

Senate Substitute for HOUSE BILL No. 2621

By Committee on Ways and Means

3-19

AN ACT concerning retirement; relating to the Kansas public employees retirement system and systems thereunder; benefits; eligibility; purchase of participating service; rollover of distributions; retirement plans and accounts, contributions; amending K.S.A. 72-8603 and 75-5524 and K.S.A. 2001 Supp. 74-4902, 74-4919m, 74-4966 and 74-49,123 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 74-4919t.

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

Section 1. K.S.A. 72-8603 is hereby amended to read as follows: 72-8603. (a) The board of education of any school district or the board of trustees of any community ~~junior~~ college shall contract with any of its employees ~~so requesting, upon request,~~ for reductions in compensation and the contribution thereof for tax sheltered ~~annuities~~ *accounts and annuities or deferred compensation plans* as permitted under *section 403(b) or section 457* of the United States internal revenue code, for the benefit of such employees. Any employee desiring to contract under the provisions of this section shall ~~express his or her wishes in writing to his or her~~ *send written notice of such desire to such employee's* employer within semiannual thirty-day periods in accordance with rules and regulations of such employer.

(b) *The board of education of any school district and the board of trustees of any community college may contribute to a participant's 403(b) account or annuity or 457 plan contracted for under the provisions of subsection (a).*

Sec. 2. K.S.A. 2001 Supp. 74-4902 is hereby amended to read as follows: 74-4902. As used in articles 49 and 49a of chapter 74 and amendments thereto, unless otherwise provided or the context otherwise requires:

(1) "Accumulated contributions" means the sum of all contributions by a member to the system which are credited to the member's account, with interest allowed thereon;

(2) "acts" means the provisions of articles 49 and 49a of the Kansas Statutes Annotated and amendments thereto;

(3) "actuarial equivalent" means an annuity or benefit of equal value

1 to the accumulated contributions, annuity or benefit, when computed
2 upon the basis of the actuarial tables in use by the system. Whenever the
3 amount of any benefit is to be determined on the basis of actuarial as-
4 sumptions, the assumptions shall be specified in a way that precludes
5 employer discretion;

6 (4) “actuarial tables” means the actuarial tables approved and in use
7 by the board at any given time;

8 (5) “actuary” means the actuary or firm of actuaries employed or
9 retained by the board at any given time;

10 (6) “agent” means the individual designated by each participating em-
11 ployer through whom system transactions and communication are
12 directed;

13 (7) “beneficiary” means any natural person or persons or estate
14 named by a member to receive any benefits as provided for by this act.
15 Designations of beneficiaries by a member who is a member of more
16 than one retirement system made on or after July 1, 1987, shall be the
17 basis of any benefits payable under all systems unless otherwise provided
18 by law. Except as otherwise provided by subsection (33) of this section,
19 if there is no named beneficiary living at time of member’s death, any
20 benefits provided for by this act shall be paid to: (A) The member’s sur-
21 viving spouse; (B) the member’s dependent child or children; (C) the
22 member’s dependent parent or parents; (D) the member’s nondependent
23 child or children; (E) the member’s nondependent parent or parents; (F)
24 the estate of the deceased member; in the order of preference as specified
25 in this subsection.

26 (8) “board of trustees,” “board” or “trustees” means the managing
27 body of the system which is known as the Kansas public employees re-
28 tirement system board of trustees;

29 (9) “compensation” means, except as otherwise provided, all salary,
30 wages and other remuneration payable to a member for personal services
31 performed for a participating employer, including maintenance or any
32 allowance in lieu thereof provided a member as part of compensation,
33 but not including reimbursement for travel or moving expenses or on and
34 after July 1, 1994, payment pursuant to an early retirement incentive
35 program made prior to the retirement of the member. Beginning with
36 the employer’s fiscal year which begins in calendar year 1991 or for em-
37 ployers other than the state of Kansas, beginning with the fiscal year
38 which begins in calendar year 1992, when the compensation of a member
39 who remains in substantially the same position during any two consecutive
40 years of participating service used in calculating final average salary is
41 increased by an amount which exceeds 15%, then the amount of such
42 increase which exceeds 15% shall not be included in compensation, ex-
43 cept that (A) any amount of compensation for accumulated sick leave or

1 vacation or annual leave paid to the member, (B) any increase in com-
2 pensation for any member due to a reclassification or reallocation of such
3 member's position or a reassignment of such member's job classification
4 to a higher range or level and (C) any increase in compensation as pro-
5 vided in any contract entered into prior to January 1, 1991, and still in
6 force on the effective date of this act, pursuant to an early retirement
7 incentive program as provided in K.S.A. 72-5395 *et seq.* and amendments
8 thereto, shall be included in the amount of compensation of such member
9 used in determining such member's final average salary and shall not be
10 subject to the 15% limitation provided in this subsection. Any contribu-
11 tions by such member on the amount of such increase which exceeds
12 15% which is not included in compensation shall be returned to the mem-
13 ber. Unless otherwise provided by law, beginning with the employer's
14 fiscal year coinciding with or following July 1, 1985, compensation shall
15 include any amounts for tax sheltered annuities or deferred compensation
16 plans. Beginning with the employer's fiscal year which begins in calendar
17 year 1991, compensation shall include amounts under sections 403b, 457
18 and 125 of the federal internal revenue code of 1986 and, as the board
19 deems appropriate, any other section of the federal internal revenue code
20 of 1986 which defers or excludes amounts from inclusion in income. For
21 purposes of applying limits under the federal internal revenue code "com-
22 pensation" shall have the meaning as provided in K.S.A. 2001 Supp. 74-
23 49,123 and amendments thereto;

24 (10) "credited service" means the sum of participating service and
25 prior service and in no event shall credited service include any service
26 which is credited under another retirement plan authorized under any
27 law of this state;

28 (11) "dependent" means a parent or child of a member who is de-
29 pendent upon the member for at least ½ of such parent or child's support;

30 (12) "effective date" means the date upon which the system becomes
31 effective by operation of law;

32 (13) "eligible employer" means the state of Kansas, and any county,
33 city, township, special district or any instrumentality of any one or several
34 of the aforementioned or any noncommercial public television or radio
35 station located in this state which receives state funds allocated by the
36 Kansas public broadcasting commission whose employees are covered by
37 social security. If a class or several classes of employees of any above
38 defined employer are not covered by social security, such employer shall
39 be deemed an eligible employer only with respect to such class or those
40 classes of employees who are covered by social security;

41 (14) "employee" means any appointed or elective officer or employee
42 of a participating employer whose employment is not seasonal or tem-
43 porary and whose employment requires at least 1,000 hours of work per

1 year, and any such officer or employee who is concurrently employed
2 performing similar or related tasks by two or more participating employ-
3 ers, who each remit employer and employee contributions on behalf of
4 such officer or employee to the system, and whose combined employment
5 is not seasonal or temporary, and whose combined employment requires
6 at least 1,000 hours of work per year, but not including: (A) Any employee
7 who is a contributing member of the United States civil service retirement
8 system; (B) any employee who is a contributing member of the federal
9 employees retirement system; (C) any employee who is a leased employee
10 as provided in section 414 of the federal internal revenue code of a partic-
11 ipating employer. ~~“Leased employee” means the same as provided in~~
12 ~~section 414 of the federal internal revenue code;~~ and (D) any employee
13 or class of employees specifically exempted by law. After June 30, 1975,
14 no person who is otherwise eligible for membership in the Kansas public
15 employees retirement system shall be barred from such membership by
16 reason of coverage by, eligibility for or future eligibility for a retirement
17 annuity under the provisions of K.S.A. 74-4925 and amendments thereto,
18 except that no person shall receive service credit under the Kansas public
19 employees retirement system for any period of service for which benefits
20 accrue or are granted under a retirement annuity plan under the provi-
21 sions of K.S.A. 74-4925 and amendments thereto. After June 30, 1982,
22 no person who is otherwise eligible for membership in the Kansas public
23 employees retirement system shall be barred from such membership by
24 reason of coverage by, eligibility for or future eligibility for any benefit
25 under another retirement plan authorized under any law of this state,
26 except that no such person shall receive service credit under the Kansas
27 public employees retirement system for any period of service for which
28 any benefit accrues or is granted under any such retirement plan. Em-
29 ployee shall include persons who are in training at or employed by, or
30 both, a sheltered workshop for the blind operated by the secretary of
31 social and rehabilitation services. The entry date for such persons shall
32 be the beginning of the first pay period of the fiscal year commencing in
33 calendar year 1986. Such persons shall be granted prior service credit in
34 accordance with K.S.A. 74-4913 and amendments thereto. However, such
35 persons classified as home industry employees shall not be covered by
36 the retirement system. Employees shall include any member of a board
37 of county commissioners of any county and any council member or com-
38 missioner of a city whose compensation is equal to or exceeds \$5,000 per
39 year;

40 (15) “entry date” means the date as of which an eligible employer
41 joins the system. The first entry date pursuant to this act is January 1,
42 1962;

43 (16) “executive director” means the managing officer of the system

1 employed by the board under this act;

2 (17) “final average salary” means in the case of a member who retires
3 prior to January 1, 1977, and in the case of a member who retires after
4 January 1, 1977, and who has less than five years of participating service
5 after January 1, 1967, the average highest annual compensation paid to
6 such member for any five years of the last 10 years of participating service
7 immediately preceding retirement or termination of employment, or in
8 the case of a member who retires on or after January 1, 1977, and who
9 has five or more years of participating service after January 1, 1967, the
10 average highest annual compensation paid to such member on or after
11 January 1, 1967, for any five years of participating service preceding re-
12 tirement or termination of employment, or, in any case, if participating
13 service is less than five years, then the average annual compensation paid
14 to the member during the full period of participating service, or, in any
15 case, if the member has less than one calendar year of participating service
16 such member’s final average salary shall be computed by multiplying such
17 member’s highest monthly salary received in that year by 12; in the case
18 of a member who became a member under subsection (3) of K.S.A. 74-
19 4925 and amendments thereto, or who became a member with a partic-
20 ipating employer as defined in subsection (3) of K.S.A. 74-4931 and
21 amendments thereto and who elects to have compensation paid in other
22 than 12 equal installments, such compensation shall be annualized as if
23 the member had elected to receive 12 equal installments for any such
24 periods preceding retirement; in the case of a member who retires after
25 July 1, 1987, the average highest annual compensation paid to such mem-
26 ber for any four years of participating service preceding retirement or
27 termination of employment; in the case of a member who retires on or
28 after July 1, 1993, ~~who was first hired as an employee, as defined in~~
29 ~~subsection (14) of K.S.A. 74-4902 and amendments thereto, prior to July~~
30 ~~1, 1993 whose date of membership in the system is prior to July 1, 1993,~~
31 ~~and any member who is in such member’s membership waiting period on~~
32 ~~July 1, 1993, and whose date of membership in the system is on or after~~
33 ~~July 1, 1993,~~ the average highest annual compensation, as defined in
34 subsection (9), paid to such member for any four years of participating
35 service preceding retirement or termination of employment or the aver-
36 age highest annual salary, as defined in subsection (34), paid to such
37 member for any three years of participating service preceding retirement
38 or termination of employment, whichever is greater; and in the case of a
39 member who retires on or after July 1, 1993, and ~~who is first hired as an~~
40 ~~employee, as defined in subsection (14) of K.S.A. 74-4902 and amend-~~
41 ~~ments thereto, on or after July 1, 1993 whose date of membership in the~~
42 ~~system is on or after July 1, 1993,~~ the average highest annual salary, as
43 defined in subsection (34), paid to such member for any three years of

1 participating service preceding retirement or termination of employment.
2 Final average salary shall not include any purchase of participating service
3 credit by a member as provided in subsection (2) of K.S.A. 74-4919h and
4 amendments thereto which is completed within five years of retirement.
5 For any application to purchase or repurchase service credit for a certain
6 period of service as provided by law received by the system after May 17,
7 1994, for any member who will have contributions deducted from such
8 member's compensation at a percentage rate equal to two or three times
9 the employee's rate of contribution or will begin paying to the system a
10 lump-sum amount for such member's purchase or repurchase and such
11 deductions or lump-sum payment commences after the commencement
12 of the first payroll period in the third quarter, "final average salary" shall
13 not include any amount of compensation or salary which is based on such
14 member's purchase or repurchase. Any application to purchase or repur-
15 chase multiple periods of service shall be treated as multiple applications.
16 For purposes of this subsection, the date that such member is first hired
17 as an employee for members who are employees of employers that
18 elected to participate in the system on or after January 1, 1994, shall be
19 the date that such employee's employer elected to participate in the sys-
20 tem. In the case of any former member who was eligible for assistance
21 pursuant to K.S.A. 74-4925 and amendments thereto prior to July 1, 1998,
22 for the purpose of calculating final average salary of such member, such
23 member's final average salary shall be based on such member's salary
24 while a member of the system or while eligible for assistance pursuant to
25 K.S.A. 74-4925 and amendments thereto, whichever is greater;

26 (18) "fiscal year" means, for the Kansas public employees retirement
27 system, the period commencing July 1 of any year and ending June 30 of
28 the next;

29 (19) "Kansas public employees retirement fund" means the fund cre-
30 ated by this act for payment of expenses and benefits under the system
31 and referred to as the fund;

32 (20) "leave of absence" means a period of absence from employment
33 without pay, authorized and approved by the employer, and which after
34 the effective date does not exceed one year;

35 (21) "member" means an eligible employee who is in the system and
36 is making the required employee contributions; any former employee who
37 has made the required contributions to the system and has not received
38 a refund if such member is within five years of termination of employment
39 with a participating employer; or any former employee who has made the
40 required contributions to the system, has not yet received a refund and
41 has been granted a vested benefit;

42 (22) "military service" means service in the uniformed forces of the
43 United States, for which retirement benefit credit must be given under

1 the provisions of USERRA or service in the armed forces of the United
2 States or in the commissioned corps of the United States public health
3 service, which service is immediately preceded by a period of employ-
4 ment as an employee or by the entering into of an employment contract
5 with a participating employer and is followed by return to employment
6 as an employee with the same or another participating employer within
7 12 months immediately following discharge from such military service,
8 except that if the board determines that such return within 12 months
9 was made impossible by reason of a service-connected disability, the pe-
10 riod within which the employee must return to employment with a par-
11 ticipating employer shall be extended not more than two years from the
12 date of discharge or separation from military service;

13 (23) “normal retirement date” means the date on or after which a
14 member may retire with full retirement benefits pursuant to K.S.A. 74-
15 4914 and amendments thereto;

16 (24) “participating employer” means an eligible employer who has
17 agreed to make contributions to the system on behalf of its employees;

18 (25) “participating service” means the period of employment after
19 the entry date for which credit is granted a member;

20 (26) “prior service” means the period of employment of a member
21 prior to the entry date for which credit is granted a member under this
22 act;

23 (27) “prior service annual salary” means the highest annual salary,
24 not including any amounts received as payment for overtime or as re-
25 imbursement for travel or moving expense, received for personal services
26 by the member from the current employer in any one of the three cal-
27 endar years immediately preceding January 1, 1962, or the entry date of
28 the employer, whichever is later, except that if a member entered the
29 employment of the state during the calendar year 1961, the prior service
30 annual salary shall be computed by multiplying such member’s highest
31 monthly salary received in that year by 12;

32 (28) “retirant” means a member who has retired under this system;

33 (29) “retirement benefit” means a monthly income or the actuarial
34 equivalent thereof paid in such manner as specified by the member pur-
35 suant to this act or as otherwise allowed to be paid at the discretion of
36 the board, with benefits accruing from the first day of the month coin-
37 ciding with or following retirement and ending on the last day of the
38 month in which death occurs. Upon proper identification a surviving
39 spouse may negotiate the warrant issued in the name of the retirant. If
40 there is no surviving spouse, the last warrant shall be payable to the des-
41 ignated beneficiary;

42 (30) “retirement system” or “system” means the Kansas public em-
43 ployees retirement system as established by this act and as it may be

1 amended;

2 (31) “social security” means the old age, survivors and disability in-
3 surance section of the federal social security act;

4 (32) “total disability” means a physical or mental disability which pre-
5 vents the member from engaging, for remuneration or profit, in any oc-
6 cupation for which the member is reasonably suited by education, training
7 or experience;

8 (33) “trust” means an express trust, created by a trust instrument,
9 including a will, designated by a member to receive payment of the in-
10 sured death benefit under K.S.A. 74-4927 and amendments thereto and
11 payment of the member’s accumulated contributions under subsection
12 (1) of K.S.A. 74-4916 and amendments thereto. A designation of a trust
13 shall be filed with the board. If there is a designated trust at the time of
14 the member’s death, the insured death benefit for the member under
15 K.S.A. 74-4927 and amendments thereto and the member’s accumulated
16 contributions under subsection (1) of K.S.A. 74-4916 and amendments
17 thereto shall be paid to the trust in lieu of the member’s beneficiary. If
18 no will is admitted to probate within six months after the death of the
19 member or no trustee qualifies within such six months or if the designated
20 trust fails, for any reason whatsoever, the insured death benefit under
21 K.S.A. 74-4927 and amendments thereto and the member’s accumulated
22 contributions under subsection (1) of K.S.A. 74-4916 and amendments
23 thereto shall be paid in accordance with the provisions of subsection (7)
24 of this section as in other cases where there is no named beneficiary living
25 at the time of the member’s death and any payments so made shall be a
26 full discharge and release to the system from any further claims;

27 (34) “salary” means all salary and wages payable to a member for
28 personal services performed for a participating employer, including main-
29 tenance or any allowance in lieu thereof provided a member as part of
30 salary. Salary shall not include reimbursement for travel or moving ex-
31 penses, payment for accumulated sick leave or vacation or annual leave,
32 severance pay or any other payments to the member determined by the
33 board to not be payments for personal services performed for a partici-
34 pating employer constituting salary or on and after July 1, 1994, payment
35 pursuant to an early retirement incentive program made prior to the
36 retirement of the member. When the salary of a member who remains
37 in substantially the same position during any two consecutive years of
38 participating service used in calculating final average salary is increased
39 by an amount which exceeds 15%, then the amount of such increase
40 which exceeds 15% shall not be included in salary. Any contributions by
41 such member on the amount of such increase which exceeds 15% which
42 is not included in compensation shall be returned to the member. Unless
43 otherwise provided by law, salary shall include any amounts for tax shel-

1 tered annuities or deferred compensation plans. Salary shall include
2 amounts under sections 403b, 457 and 125 of the federal internal revenue
3 code of 1986 and, as the board deems appropriate, any other section of
4 the federal internal revenue code of 1986 which defers or excludes
5 amounts from inclusion in income. For purposes of applying limits under
6 the federal internal revenue code “salary” shall have the meaning as pro-
7 vided in K.S.A. 2001 Supp. 74-49,123 and amendments thereto. In any
8 case, if participating service is less than three years, then the average
9 annual salary paid to the member during the full period of participating
10 service, or, in any case, if the member has less than one calendar year of
11 participating service such member’s final average salary shall be com-
12 puted by multiplying such member’s highest monthly salary received in
13 that year by 12;

14 (35) “federal internal revenue code” means the federal internal rev-
15 enue code of 1954 or 1986, as in effect on July 1, 1998, and as applicable
16 to a governmental plan; and

17 (36) “USERRA” means the federal uniformed services employment
18 and reemployment rights act of 1994 as in effect on July 1, 1998.

19 Sec. 3. K.S.A. 2001 Supp. 74-4919m is hereby amended to read as
20 follows: 74-4919m. (1) Except as otherwise provided, any active contrib-
21 uting member of the retirement system who at one time had the state
22 board of regents assist such member in the purchase of retirement an-
23 nuities as provided in K.S.A. 74-4925 and amendments thereto and who
24 withdrew such member’s accumulated contributions upon the termina-
25 tion of such employment as provided in K.S.A. 74-4925 and amendments
26 thereto may purchase such participating service credit for such service,
27 *and any active contributing member of the retirement system may pur-
28 chase participating service credit for any waiting period required pur-
29 suant to K.S.A. 74-4925, and amendments thereto, regardless of whether
30 the state board of regents assisted such member in the purchase of retire-
31 ment annuities as provided in K.S.A. 74-4925, and amendments thereto.*
32 Such member may purchase, subject to the provisions of K.S.A. 2001
33 Supp. 74-49,123 and amendments thereto such service credit by submit-
34 ting proof of such service acceptable to the board of trustees and electing
35 in writing to have employee contributions deducted as provided in K.S.A.
36 74-4919 and amendments thereto from such member’s compensation at
37 an additional rate of contribution, in addition to the employee’s rate of
38 contribution as provided in K.S.A. 74-4919 and amendments thereto,
39 based upon the member’s attained age at the time of purchase and using
40 actuarial assumptions and tables in use by the retirement system at such
41 time of purchase for such periods of service. Such additional rate of con-
42 tribution shall commence at the beginning of the quarter following such
43 election and shall remain in effect until all of the full quarters of such

1 service have been purchased.

2 (2) Any member of the Kansas public employees retirement system
3 who has not retired may purchase, subject to the provisions of K.S.A.
4 2001 Supp. 74-49,123 and amendments thereto participating service
5 credit for such service as described in this section with a participating
6 employer by making a single lump-sum payment in lieu of employee
7 contributions as provided in this section. The lump-sum payment shall
8 be in an amount determined by the actuary using (a) the member's then
9 current annual rate of compensation, (b) the actuarial assumptions and
10 tables currently in use by the system and (c) the member's attained age.

11 Sec. 4. K.S.A. 2001 Supp. 74-4966 is hereby amended to read as
12 follows: 74-4966. (a) In the case of any member whose employment shall
13 be covered by social security and who is a member of the class certified
14 in the case of *Brazelton v. Kansas public employees retirement system*,
15 227 K. 443, 607 P.2d 510 (1980), any benefits payable under the provi-
16 sions of K.S.A. 74-4958, 74-4959 and 74-4960, *and amendments thereto*,
17 shall be reduced by an amount equal to $\frac{1}{2}$ of the original social security
18 benefits accruing from employment with the participating employer at
19 the time the member retired. *The actuarial calculation of such benefit*
20 *and the social security reduction shall include an assumption that the*
21 *member first commences receiving such member's benefit payments pur-*
22 *suant to social security at the age such member is first eligible for unred-*
23 *uced social security benefits or such member's actual retirement age,*
24 *whichever occurs later.* For any member already retired on the effective
25 date of this act, no reduction of the original social security benefits shall
26 be applicable to benefits paid prior to the effective date of this act. The
27 member must make an initial application for social security benefits from
28 employment with the participating employer and, if denied such benefits,
29 the member must pursue and exhaust all administrative remedies of the
30 social security administration which include, but are not limited to, re-
31 consideration and hearings. Until such initial application for benefits has
32 been approved by the social security administration, social security ben-
33 efits may be estimated and may be deducted from the amount of any
34 benefits payable as provided in this subsection.

35 (b) For any member other than a member who is a member of the
36 class certified in the case of *Brazelton v. Kansas public employees retire-*
37 *ment system*, 227 K. 443, 607 P.2d 510 (1980), no benefits shall be re-
38 duced because of social security benefits. Any benefits which first become
39 payable on or after January 1, 1976, by reason of employment with a
40 participating employer participating in the Kansas police and firemen's
41 retirement system, which employment was also covered by social security,
42 shall be reduced by an amount equal to the value of the difference be-
43 tween contributions actually made by the member and contributions

1 which would have been made had there been no reduction for contri-
2 butions to social security. The amount of reduction shall be made by the
3 board upon the advice of the actuary at the time benefits become payable
4 and shall continue until benefits are no longer payable. Should a member,
5 whose employment prior to January 1, 1976, with a participating employer
6 participating in the Kansas police and firemen's retirement system, such
7 employment also being covered by social security, repay in a lump-sum
8 prior to January 1, 1977, or on date of retirement, whichever is earlier,
9 an amount equal to the difference between contributions actually made
10 by the member and contributions which would have been made had there
11 been no reduction for contributions to social security, there shall be no
12 reduction as heretofore provided. If the payment is made after January
13 1, 1977, but prior to retirement, the member will pay the actual amount
14 plus interest which shall accrue from January 1, 1976, at a rate specified
15 by the board of trustees.

16 Section 5. K.S.A. 2001 Supp. 74-49,123 is hereby amended to read
17 as follows: 74-49,123. (a) This section applies to the Kansas public em-
18 ployees retirement system and to all other public retirement plans ad-
19 ministered by the board of trustees.

20 (b) As used in this section:

21 (1) "Federal internal revenue code" means the federal internal rev-
22 enue code of 1954 or 1986, as amended and as applicable to a govern-
23 mental plan as in effect on July 1, 1998; and

24 (2) "retirement plan" includes the Kansas public employees retire-
25 ment system and all other Kansas public retirement plans and benefit
26 structures, which are administered by the board.

27 (c) In addition to the federal internal revenue code provisions oth-
28 erwise noted in each retirement plan's law, and in order to satisfy the
29 applicable requirements under the federal internal revenue code, the
30 retirement plans shall be subject to the following provisions, notwith-
31 standing any other provision of the retirement plan's law:

32 (1) The board shall distribute the corpus and income of the retire-
33 ment plan to the members and their beneficiaries in accordance with the
34 retirement plan's law. At no time prior to the satisfaction of all liabilities
35 with respect to members and their beneficiaries shall any part of the
36 corpus and income be used for, or diverted to, purposes other than the
37 exclusive benefit of the members and their beneficiaries.

38 (2) Forfeitures arising from severance of employment, death or for
39 any other reason may not be applied to increase the benefits any member
40 would otherwise receive under the retirement plan's law. However, for-
41 feitures may be used to reduce an employer's contribution.

42 (3) All benefits paid from the retirement plan shall be distributed in
43 accordance with the requirements of section 401(a)(9) of the federal in-

1 ternal revenue code and the regulations under that section. In order to
2 meet these requirements, the retirement plan shall be administered in
3 accordance with the following provisions: (A) Distribution of a member's
4 benefit must begin by the later of the April 1 following the calendar year
5 in which a participant attains age 70 1/2 or the April 1 of the year following
6 the calendar year in which the member retires;

7 (B) the life expectancy of a member or the member's spouse may not
8 be recalculated after the benefits commence;

9 (C) if a member dies before the distribution of the member's benefits
10 has begun, distributions to beneficiaries must begin no later than Decem-
11 ber 31 of the calendar year immediately following the calendar year in
12 which the member died, except as provided in subsection (6) of K.S.A.
13 74-4918 and amendments thereto; and

14 (D) the amount of benefits payable to a member's beneficiary may
15 not exceed the maximum determined under the incidental death benefit
16 requirement of the federal internal revenue code.

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

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

20 (A) determine eligibility for benefits;

21 (B) compute rates of contribution; or

22 (C) compute benefits of members or beneficiaries, in a manner that
23 discriminates in favor of members who are considered officers, supervi-
24 sors or highly compensated, as prohibited under section 401(a)(4) of the
25 federal internal revenue code.

26 (6) Subject to the provisions of this subsection, benefits paid from,
27 and employee contributions made to, the retirement plans shall not ex-
28 ceed the maximum benefits and the maximum annual additions, respec-
29 tively, permissible under section 415 of the federal internal revenue code.

30 (A) Beginning January 1, 1995, a participant may not receive an an-
31 nual benefit that exceeds the dollar amount specified in section
32 415(b)(1)(A) of the federal internal revenue code, subject to the appli-
33 cable adjustments in section 415 of the federal internal revenue code,
34 except as provided in clause (C) of this subsection.

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

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

1 (ii) An eligible participant in a retirement plan, as defined by section
2 1526 of the federal taxpayer relief act of 1997, may purchase service credit
3 without regard to the limitations of section 415 (c)(1) of the federal in-
4 ternal revenue code as provided by state law in effect on August 5, 1997.

5 If the board's option under subdivision (i) will not avoid a contribution
6 in excess of the limits under section 415(c) or 415(n) of the federal in-
7 ternal revenue code, the board shall reduce or deny the contribution.

8 (C) Subject to approval by the internal revenue service, the board
9 shall maintain a qualified governmental excess benefit arrangement under
10 section 415(m) of the federal internal revenue code. The board shall es-
11 tablish the necessary and appropriate procedures for the administration
12 of such benefit arrangement under the federal internal revenue code.
13 The amount of any annual benefit that would exceed the limitations im-
14 posed by section 415 of the federal internal revenue code shall be paid
15 from this benefit arrangement. The amount of any contribution that
16 would exceed the limitations imposed by section 415 of the federal in-
17 ternal revenue code shall be credited to this benefit arrangement. The
18 qualified excess benefit arrangement shall be a separate portion of the
19 retirement plan. The qualified excess benefit arrangement is subject to
20 the following requirements:

21 (i) The benefit arrangement shall be maintained solely for the pur-
22 pose of providing to participants in the retirement plans that part of the
23 participant's annual benefit otherwise payable under the terms of the act
24 that exceeds the limitations on benefits imposed by section 415 of the
25 federal internal revenue code; and

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

28 (D) Prior to January 1, 1998, the definition of compensation, wages,
29 salary or other similar term when used for purposes of determining com-
30 pliance with section 415 of the federal internal revenue code does not
31 include the amount of any elective deferral, as defined in section
32 402(g)(3) of the federal internal revenue code, or any contribution which
33 is contributed or deferred by the employer at the election of the employee
34 and which is not includable in the gross income of the employee by reason
35 of section 125 or 457 of the federal internal revenue code.

36 (7) The board may not engage in a transaction prohibited by section
37 503(b) of the federal internal revenue code.

38 (8) To the extent required by section 401(a)(31) of the federal inter-
39 nal revenue code, the board shall allow members and qualified benefi-
40 ciaries to elect a direct rollover of eligible distributions to another eligible
41 retirement plan. Notwithstanding any law to the contrary, the board may
42 accept a direct *or indirect* rollover of eligible distributions for the purpose
43 of the purchase of service credit. *In addition, the board may accept a*

1 *direct trustee to trustee transfer from a deferred compensation plan under*
2 *section 457(b) of the federal internal revenue code or a tax sheltered an-*
3 *nuity under section 403(b) of the federal internal revenue code for: (A)*
4 *The purchase of permissive service credit, as defined under section*
5 *415(n)(3)(A) of the federal internal revenue code; or (B) a repayment to*
6 *which section 415 of the federal internal revenue code does not apply*
7 *pursuant to section 415(k)(3) of the federal internal revenue code. Any*
8 *such transfer shall be allowed as provided in this subsection to the extent*
9 *permitted by law, subject to any conditions, proofs or acceptance estab-*
10 *lished or required by the board or the board's designee.*

11 (9) Where required by the act, an employer shall pick up and pay
12 contributions that would otherwise be payable by members of a retire-
13 ment plan in accordance with section 414(h)(2) of the federal internal
14 revenue code as follows:

15 (A) The contributions, although designated as employee contribu-
16 tions, are being paid by the employer in lieu of contributions by the
17 employee;

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

21 (C) the pickup shall apply to amounts that a member elects to con-
22 tribute to receive credit for prior or participating service if the election
23 is irrevocable and applies to amounts contributed before retirement.

24 (10) Notwithstanding any provision of this plan to the contrary, con-
25 tributions, benefits and service credit with respect to qualified military
26 service will be provided in accordance with section 414(u) of the federal
27 internal revenue code.

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

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

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

35 Sec. 6. K.S.A. 75-5524 is hereby amended to read as follows: 75-
36 5524. (a) The director is authorized to enter into a voluntary agreement
37 with any employee whereby the director agrees to defer and deduct each
38 payroll period a portion of the employee's salary or compensation from
39 the state in accordance with the Kansas public employees deferred com-
40 pensation plan. Such agreement may require each participant to pay a
41 service charge to defray all or part of any significant costs incurred and
42 to be recovered by the state pursuant to subsection (c) of K.S.A. 75-5523,
43 *and amendments thereto*, as a result of the administration of this act.

1 Pursuant to this act and such agreements the director is authorized to
2 deduct amounts authorized in such agreements from the salary or com-
3 pensation of such employee each payroll period, as part of the system of
4 regular payroll deduction. *On and after July 1, 2002, pursuant to section*
5 *401(a) of the federal internal revenue code, the director may establish a*
6 *qualified plan under which the state may contribute a specified amount,*
7 *subject to appropriations, to the deferred compensation plan for state*
8 *employees who have entered into a voluntary agreement with the director*
9 *under this section.*

10 (b) The minimum amount and the maximum amount which may be
11 deferred in any one payroll period shall be established by rules and reg-
12 ulations adopted under K.S.A. 75-5529, *and amendments thereto.*

13 (c) The Kansas public employees deferred compensation plan shall
14 exist and be in addition to, and shall not be a part of any retirement or
15 pension system for employees. The state shall not be responsible for any
16 loss incurred by an employee under the Kansas public employees de-
17 ferred compensation plan established and approved pursuant to this act.

18 (d) Any amount of the employee's salary or compensation that is de-
19 ferred under such authorized agreement shall continue to be included as
20 regular compensation for all purposes of computing retirement and pen-
21 sion benefits earned by any such employee, but any sum deferred or
22 deducted shall not be subject to any state or local income taxes for the
23 year in which such sum is earned but shall be subject to applicable state
24 and local income taxes for the year in which such sum is received by the
25 employee.

26 (e) The director is hereby authorized to establish a deferred com-
27 pensation clearing fund in the state treasury in which shall be placed
28 temporarily all compensation deferred ~~and~~ deducted *or contributed* in
29 accordance with this act, as provided for in any agreement between an
30 employee and the director.

31 Sec. 7. K.S.A. 72-8603 and 75-5524 and K.S.A. 2001 Supp. 74-4902,
32 74-4919m, 74-4919t, 74-4966 and 74-49,123 are hereby repealed.

33 Sec. 8. This act shall take effect and be in force from and after its
34 publication in the Kansas register.

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