

**SENATE BILL No. 202**

By Committee on Ways and Means

2-18

---

1 AN ACT concerning retirement and pensions; relating to the Kansas public  
2 employees retirement system; employment after retirement; eliminating  
3 the six-month retirement benefit suspension; amending K.S.A. 74-4914  
4 and repealing the existing section.  
5

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

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

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

36 (3) Any member who is an employee of an affiliating employer

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

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

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

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

42 (6) For purposes of this section, any employee of a local  
43 governmental unit which has its own pension plan who becomes an

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

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

20 (ii) Commencing January 1, 2018, for all retirements that occurred  
21 prior to such date, any retirant who is employed or appointed in or to any  
22 position by a participating employer, an independent contractor or a third-  
23 party entity who contracts services with a participating employer to fill a  
24 position, without any prearranged agreement with such participating  
25 employer and not prior to 60 days after such retirant's retirement date, shall  
26 not be subject to an earnings limitation that when met or exceeded requires  
27 that the retirant not receive a retirement benefit for any month for which  
28 such retirant serves in such position. If a retirant is employed in a covered  
29 position, as defined in K.S.A. 74-49,202, and amendments thereto, the  
30 participating employer of such retirant 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.

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

41 (i) Licensed professional nurses or licensed practical nurses employed  
42 by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or  
43 38-2302(k), and amendments thereto, the Kansas soldiers' home or the

1 Kansas veterans' home. The participating employer of such retirant shall  
2 pay to the system the actuarially determined employer contribution based  
3 on the retirant's compensation and the statutorily prescribed employee  
4 contribution during any such period of employment;

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

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

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

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

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

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

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

42 (c) The participating employer shall enroll all retirants, including  
43 retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to

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

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

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

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

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

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

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

41 (i) No applications were submitted for the position;

42 (ii) if applications were submitted, none of the applicants met the  
43 reference screening criteria of the employer; or

1 (iii) if applications were submitted, none of the applicants possessed  
2 the appropriate licensure, certification or other necessary credentials for  
3 the position.

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

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

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

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

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

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

25 (8) *For members who retired on and after January 1, 2018, if*  
26 *determined by the retirement system that a retirant entered into a*  
27 *prearranged agreement for employment with a participating employer*  
28 *prior to such retirant's retirement and prior to the end of the subsequent 60-*  
29 *day waiting period, or the 180-day waiting period under subsection (10),*  
30 *the monthly retirement benefit of such retirant shall be suspended during*  
31 *the period that begins on the month in which the retirant is re-employed*  
32 *and ends ~~six months~~ on the month after the retirant's termination of such*  
33 *employment. The retirant shall repay to the retirement system all monthly*  
34 *retirement benefits paid to the retirant by the retirement system that the*  
35 *retirant received after such employment began. The participating employer*  
36 *which hired such retirant shall be required to pay to the system any fees,*  
37 *finances, penalties or any other cost imposed by the internal revenue service*  
38 *and indemnify the system for any cost incurred by the system to defend*  
39 *any action brought by the internal revenue service based on in-service*  
40 *distributions which are a result of any determined prearranged agreement*  
41 *and for any cost incurred by the system to collect any monthly retirement*  
42 *benefit required to be repaid by such retirant pursuant to this subsection.*

43 (9) For the purposes of this section a prearranged agreement for

1 employment may be determined by whether the facts and circumstances of  
2 the situation indicate that the employer and employee reasonably  
3 anticipated that further services would be performed after the employee's  
4 retirement.

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

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

36 (c) The participating employer shall enroll all retirants, including  
37 retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to  
38 the system when compensation is paid to a retirant as provided in this  
39 subsection. Such report shall contain a certification by the appointing  
40 authority of the participating employer that any hired retirant has not been  
41 employed by the participating employer within 60 days of such retirant's  
42 retirement in the case of a retirant whose age on the date of retirement is  
43 62 or older, or within 180 days of such retirant's retirement in the case of a

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

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

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

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

18   Sec. 3. This act shall take effect and be in force from and after its  
19   publication in the Kansas register.