

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

1 payable under this act shall be paid until the member has terminated such
2 member's office.

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

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7 withdrawn such member's accumulated contributions from the Kansas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

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

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

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

1 to the system the actuarially determined employer contribution based on
2 the retiree's compensation during any such period of employment. The
3 provisions of the subsection shall expire on January 1, 2018.

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

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

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

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

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

10 (ii) employed by a school district in a position as provided in K.S.A.
11 74-4937(3), (4) or (5), and amendments thereto;

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

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

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

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

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

43 (viii) state or local elected officials. A retirant shall not be employed

1 in an elected office within 30 days of such retirant's retirement, except that
2 if a retirant is filling a vacant elected office, no waiting period shall be
3 required; or

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

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

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

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

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

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

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

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

1 governing body's designee for such municipality. Such written assurance
2 protocol shall state that the position was advertised on multiple platforms
3 for a minimum of 30 calendar days and that at least one of the following
4 conditions occurred:

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

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

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

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

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

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

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

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

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

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

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

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

42 (b) Notwithstanding the provisions of subsection (5) or (7) to the
43 contrary, commencing January 1, 2018, any retirant who is retired more

1 than 60 days, if such retirant's age on the date of retirement is 62 or older,
2 or is retired more than 180 days, if such retirant's age on the date of
3 retirement is less than 62, and who is subsequently hired without any
4 prearranged agreement with the participating employer in a non-covered
5 position, or an independent contractor or a third-party entity who contracts
6 service to fill such non-covered position, shall not be subject to an
7 earnings limitation that when met or exceeded requires that the retirant not
8 receive a retirement benefit for any month for which such retirant serves in
9 such non-covered position. No employer contribution shall be paid to the
10 system on compensation paid to a retirant hired in a non-covered position.

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

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

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

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

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