

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.