

HOUSE BILL No. 2272

By Committee on Financial Institutions and Pensions

2-2

1 AN ACT concerning retirement and pensions; relating to the Kansas public
2 employees retirement system; employment after retirement; providing
3 an exemption for retirants employed by a community developmental
4 disability organization in a licensed professional nurse, licensed
5 practical nurse or direct support position; amending K.S.A. 2022 Supp.
6 74-4914 and repealing the existing section.
7

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

9 Section 1. K.S.A. 2022 Supp. 74-4914 is hereby amended to read as
10 follows: 74-4914.(1) The normal retirement date for a member of the
11 system shall be the first day of the month coinciding with or following
12 termination of employment with any participating employer not followed
13 by employment with any participating employer within 60 days, or 180
14 days as provided in subsection ~~(10)~~ (9), and without any prearranged
15 agreement for employment with any participating employer, and the
16 attainment of age 65 or, commencing July 1, 1993, age 62 with the
17 completion of 10 years of credited service or the first day of the month
18 coinciding with or following the date that the total of the number of years
19 of credited service and the number of years of attained age of the member
20 is equal to or more than 85. In no event shall a normal retirement date for a
21 member be before six months after the entry date of the participating
22 employer by whom such member is employed. A member may retire on
23 the normal retirement date or on the first day of any month thereafter upon
24 the filing with the office of the retirement system of an application in such
25 form and manner as the board shall prescribe. Such application shall
26 contain a certification by the member that the member will not be
27 employed with any participating employer within 60 days, or 180 days as
28 provided in subsection ~~(10)~~ (9), of retirement and the member has not
29 entered into a prearranged agreement for employment with any
30 participating employer. Nothing herein shall prevent any person, member
31 or retirant from being employed, appointed or elected as an employee,
32 appointee, officer or member of the legislature. Elected officers may retire
33 from the system on any date on or after the attainment of the normal
34 retirement date, but no retirement benefits payable under this act shall be
35 paid until the member has terminated such member's office.

36 (2) No retirant shall make contributions to the system or receive

1 service credit for any service after the date of retirement.

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

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

22 ~~(5) Except as provided in subsections (7) and (10), on or after July 1,~~
23 ~~2006, through December 31, 2017, for any retiree who is first employed~~
24 ~~or appointed in or to any position or office by a participating employer~~
25 ~~other than a participating employer for which such retiree was employed~~
26 ~~or appointed during the final two years of such retiree's participation, and,~~
27 ~~on or after April 1, 2009, for any retiree who is employed by a third-party~~
28 ~~entity who contracts services with a participating employer other than a~~
29 ~~participating employer for which such retiree was employed or appointed~~
30 ~~during the final two years of such retiree's participation to fill a position~~
31 ~~covered under K.S.A. 72-2215(a), and amendments thereto, with such~~
32 ~~retiree, such participating employer shall pay to the system the actuarially~~
33 ~~determined employer contribution and the statutorily prescribed employee~~
34 ~~contribution based on the retiree's compensation during any such period~~
35 ~~of employment or appointment. If a retiree is employed or appointed in or~~
36 ~~to any position or office for which compensation for service is paid in an~~
37 ~~amount equal to \$25,000 or more in any one calendar year between July 1,~~
38 ~~2016, and January 1, 2018, by any participating employer for which such~~
39 ~~retiree was employed or appointed during the final two years of such~~
40 ~~retiree's participation, and, on or after April 1, 2009, by any third-party~~
41 ~~entity who contracts services to fill a position covered under K.S.A. 72-~~
42 ~~2215(a), and amendments thereto, with such retiree with a participating~~
43 ~~employer for which such retiree was employed or appointed during the~~

1 final two years of such retirant's participation, such retirant shall not
2 receive any retirement benefit for any month for which such retirant serves
3 in such position or office. The participating employer who employs such
4 retirant whether by contract directly with the retirant or through an
5 arrangement with a third-party entity shall report to the system within 30
6 days of when the compensation paid to the retirant is equal to or exceeds
7 any limitation provided by this section. Any participating employer who
8 contracts services with any such third-party entity to fill a position covered
9 under K.S.A. 72-2215(a), and amendments thereto, shall include in such
10 contract a provision or condition which requires the third-party entity to
11 provide the participating employer with the necessary compensation paid
12 information related to any such position filled by the third-party entity
13 with a retirant to enable the participating employer to comply with
14 provisions of this subsection relating to the payment of contributions and
15 reporting requirements. The provisions and requirements provided for in
16 amendments made in this act which relate to positions filled with a retirant
17 or employment of a retirant by a third-party entity shall not apply to any
18 contract for services entered into prior to April 1, 2009, between a
19 participating employer and third-party entity as described in this
20 subsection. Any retirant employed by a participating employer or a third-
21 party entity as provided in this subsection shall not make contributions nor
22 receive additional credit under such system for such service except as
23 provided by this section. Upon request of the executive director of the
24 system, the secretary of revenue shall provide such information as may be
25 needed by the executive director to carry out the provisions of this act. The
26 provisions of this subsection shall not apply to retirants employed as
27 substitute teachers without a contract or officers, employees or appointees
28 of the legislature. The provisions of this subsection shall not apply to
29 members of the legislature. The provisions of this subsection shall not
30 apply to any other elected officials. Commencing July 1, 2005, the
31 provisions of this subsection shall not apply to retirants who either retired
32 under the provisions of subsection (1), or, if they retired under the
33 provisions of subsection (4), were retired more than 30 days prior to the
34 effective date of this act and are licensed professional nurses or licensed
35 practical nurses employed by the state of Kansas in an institution as
36 defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302(k), and amendments
37 thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing
38 in this subsection shall be construed to create any right, or to authorize the
39 creation of any right, which is not subject to amendment or nullification by
40 act of the legislature. The participating employer of such retirant shall pay
41 to the system the actuarially determined employer contribution based on
42 the retirant's compensation during any such period of employment. The
43 provisions of the subsection shall expire on January 1, 2018.

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

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

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

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

43 (i) Licensed professional nurses or licensed practical nurses employed

1 by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or
2 38-2302(k), and amendments thereto, the Kansas soldiers' home or the
3 Kansas veterans' home. The participating employer of such retirant shall
4 pay to the system the actuarially determined employer contribution based
5 on the retirant's compensation and the statutorily prescribed employee
6 contribution during any such period of employment;

7 (ii) employed by a school district in a position as provided in K.S.A.
8 74-4937(3), (4) or (5), and amendments thereto;

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

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

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

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

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

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; *or*

4 (x) *employed as a licensed professional nurse, licensed practical*
5 *nurse or in a direct support position of an affiliated employer organized*
6 *under K.S.A. 19-4001, and amendments thereto, and defined under K.S.A.*
7 *39-1803, and amendments thereto.*

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

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

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

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

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

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

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

1 than a school district, submits a written assurance protocol, such written
 2 assurance protocol shall be signed by the governing body or such
 3 governing body's designee for such municipality. Such written assurance
 4 protocol shall state that the position was advertised on multiple platforms
 5 for a minimum of 30 calendar days and that at least one of the following
 6 conditions occurred:

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

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

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

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

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

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

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

34 ~~(8)(7)~~ (a) Except as provided in ~~subsection (8)(b)~~ *paragraph (b)*, if
 35 determined by the retirement system that a retirant entered into a
 36 prearranged agreement for employment with a participating employer
 37 prior to such retirant's retirement and prior to the end of the subsequent 60-
 38 day waiting period, or the 180-day waiting period under ~~subsection (10)~~
 39 *(9)*, the monthly retirement benefit of such retirant shall be suspended
 40 during the period that begins on the month in which the retirant is re-
 41 employed and ends six months after the retirant's termination of such
 42 employment. The retirant shall repay to the retirement system all monthly
 43 retirement benefits paid to the retirant by the retirement system that the

1 retirant received after such employment began. The participating employer
2 which hired such retirant shall be required to pay to the system any fees,
3 fines, penalties or any other cost imposed by the internal revenue service
4 and indemnify the system for any cost incurred by the system to defend
5 any action brought by the internal revenue service based on in-service
6 distributions which are a result of any determined prearranged agreement
7 and for any cost incurred by the system to collect any monthly retirement
8 benefit required to be repaid by such retirant pursuant to this subsection.

9 (b) For members who retired on and after July 1, 2016, and on or
10 before July 1, 2019, if determined by the retirement system that a retirant
11 entered into a prearranged agreement for employment with a participating
12 employer prior to such retirant's retirement date and the subsequent 60-day
13 waiting period, or the 180-day waiting period under subsection ~~(10)~~ (9),
14 and upon being notified of the violation, the retirant terminated such
15 employment, the provisions of ~~subsection~~ *paragraph* (a) shall not apply. If
16 any retirant had benefits suspended prior to July 1, 2019, such benefits
17 shall be reimbursed by the retirement system, if the retirant terminated
18 such prearranged employment in accordance with the provisions of this
19 act. On and after July 1, 2019, the executive director may waive such
20 penalties under this subsection if it is determined by the retirement system
21 that any of the following conditions were satisfied:

22 (i) The retirant's total length of reemployment was less than 21
23 calendar days;

24 (ii) the retirant's total compensation during the total length of
25 reemployment was less than 10% of the amount of such retirant's
26 retirement benefit that would be suspended pursuant to this subsection; or

27 (iii) other facts and circumstances indicated that the retirant would
28 not have been reemployed but for an error on the part of the participating
29 employer or the retirement system in verifying the retirement status of
30 such retirant and such retirant immediately terminated employment upon
31 being notified of the violation.

32 (c) On or before the first day of each regular session of the
33 legislature, beginning with the 2020 regular session, the executive director
34 shall submit an annual report on the number of waivers granted pursuant to
35 ~~subsection (8)(b)~~ *paragraph (b)* in the prior calendar year to the joint
36 committee on pensions, investments and benefits, the house of
37 representatives standing committee on financial institutions and pensions
38 and the senate standing committee on financial institutions and insurance,
39 or the successors of such committees.

40 ~~(9)~~(8) For the purposes of this section a prearranged agreement for
41 employment may be determined by whether the facts and circumstances of
42 the situation indicate that the employer and employee reasonably
43 anticipated that further services would be performed after the employee's

1 retirement.

2 ~~(10)~~(9) (a) Notwithstanding the provisions of subsection ~~(5) or (7)~~ (6)
3 to the contrary, commencing January 1, 2018, any retirant who is retired
4 more than 60 days, if such retirant's age on the date of retirement is 62 or
5 older, or is retired more than 180 days, if such retirant's age on the date of
6 retirement is less than 62, and who is subsequently hired without any
7 prearranged agreement with the participating employer in a covered
8 position, as defined in K.S.A. 74-49,202, and amendments thereto, or an
9 independent contractor or a third-party entity who contracts service to fill
10 such covered position shall not be subject to an earnings limitation that
11 when met or exceeded requires that the retirant not receive a retirement
12 benefit for any month for which such retirant serves in such covered
13 position. The participating employer of such retirant shall pay to the
14 system the statutorily prescribed employer contribution rate on the first
15 \$25,000 of such retirant's compensation in a calendar year and a 30%
16 employer contribution on any compensation in excess of \$25,000 in a
17 calendar year during any such period of employment. If a retirant is
18 employed by more than one participating employer or performing duties in
19 more than one position, contributions shall be made on compensation from
20 all such employment for that calendar year.

21 (b) Notwithstanding the provisions of subsection ~~(5) or (7)~~ (6) 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 non-covered
27 position, or an independent contractor or a third-party entity who contracts
28 service to fill such non-covered position, shall not be subject to an
29 earnings limitation that when met or exceeded requires that the retirant not
30 receive a retirement benefit for any month for which such retirant serves in
31 such non-covered position. No employer contribution shall be paid to the
32 system on compensation paid to a retirant hired in a non-covered position.

33 (c) The participating employer shall enroll all retirants, including
34 retirants under subsection ~~(7)(b)(i)~~ (6)(b)(i), (ii), (iii), (vii) and (viii), and
35 report to the system when compensation is paid to a retirant as provided in
36 this subsection. Such report shall contain a certification by the appointing
37 authority of the participating employer that any hired retirant has not been
38 employed by the participating employer within 60 days of such retirant's
39 retirement in the case of a retirant whose age on the date of retirement is
40 62 or older, or within 180 days of such retirant's retirement in the case of a
41 retirant whose age on the date of retirement is less than 62, and that there
42 was no prearranged agreement for employment between the participating
43 employer and the hired retirant. Upon request of the executive director of

1 the system, the participating employer shall provide such information as
2 may be needed by the executive director to carry out the provisions of this
3 subsection. No retirant shall make contributions to the system or receive
4 credit for service while employed under the provisions of this subsection.

5 (d) The provisions of this subsection relating to an earnings limitation
6 and employer contributions shall not apply to any retirant described in
7 subsection ~~(7)(b)~~ (6)(b) or to retirants who are independent contractors or
8 employees of third-party entities who contract with a participating
9 employer as described in subsection ~~(7)(f)~~ (6)(d), except as specifically
10 provided in this subsection.

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

14 Sec. 2. K.S.A. 2022 Supp. 74-4914 is hereby repealed.

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