

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; amending K.S.A. 74-
5 4914 and repealing the existing section.
6

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

8 Section 1. K.S.A. 74-4914 is hereby amended to read as follows: 74-
9 4914. (1) The normal retirement date for a member of the system shall be
10 the first day of the month coinciding with or following termination of
11 employment with any participating employer not followed by employment
12 with any participating employer within 60 days, or 180 days as provided in
13 subsection (10), and without any prearranged agreement for employment
14 with any participating employer, and the attainment of age 65 or,
15 commencing July 1, 1993, age 62 with the completion of 10 years of
16 credited service or the first day of the month coinciding with or following
17 the date that the total of the number of years of credited service and the
18 number of years of attained age of the member is equal to or more than 85.
19 In no event shall a normal retirement date for a member be before six
20 months after the entry date of the participating employer by whom such
21 member is employed. A member may retire on the normal retirement date
22 or on the first day of any month thereafter upon the filing with the office of
23 the retirement system of an application in such form and manner as the
24 board shall prescribe. Such application shall contain a certification by the
25 member that the member will not be employed with any participating
26 employer within 60 days, or 180 days as provided in subsection (10), of
27 retirement and the member has not entered into a prearranged agreement
28 for employment with any participating employer. Nothing herein shall
29 prevent any person, member or retirant from being employed, appointed or
30 elected as an employee, appointee, officer or member of the legislature.
31 Elected officers may retire from the system on any date on or after the
32 attainment of the normal retirement date, but no retirement benefits
33 payable under this act shall be paid until the member has terminated such
34 member's office.

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

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3 withdrawn such member's accumulated contributions from the Kansas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

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

21 (5) Except as provided in subsections (7) and (10), on or after July 1,
22 2006, through December 31, 2017, for any retiree who is first employed
23 or appointed in or to any position or office by a participating employer
24 other than a participating employer for which such retiree was employed
25 or appointed during the final two years of such retiree's participation, and,
26 on or after April 1, 2009, for any retiree who is employed by a third-party
27 entity who contracts services with a participating employer other than a
28 participating employer for which such retiree was employed or appointed
29 during the final two years of such retiree's participation to fill a position
30 covered under K.S.A. 72-5410(a), and amendments thereto, with such
31 retiree, such participating employer shall pay to the system the actuarially
32 determined employer contribution and the statutorily prescribed employee
33 contribution based on the retiree's compensation during any such period
34 of employment or appointment. If a retiree is employed or appointed in or
35 to any position or office for which compensation for service is paid in an
36 amount equal to \$25,000 or more in any one calendar year between July 1,
37 2016, and January 1, 2018, by any participating employer for which such
38 retiree was employed or appointed during the final two years of such
39 retiree's participation, and, on or after April 1, 2009, by any third-party
40 entity who contracts services to fill a position covered under K.S.A. 72-
41 5410(a), and amendments thereto, with such retiree with a participating
42 employer for which such retiree was employed or appointed during the
43 final two years of such retiree's participation, such retiree shall not

1 receive any retirement benefit for any month for which such retirant serves
2 in such position or office. The participating employer who employs such
3 retirant whether by contract directly with the retirant or through an
4 arrangement with a third-party entity shall report to the system within 30
5 days of when the compensation paid to the retirant is equal to or exceeds
6 any limitation provided by this section. Any participating employer who
7 contracts services with any such third-party entity to fill a position covered
8 under K.S.A. 72-5410(a), and amendments thereto, shall include in such
9 contract a provision or condition which requires the third-party entity to
10 provide the participating employer with the necessary compensation paid
11 information related to any such position filled by the third-party entity
12 with a retirant to enable the participating employer to comply with
13 provisions of this subsection relating to the payment of contributions and
14 reporting requirements. The provisions and requirements provided for in
15 amendments made in this act which relate to positions filled with a retirant
16 or employment of a retirant by a third-party entity shall not apply to any
17 contract for services entered into prior to April 1, 2009, between a
18 participating employer and third-party entity as described in this
19 subsection. Any retirant employed by a participating employer or a third-
20 party entity as provided in this subsection shall not make contributions nor
21 receive additional credit under such system for such service except as
22 provided by this section. Upon request of the executive director of the
23 system, the secretary of revenue shall provide such information as may be
24 needed by the executive director to carry out the provisions of this act. The
25 provisions of this subsection shall not apply to retirants employed as
26 substitute teachers without a contract or officers, employees or appointees
27 of the legislature. The provisions of this subsection shall not apply to
28 members of the legislature. The provisions of this subsection shall not
29 apply to any other elected officials. Commencing July 1, 2005, the
30 provisions of this subsection shall not apply to retirants who either retired
31 under the provisions of subsection (1), or, if they retired under the
32 provisions of subsection (4), were retired more than 30 days prior to the
33 effective date of this act and are licensed professional nurses or licensed
34 practical nurses employed by the state of Kansas in an institution as
35 defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302(k), and amendments
36 thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing
37 in this subsection shall be construed to create any right, or to authorize the
38 creation of any right, which is not subject to amendment or nullification by
39 act of the legislature. The participating employer of such retirant shall pay
40 to the system the actuarially determined employer contribution based on
41 the retirant's compensation during any such period of employment. The
42 provisions of the subsection shall expire on January 1, 2018.

43 (6) For purposes of this section, any employee of a local

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

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

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

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

42 (i) Licensed professional nurses or licensed practical nurses employed
43 by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or

1 38-2302(k), and amendments thereto, the Kansas soldiers' home or the
2 Kansas veterans' home. The participating employer of such retirant shall
3 pay to the system the actuarially determined employer contribution based
4 on the retirant's compensation and the statutorily prescribed employee
5 contribution during any such period of employment;

6 (ii) employed by a school district in a position as provided in K.S.A.
7 74-4937(3), (4) or (5), and amendments thereto;

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

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

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

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

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

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

43 (ix) *employed by the Kansas academies of the United States*

1 *department of defense STARBASE program.*

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

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

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

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

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

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

30 (e) An employer may submit a written assurance protocol to the
31 system to extend the exception provided for in subsection (7)(d) by one-
32 year increments for a total extension not to exceed three years. A written
33 assurance protocol shall be submitted to the system for each one-year
34 increment extension. If a school district submits a written assurance
35 protocol, such written assurance protocol shall be signed by the
36 superintendent and the board president of such school district. If a
37 municipality, as defined in K.S.A. 75-1117, and amendments thereto, other
38 than a school district, submits a written assurance protocol, such written
39 assurance protocol shall be signed by the governing body or such
40 governing body's designee for such municipality. Such written assurance
41 protocol shall state that the position was advertised on multiple platforms
42 for a minimum of 30 calendar days and that at least one of the following
43 conditions occurred:

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

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

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

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

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

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

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

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

1 benefit required to be repaid by such retirant pursuant to this subsection.

2 (9) For the purposes of this section a prearranged agreement for
3 employment may be determined by whether the facts and circumstances of
4 the situation indicate that the employer and employee reasonably
5 anticipated that further services would be performed after the employee's
6 retirement.

7 (10) (a) Notwithstanding the provisions of subsection (5) or (7) to the
8 contrary, commencing January 1, 2018, any retirant who is retired more
9 than 60 days, if such retirant's age on the date of retirement is 62 or older,
10 or is retired more than 180 days, if such retirant's age on the date of
11 retirement is less than 62, and who is subsequently hired without any
12 prearranged agreement with the participating employer in a covered
13 position, as defined in K.S.A. 74-49,202, and amendments thereto, or an
14 independent contractor or a third-party entity who contracts service to fill
15 such covered position shall not be subject to an earnings limitation that
16 when met or exceeded requires that the retirant not receive a retirement
17 benefit for any month for which such retirant serves in such covered
18 position. The participating employer of such retirant shall pay to the
19 system the statutorily prescribed employer contribution rate on the first
20 \$25,000 of such retirant's compensation in a calendar year and a 30%
21 employer contribution on any compensation in excess of \$25,000 in a
22 calendar year during any such period of employment. If a retirant is
23 employed by more than one participating employer or performing duties in
24 more than one position, contributions shall be made on compensation from
25 all such employment for that calendar year.

26 (b) Notwithstanding the provisions of subsection (5) or (7) to the
27 contrary, commencing January 1, 2018, any retirant who is retired more
28 than 60 days, if such retirant's age on the date of retirement is 62 or older,
29 or is retired more than 180 days, if such retirant's age on the date of
30 retirement is less than 62, and who is subsequently hired without any
31 prearranged agreement with the participating employer in a non-covered
32 position, or an independent contractor or a third-party entity who contracts
33 service to fill such non-covered position, shall not be subject to an
34 earnings limitation that when met or exceeded requires that the retirant not
35 receive a retirement benefit for any month for which such retirant serves in
36 such non-covered position. No employer contribution shall be paid to the
37 system on compensation paid to a retirant hired in a non-covered position.

38 (c) The participating employer shall enroll all retirants, including
39 retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to
40 the system when compensation is paid to a retirant as provided in this
41 subsection. Such report shall contain a certification by the appointing
42 authority of the participating employer that any hired retirant has not been
43 employed by the participating employer within 60 days of such retirant's

1 retirement in the case of a retirant whose age on the date of retirement is
2 62 or older, or within 180 days of such retirant's retirement in the case of a
3 retirant whose age on the date of retirement is less than 62, and that there
4 was no prearranged agreement for employment between the participating
5 employer and the hired retirant. Upon request of the executive director of
6 the system, the participating employer shall provide such information as
7 may be needed by the executive director to carry out the provisions of this
8 subsection. No retirant shall make contributions to the system or receive
9 credit for service while employed under the provisions of this subsection.

10 (d) The provisions of this subsection relating to an earnings limitation
11 and employer contributions shall not apply to any retirant described in
12 subsection (7)(b) or to retirants who are independent contractors or
13 employees of third-party entities who contract with a participating
14 employer as described in subsection (7)(f), except as specifically provided
15 in this subsection.

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

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

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