c) for limitation years beginning on and after January 1, 2012, the
19 payment is made pursuant to a nonqualified unfunded deferred
20 compensation plan, but only if the payment would have been paid to the
21 member at the same time if the member had continued employment with
22 the employer and only to the extent that the payment is includable in the
23 member's gross income.

24 (iv) Any payments not described in clause (iii) are not considered
25 compensation if paid after severance from employment, even if they are
26 paid within two and a half months following severance from employment,
27 except for payments to the individual who does not currently perform
28 services for the employer by reason of qualified military service, within
29 the meaning of section 414(u)(1) of the federal internal revenue code, to
30 the extent these payments do not exceed the amounts the individual would
31 have received if the individual had continued to perform services for the
32 employer rather than entering qualified military service.

33 (v) An employee who is in qualified military service, within the
34 meaning of section 414(u)(1) of the federal internal revenue code, shall be
35 treated as receiving compensation from the employer during such period
36 of qualified military service equal to: (a) The compensation the employee
37 would have received during such period if the employee were not in
38 qualified military service, determined based on the rate of pay the
39 employee would have received from the employer but for the absence
40 during the period of qualified military service; or (b) if the compensation
41 the employee would have received during such period was not reasonably
42 certain, the employee's average compensation from the employer during
43 the twelve-month period immediately preceding the qualified military

1 service, or if shorter, the period of employment immediately preceding the
2 qualified military service.

3 (vi) Back pay, within the meaning of treasury regulation section
4 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to
5 which the back pay relates to the extent the back pay represents wages and
6 compensation that would otherwise be included under this definition.

7 (7) On and after January 1, 2009, for purposes of applying the limits
8 under section 415(b) of the federal internal revenue code, the following
9 shall apply:

10 (A) A member's applicable limit shall be applied to the member's
11 annual benefit in the first limitation year without regard to any automatic
12 cost-of-living increases;

13 (B) to the extent the member's annual benefit equals or exceeds such
14 limit, the member shall no longer be eligible for cost-of-living increases
15 until such time as the benefit plus the accumulated increases are less than
16 such limit;

17 (C) thereafter, in any subsequent limitation year, the member's annual
18 benefit including any automatic cost-of-living increase applicable shall be
19 tested under the then applicable benefit limit including any adjustment to
20 the dollar limit under section 415(b)(1)(A) or 415(d) of the federal internal
21 revenue code and the regulations thereunder; and

22 (D) in no event shall a member's annual benefit payable from a
23 retirement plan in any limitation year be greater than the limit applicable at
24 the annuity starting date, as increased in subsequent years pursuant to
25 section 415(d) of the federal internal revenue code and the regulations
26 thereunder. If the form of benefit without regard to the automatic benefit
27 increase feature is not a straight life annuity, then the preceding sentence is
28 applied by reducing the limit under section 415(b) of the federal internal
29 revenue code applicable at the annuity starting date to an actuarially
30 equivalent amount determined using the assumptions specified in treasury
31 regulation section 1.415(b)-1(c)(2)(ii) that take into account the death
32 benefits under the form of benefit. This subsection applies to distributions
33 made on and after January 1, 1993. A distributee may elect to have any
34 portion of an eligible rollover distribution paid directly to an eligible
35 retirement plan specified by the distributee in a transfer made from the
36 retirement system.

37 (i) An eligible rollover distribution is any distribution of all or any
38 portion of the balance to the credit of the distributee, except that an
39 eligible rollover distribution does not include: (a) Any distribution that is
40 one of a series of substantially equal periodic payments, not less frequently
41 than annually, made for the life or the life expectancy of the distributee or
42 the joint lives or joint life expectancies of the distributee and the
43 distributee's designated beneficiary or for a specified period of 10 years or

1 more; (b) any distribution to the extent such distribution is required under
2 section 401(a)(9) of the federal internal revenue code; (c) the portion of
3 any distribution that is not includable in gross income; and (d) any other
4 distribution that is reasonably expected to total less than \$200 during the
5 year. Effective January 1, 2002, a portion of a distribution shall not fail to
6 be an eligible rollover distribution merely because the portion consists of
7 after-tax employee contributions that are not includable in gross income.
8 However, such portion may be transferred only to an individual retirement
9 account or annuity described in section 408(a) or (b) of the federal internal
10 revenue code, or to a qualified defined contribution plan described in
11 section 401(a) of the federal internal revenue code or to a qualified plan
12 described in section 403(a) of the federal internal revenue code, that agrees
13 to separately account for amounts so transferred and earnings on such
14 amounts, including separately accounting for the portion of the distribution
15 that is includable in gross income and the portion of the distribution that is
16 not so includable, or on or after January 1, 2007, to a qualified defined
17 benefit plan described in section 401(a) of the federal internal revenue
18 code or to an annuity contract described in section 403(b) of the federal
19 internal revenue code, that agrees to separately account for amounts so
20 transferred and earnings thereon, including separately accounting for the
21 portion of the distribution that is includable in gross income and the
22 portion of the distribution that is not so includable.

23 (ii) An eligible retirement plan is any of the following that accepts the
24 distributee's eligible rollover distribution:

25 (a) An individual retirement account described in section 408(a) of
26 the federal internal revenue code;

27 (b) an individual retirement annuity described in section 408(b) of the
28 federal internal revenue code;

29 (c) an annuity plan described in section 403(a) of the federal internal
30 revenue code;

31 (d) a qualified trust described in section 401(a) of the federal internal
32 revenue code;

33 (e) effective January 1, 2002, an annuity contract described in section
34 403(b) of the federal internal revenue code;

35 (f) effective January 1, 2002, a plan eligible under section 457(b) of
36 the federal internal revenue code that is maintained by a state, political
37 subdivision of a state or any agency or instrumentality of a state or a
38 political subdivision of a state that agrees to separately account for
39 amounts transferred into the plan from a retirement plan; or

40 (g) effective January 1, 2008, a roth IRA described in section 408(A)
41 of the federal internal revenue code.

42 (iii) Effective January 1, 2002, the definition of eligible rollover
43 distribution also includes a distribution to a surviving spouse, or to a

1 spouse or former spouse who is an alternate payee under a domestic
2 relations order, as defined in section 414(p) of the federal internal revenue
3 code.

4 (iv) A distributee includes an employee or former employee. It also
5 includes the employee's or former employee's surviving spouse and the
6 employee's or former employee's spouse or former spouse who is the
7 alternate payee under a qualified domestic relations order, as defined in
8 section 414(p) of the federal internal revenue code. Effective July 1, 2007,
9 a distributee further includes a nonspouse beneficiary who is a designated
10 beneficiary as defined by section 401(a)(9)(E) of the federal internal
11 revenue code. However, a nonspouse beneficiary may rollover the
12 distribution only to an individual retirement account or individual
13 retirement annuity established for the purpose of receiving the distribution
14 and the account or annuity will be treated as an "inherited" individual
15 retirement account or annuity.

16 (v) A direct rollover is a payment by the retirement system to the
17 eligible retirement plan specified by the distributee.

18 (8) Notwithstanding any law to the contrary, the board may accept a
19 direct or indirect eligible rollover distributions for the purpose of the
20 purchase of service credit. In addition, the board may accept a direct
21 trustee to trustee transfer from a deferred compensation plan under section
22 457(b) of the federal internal revenue code or a tax sheltered annuity under
23 section 403(b) of the federal internal revenue code for: (A) The purchase
24 of permissive service credit, as defined under section 415(n)(3)(A) of the
25 federal internal revenue code; or (B) a repayment to which section 415 of
26 the federal internal revenue code does not apply pursuant to section 415(k)
27 (3) of the federal internal revenue code. Any such transfer shall be allowed
28 as provided in this subsection to the extent permitted by law, subject to any
29 conditions, proofs or acceptance established or required by the board or
30 the board's designee.

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

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

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

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

1 (10) (A) Notwithstanding any provision of this plan to the contrary,
2 contributions, benefits and service credit with respect to qualified military
3 service will be provided in accordance with section 414(u) of the federal
4 internal revenue code and the uniformed services employment and
5 reemployment rights act of 1994.

6 (B) Effective with respect to deaths occurring on or after January 1,
7 2007, while a member is performing qualified military service, as defined
8 in chapter 43 of title 38, United States code, to the extent required by
9 section 401(a)(37) of the federal internal revenue code, survivors of a
10 member in the system, are entitled to any additional benefits that the
11 system would provide if the member had resumed employment and then
12 died, such as accelerated vesting or survivor benefits that are contingent on
13 the member's death while employed. A deceased member's period of
14 qualified military service must be counted for vesting purposes.

15 (C) Effective with respect to deaths or disabilities, or both, occurring
16 on or after January 1, 2007, while a member is performing qualified
17 military service, as defined in chapter 43 of title 38, United States code, to
18 the extent permitted by section 414(u)(9) of the federal internal revenue
19 code, for the benefit accrual purposes and in the case of death, for vesting
20 purposes, the member will be treated as having earned years of service for
21 the period of qualified military service, having returned to employment on
22 the day before the death or disability, or both, and then having terminated
23 on the date of death or disability. This provision shall be applied to all
24 similarly situated individuals in a reasonably equivalent manner.

25 (D) Beginning January 1, 2009, to the extent required by section
26 414(u)(12) of the federal internal revenue code, an individual receiving
27 differential wage payments, as defined under section 3401(h)(2) of the
28 federal internal revenue code, from an employer shall be treated as
29 employed by that employer, and the differential wage payment shall be
30 treated as compensation for purposes of applying the limits on annual
31 additions under section 415(c) of the federal internal revenue code. This
32 provision shall be applied to all similarly situated individuals in a
33 reasonably equivalent manner.

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

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

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

41 (f) The board may not engage in a transaction prohibited by section
42 503(b) of the federal internal revenue code.

43 (g) (1) For purposes of determining an "actuarial equivalent" or of an

1 "actuarial computation" for members hired prior to July 1, 2009, the board
2 shall use the following:

3 (A) The applicable mortality table is specified in revenue ruling
4 2001-62 or revenue ruling 2007-67, as applicable; and

5 (B) the applicable interest factor is the actuarially assumed rate of
6 return established by the board.

7 (2) For purposes of determining an "actuarial equivalent" or an
8 "actuarial computation" for members hired on or after July 1, 2009, the
9 board shall use the following:

10 (A) The applicable mortality table is the $^{50}/_{50}$ male/female blend of the
11 RP 2000 health annuitant mortality table, projected to 2025; and

12 (B) the applicable interest factor is the actuarially assumed rate of
13 return established by the board.

14 (3) For converting amounts payable under the partial lump sum
15 option, the board shall use the following:

16 (A) The applicable mortality table is a $^{50}/_{50}$ male/female blend of the
17 1983 group annuity mortality table; and

18 (B) the applicable interest factor is the actuarially assumed rate of
19 return established by the board.

20 (4) For benefit testing under section 415(b) of the federal internal
21 revenue code, the factors required by treasury regulations shall be used.
22 The applicable mortality table is specified in revenue ruling 2001-62 for
23 years prior to January 1, 2009, and notice 2008-85 for years after
24 December 31, 2008.

25 Sec. 2. K.S.A. 74-49,123 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the ~~statute book~~ **Kansas register**.