

AN ACT

ENTITLED, An Act to recodify, to make certain form and style changes, to clarify, and to repeal certain provisions related to the South Dakota Retirement System.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Pursuant to § 2-16-9, the Code Counsel shall transfer the following sections to a NEW CHAPTER 3-12C: §§ 3-12-46, 3-12-47.1, 3-12-47.2, 3-12-47.4, 3-12-47.5, 3-12-47.6, 3-12-47.7, 3-12-47.8, 3-12-47.9, 3-12-47.11, 3-12-47.12, 3-12-47.13, 3-12-48, 3-12-49, 3-12-51, 3-12-52, 3-12-53, 3-12-54, 3-12-55, 3-12-57.1, 3-12-58, 3-12-58.1, 3-12-60, 3-12-61, 3-12-62, 3-12-62.1, 3-12-62.2, 3-12-62.3, 3-12-62.4, 3-12-62.5, 3-12-62.6, 3-12-62.8, 3-12-62.9, 3-12-62.10, 3-12-62.11, 3-12-62.12, 3-12-62.13, 3-12-63, 3-12-64, 3-12-65, 3-12-66, 3-12-67, 3-12-67.1, 3-12-69.1, 3-12-69.2, 3-12-69.3, 3-12-69.4, 3-12-69.5, 3-12-70, 3-12-71, 3-12-72, 3-12-72.1, 3-12-72.3, 3-12-72.4, 3-12-73, 3-12-74, 3-12-75, 3-12-76, 3-12-76.2, 3-12-76.3, 3-12-77, 3-12-77.3, 3-12-78, 3-12-81.1, 3-12-82, 3-12-83, 3-12-83.1, 3-12-83.2, 3-12-84, 3-12-84.2, 3-12-84.3, 3-12-85, 3-12-86, 3-12-86.2, 3-12-87, 3-12-88, 3-12-89, 3-12-89.1, 3-12-89.3, 3-12-89.4, 3-12-89.6, 3-12-89.7, 3-12-89.8, 3-12-89.9, 3-12-89.10, 3-12-90, 3-12-91, 3-12-91.1, 3-12-92, 3-12-92.1, 3-12-92.2, 3-12-92.3, 3-12-92.4, 3-12-92.6, 3-12-94, 3-12-94.1, 3-12-95, 3-12-95.1, 3-12-95.2, 3-12-95.3, 3-12-95.4, 3-12-95.6, 3-12-96, 3-12-97, 3-12-98, 3-12-99, 3-12-99.1, 3-12-100, 3-12-101, 3-12-103, 3-12-103.1, 3-12-104, 3-12-104.1, 3-12-104.2, 3-12-105, 3-12-106, 3-12-107, 3-12-109, 3-12-110, 3-12-111, 3-12-111.1, 3-12-112, 3-12-114, 3-12-115, 3-12-115.1, 3-12-116, 3-12-117, 3-12-118, 3-12-119, 3-12-120.4, 3-12-121, 3-12-122, 3-12-122.1, 3-12-123, 3-12-124, 3-12-125, 3-12-126, 3-12-127, 3-12-128, 3-12-129, 3-12-130, 3-12-130.1, 3-12-131, 3-12-132, 3-12-133, 3-12-134, 3-12-135, 3-12-136, 3-12-141, 3-12-142, 3-12-143, 3-12-153, 3-12-154, 3-12-155, 3-12-156, 3-12-157, 3-12-158, 3-12-159, 3-12-160, 3-12-161, 3-12-162, 3-12-163, 3-12-164, 3-12-189, 3-12-190, 3-12-191, 3-12-192, 3-12-193, 3-12-194, 3-12-195, 3-12-196, 3-12-197, 3-12-198, 3-12-199,

3-12-202, 3-12-203, 3-12-204, 3-12-205, 3-12-206, 3-12-207, 3-12-207.1, 3-12-217, 3-12-218, 3-12-219, 3-12-220, 3-12-221, 3-12-222, 3-12-223, 3-12-224, 3-12-500, 3-12-501, 3-12-502, 3-12-502.1, 3-12-504, 3-12-505, 3-12-506, 3-12-507, 3-12-508, 3-12-509, 3-12-510, 3-12-511, 3-12-512, 3-12-513, 3-12-514, 3-12-515, 3-12-517, 3-12-519, 3-12-520, and 3-12-521.

Section 2. That § 3-12-47 be amended to read:

3-12-47. Terms as used in this chapter mean:

- (1) "Actuarial accrued liability," the present value of all benefits less the present value of future normal cost contributions;
- (2) "Actuarial experience analysis," a periodic report that reviews basic experience data and furnishes actuarial analysis that substantiates the assumptions adopted for the purpose of making an actuarial valuation of the system;
- (3) "Actuarial valuation," a projection of the present value of all benefits and the current funded status of the system, based upon stated assumptions as to rates of interest, mortality, disability, salary progressions, withdrawal, and retirement as established by a periodic actuarial experience analysis that takes into account census data of all active members, vested terminated members, and retired members and their beneficiaries under the system;
- (4) "Actuarial value funded ratio," the actuarial value of assets divided by the actuarial accrued liability;
- (5) "Actuarial value of assets," equal to the fair value of assets;
- (6) "Actuarially determined contribution rate," the fixed, statutory contribution rate, no less than the normal cost rate with expenses assuming the minimum COLA, and no greater than the normal cost rate with expenses assuming the maximum COLA;
- (7) "Air rescue firefighters," employees of the Department of the Military who are stationed

at Joe Foss Field, Sioux Falls, and who are directly involved in firefighting activities on a daily basis;

- (8) "Approved actuary," any actuary who is a member of the American Academy of Actuaries or an Associate or a Fellow of the Society of Actuaries who meets the qualification standards of the American Academy of Actuaries to issue actuarial opinions regarding the system or any firm retaining such an actuary on its staff and who is appointed by the board to perform actuarial services;
- (9) "Assumed rate of return," the actuarial assumption adopted by the board pursuant to § 3-12-121 as the annual assumed percentage return on trust fund assets, compounded;
- (10) "Beneficiary," the person designated by a member of the system to receive any payments after the death of such member;
- (11) "Benefits," the amounts paid to a member, spouse, child, or beneficiary as a result of the provisions of this chapter;
- (12) "Board," the Board of Trustees of the South Dakota Retirement System;
- (13) "Calendar quarter," a period of three calendar months ending March thirty-first, June thirtieth, September thirtieth, or December thirty-first of any year;
- (14) "Campus security officers," employees of the Board of Regents whose positions are subject to the minimal educational training standards established by the law enforcement standards commission pursuant to chapter 23-3 and who satisfactorily complete the training required by chapter 23-3 within one year of employment and whose primary duty as sworn law enforcement officers is to preserve the safety of the students, faculty, staff, visitors and the property of the University of South Dakota and South Dakota State University. The employer shall file with the system evidence of the appointment as a sworn law enforcement officer at the time of employment and shall file evidence of

satisfactory completion of the training program pursuant to chapter 23-3 within one year of employment;

- (15) "Certified school employee," any employee of a participating unit who is required to have a certificate as defined in subdivision 13-42-1(3);
- (16) "Class A credited service," service credited as a Class A member of the system;
- (17) "Class A member," any member other than a Class B member or a Class C member and is either a foundation member or a generational member;
- (18) "Class B credited service," service credited as a Class B member of the system;
- (19) "Class B member," a member who is a justice, judge, state law enforcement officer, magistrate judge, police officer, firefighter, county sheriff, deputy county sheriff, correctional security staff, parole agent, air rescue firefighter, campus security officer, court services officer, juvenile corrections agent, conservation officer, or park ranger and is either a foundation member or a generational member;
- (20) "Class C credited service," service credited as a Class C member of the system;
- (21) "Class C member," any member of the cement plant retirement plan including any retiree or any vested member;
- (22) "Classified employee," an employee of a public school district who is not required by law to be a certified school employee, an employee of any college or university under the control of the Board of Regents who is not a faculty member or an administrator and comes within the provisions of chapter 3-6D, an employee of a public corporation, an employee of a chartered governmental unit, and any other participating employee not elsewhere provided for in this chapter;
- (23) "Comparable level position," a member's position of employment that is generally equivalent to the member's prior position of employment in terms of required education,

required experience, required training, required work history, geographic location, and compensation and benefits;

- (24) "Conservation officers," employees of the Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park who are employed pursuant to § 41-2-11 and whose positions are subject to the requirements as to education and training provided in chapter 23-3;
- (25) "Consumer price index," the consumer price index for urban wage earners and clerical workers calculated by the United States Bureau of Labor Statistics;
- (26) "Contributory service," service to a participating unit during which contributions were made to a South Dakota retirement system, which may not include years of credited service as granted in § 3-12-84 or 3-12-84.2;
- (27) "Correctional security staff," the warden, deputy warden, and any other correctional staff holding a security position as verified by the Department of Corrections and approved by the Bureau of Human Resources and the Bureau of Finance and Management, and determined by the board as Class B members;
- (28) "Court services officers," persons appointed pursuant to § 26-7A-8;
- (29) "Covered employment," a member's employment as a permanent full-time employee by a participating unit;
- (30) "Deputy county sheriff," an employee of a county that is a participating unit, appointed by the board of county commissioners pursuant to §§ 7-12-9 and 7-12-10, who is a permanent full-time employee and whose position is subject to the minimum educational and training standards established by the law enforcement standards commission pursuant to chapter 23-3. The term does not include jailers or clerks appointed pursuant to §§ 7-12-9 and 7-12-10 unless the participating unit has requested that the jailer be considered as

a deputy county sheriff and the board has approved the request;

- (31) "Effective date of retirement," the first day of the month in which retirement benefits are payable;
- (32) "Eligible retirement plan," the term eligible retirement plan includes those plans described in section 402(c)(8)(B) of the Internal Revenue Code;
- (33) "Eligible rollover distribution," any distribution to a member of accumulated contributions pursuant to § 3-12-76. The term does not include any portion of a distribution that represents contributions made to the system on an after tax basis nor distributions paid as a result of the member reaching the required beginning date;
- (34) "Employer," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, or any of its governmental or political subdivisions or any public corporation of the State of South Dakota that elects to become a participating unit;
- (35) "Employer contributions," amounts contributed by the employer of a contributing member, excluding member contributions made by an employer after June 30, 1984, pursuant to § 3-12-71;
- (36) "Equivalent public service," any public service other than as a justice, a judge, or a magistrate judge and comparable to Class B service as defined by this section, if the service is in the employ of a public entity that is not a participating unit;
- (37) "Fair value of assets," the total assets of the system at fair market value for securities traded on exchanges; for securities not traded on exchanges, a value based on similar securities; and for alternative investments, reported net asset value;
- (38) "Fair value funded ratio," the fair value of assets divided by the actuarial accrued liability;
- (39) "Fiduciary," any person who exercises any discretionary authority or control over the management of the system or the management or disposition of its assets, renders

investment advice for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so, or has any discretionary authority or responsibility in the administration of the system;

- (40) "Foundation member," any member of the system whose contributory service began before July 1, 2017;
- (41) "Foundation retiree," any foundation member who has retired with a benefit payable from the system;
- (42) "Firefighter," any full-time firefighter who works at least twenty hours a week and at least six months a year. The term does not include any volunteer firefighter;
- (43) "Fund," public employees' retirement fund or funds established for the purposes of administration of this chapter;
- (44) "General employee," any full-time municipal employee who is not a firefighter or a police officer;
- (45) "Generational member," any member of the system whose contributory service began after June 30, 2017;
- (46) "Generational retiree," any generational member who has retired with a benefit payable from the system;
- (47) "Health care provider," a physician or other health care practitioner licensed, registered, certified, or otherwise authorized by law to provide specified health services;
- (48) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of January 1, 2019;
- (49) "Juvenile corrections agent," a designee of the secretary of corrections charged with the care, custody, and control of juveniles committed to the Department of Corrections until the age of twenty-one;

- (50) "Law enforcement officer," any agent of the state division of criminal investigation, officer of the South Dakota Highway Patrol, police officer, county sheriff, deputy county sheriff, or firefighter;
- (51) "Member," any person who is contributing or has made contributions to the system and is either a foundation member or generational member. A person's membership ceases when the person withdraws his or her accumulated contributions after termination of employment;
- (52) "Member contributions," amounts contributed by members, including member contributions made by an employer after June 30, 1984, pursuant to § 3-12-71;
- (53) "Military service," a period of active duty with the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, or the United States Coast Guard, from which duty the member received an honorable discharge or an honorable release;
- (54) "Municipality," any incorporated municipal government under chapter 9-3 or any chartered governmental unit under the provisions of Article IX of the Constitution of the State of South Dakota;
- (55) "Noncontributory service," for foundation members, service delineated in subdivisions 3-12-89.3 (2), (5), (7), and (8), and for generational members, service pursuant to § 3-12-86;
- (56) "Normal cost," the expected long-term cost of the system benefits and expenses expressed as a percentage of payroll;
- (57) "Normal retirement," the termination of employment and application for benefits by a member with three or more years of contributory service or noncontributory service on or after the member's normal retirement age;

- (58) "Other public benefits," eighty percent of the primary insurance amount or primary social security benefits that would be provided under federal social security;
- (59) "Other public service," service for the government of the United States, including military service; service for the government of any state or political subdivision thereof; service for any agency or instrumentality of any of the foregoing; or service as an employee of an association of government entities described in this subdivision;
- (60) "Park rangers," employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation and whose positions are subject to the requirements as to education and training provided in chapter 23-3 and whose primary duty is law enforcement in the state park system;
- (61) "Parole agent," an employee of the Department of Corrections employed pursuant to § 24-15-14 who is actually involved in direct supervision of parolees on a daily basis;
- (62) "Participating unit," the State of South Dakota and any department, bureau, board, or commission of the State of South Dakota, and any of its political subdivisions or any public corporation of the State of South Dakota that has employees who are members of the retirement system created in this chapter;
- (63) "Permanent full-time employee," any employee who has been placed in a permanent classification who is customarily employed by a participating unit for twenty hours or more a week and at least six months a year. The participating unit shall decide if an employee is a permanent full-time employee and that decision is conclusive;
- (64) "Plan year," a period extending from July first of one calendar year through June thirtieth of the following calendar year;
- (65) "Police officer," any employee in the police department of any participating municipality holding the rank of patrol officer, including probationary patrol officer, or higher rank and

whose position is subject to the minimum educational and training standards established by the law enforcement officers standards commission pursuant to chapter 23-3. The term does not include civilian employees of a police department nor any person employed by a municipality whose services as a police officer require less than twenty hours a week and six months a year. If a municipality which is a participating unit operates a city jail, the participating unit may request that any jailer appointed pursuant to § 9-29-25 be considered a police officer, subject to the approval of the board;

- (66) "Political subdivision" includes any municipality, school district, county, chartered governmental unit, public corporation or entity, and special district created for any governmental function;
- (67) "Present value of all benefits," the present value of all benefits expected to be paid to all retired, terminated, and active members and beneficiaries, based on past and future credited service and future compensation increases;
- (68) "Present value of benefits earned to date," the present value of the benefits currently being paid to retired members and their beneficiaries and the present value of benefits payable at retirement to active members, based on their earnings and credited service to date of the actuarial valuation;
- (69) "Projected compensation," a deceased or disabled member's final average compensation multiplied by the COLA commencing each July first for each complete twelve-month period elapsed between the date of the member's death or disability, whichever occurred earlier, and the date the member would attain normal retirement age;
- (70) "Projected service," the credited service plus the service that the member would have been credited with at normal retirement age had the member continued in the system and received credit at the same rate the member was credited during the year covered by the

- compensation that was used in the calculation of the disability or family benefit;
- (71) "Qualified military service," service in the uniformed services as defined in § 414(u)(5) of the Internal Revenue Code;
 - (72) "Required beginning date," the later of April first of the calendar year following the calendar year in which the member attains age seventy and one-half or April first of the calendar year following the calendar year in which the member retires;
 - (73) "Retiree," any foundation or generational member who retires with a lifetime benefit payable from the system;
 - (74) "Retirement," the severance of a member from the employ of a participating unit with a retirement benefit payable from the system;
 - (75) "Retirement benefit," the monthly amount payable upon the retirement of a member;
 - (76) "Single premium," the lump-sum amount paid by a supplemental pension participant pursuant to a supplemental pension contract in consideration for a supplemental pension benefit;
 - (77) "Social investment," investment, divestment, or prohibition of investment of the assets of the system for purposes other than maximum risk-adjusted investment return, which other purposes include ideological purposes, environmental purposes, political purposes, religious purposes, or purposes of local or regional economic development;
 - (78) "State employees," employees of the departments, bureaus, commissions, and boards of the State of South Dakota;
 - (79) "Supplemental pension benefit," any single-premium immediate pension benefit payable pursuant to §§ 3-12-192 and 3-12-193;
 - (80) "Supplemental pension contract," any agreement between a participant and the system upon which a supplemental pension is based, including the amount of the single premium,

- the type of pension benefit, and the monthly supplemental pension payment amount;
- (81) "Supplemental pension contract record," the record for each supplemental pension participant reflecting relevant participant data; a designation of any beneficiary, if any; the amount of the participant's funds rolled into the fund; the provisions of the participant's supplemental pension contract; and supplemental pension payments made pursuant to the contract;
- (82) "Supplemental pension participant," any member who is a retiree receiving a benefit from the system, or, if the member is deceased, the member's surviving spouse who is receiving a benefit from the system, and who chooses to purchase a supplemental pension benefit pursuant to the provisions of this chapter;
- (83) "Supplemental pension spouse," any person who was married to a supplemental pension participant at the time the participant entered into the supplemental pension contract;
- (84) "System," the South Dakota Retirement System created in this chapter;
- (85) "Tax-qualifying purchase unit," any participating unit that elects to allow the unit's employees to purchase credited service on a tax-deferred basis by means of employer contribution agreements as outlined in §§ 3-12-83.1 and 3-12-83.2;
- (86) "Trustee," a member of the board of trustees;
- (87) "Unfunded actuarial accrued liability," the actuarial accrued liability less the actuarial value of assets.

Section 3. That the code be amended by adding a NEW SECTION to read:

For purposes of administering benefits pursuant to this chapter, the term, child, means an unmarried dependent child of the member, who has not passed the child's nineteenth birthday and each unmarried dependent child, who is totally and permanently disabled, either physically or mentally, regardless of the child's age, if the disability occurred before age nineteen. It includes a

stepchild or a foster child who depends on the member for support and lives in the household of the member in a regular parent-child relationship. It also includes any child of the member conceived during the member's lifetime and born after the member's death.

For purposes of making beneficiary-type payments pursuant to this chapter, the term, child, means a person entitled to take as a child via intestate succession pursuant to the provisions of title 29A.

Section 4. That § 3-12-47.10 be amended to read:

3-12-47.10. The term, COLA or cost of living adjustment, means the annual increase in the amount of the benefit provided on July first, compounded annually. However, no annual increase may be provided unless the member has received benefit payments for at least the consecutive, twelve-month period before July first.

Section 5. That the code be amended by adding a NEW SECTION to read:

The term, disability or disabled, means any medically determinable physical or mental impairment that prevents a member from performing the member's usual duties for the member's employer, even with accommodations, or performing the duties of a comparable level position for the member's employer. The term excludes any condition resulting from a willful, self-inflicted injury.

Section 6. That the code be amended by adding a NEW SECTION to read:

The term, spouse, means a person who was married to the member at the time of the death of the member and whose marriage was both before the member's retirement and more than twelve months before the death of the member.

Section 7. That the code be amended by adding a NEW SECTION to read:

The term, terminated, means complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick

leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for unused vacation leave, payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of employer-provided health insurance coverage, severance of employer-provided life insurance coverage, or severance of any other such employer-provided perquisite of employment granted by the member's participating unit to an active employee.

Section 8. That the code be amended by adding a NEW SECTION to read:

The term, vested, means the right to a retirement benefit from the system based on the provisions of this chapter after three years of contributory service or noncontributory service, even if the member leaves the employment of a participating unit, if the member does not withdraw accumulated contributions.

Section 9. That § 3-12-50 be amended to read:

3-12-50. Each trustee within ten days after being appointed or elected shall take and file in the Office of the Secretary of State the oath required by § 3-1-5.

Section 10. That § 3-12-59 be amended to read:

3-12-59. The board shall keep complete records of its proceedings which shall be open to public inspection. The board shall prepare an annual report setting forth its financial information for the previous fiscal period including the amount of the accumulated cash and securities of the system, and the results of the most recent actuarial valuation. A copy of the report shall be available on the system's website.

Section 11. That § 3-12-118.1 be repealed.

Section 12. That § 3-12-56 be amended to read:

3-12-56. Applications for membership or any benefit shall be made to the executive director on forms approved by the system.

Section 13. That § 3-12-72.2 be amended to read:

3-12-72.2. If the system is terminated, or if contributions to the system are discontinued, the rights of all members to benefits that have accrued as of the date of termination or discontinuation of contributions shall vest. A member's recourse against the fund shall be limited by the extent to which the member's benefits are funded.

Section 14. That § 3-12-120 be amended to read:

3-12-120. To determine and verify the adequacy of the member and employer contributions to the system, an actuarial valuation of the system shall be made annually by an approved actuary.

The actuarial valuation shall include:

- (1) A demonstration of the relationship of the current member and employer contributions, expressed as a percentage of payroll, to the minimum actuarial requirement to support benefits; and
- (2) The current year's actuarial value funded ratio and fair value funded ratio as well as the ratios from the prior actuarial valuations.

Section 15. That § 3-12-68 be amended to read:

3-12-68. If a participating unit and a nonparticipating South Dakota political subdivision or public corporation agree to provide certain public services on a joint basis, they may agree to consider persons employed pursuant to the agreement as if they were solely employees of the participating unit for the exclusive purposes of the system created in this chapter. The total compensation paid a person because of the employment shall be considered compensation paid by the participating unit and services rendered by the person because of the employment shall be considered service rendered by the employee to the participating unit.

Section 16. That § 3-12-86.1 be amended to read:

3-12-86.1. If a member on leave of absence performing initial qualified military service dies, the

member shall be considered to have returned from the leave of absence on the day before the member's death and become a contributing member for purposes of survivor benefits, if the member has at least one year of credited service before the member's death, including the initial period of qualified military service. If the member was contributing for additional survivor protection benefits pursuant to § 3-12-104 immediately before the leave of absence, the member shall be considered to have resumed the contributions on the day before the member's death.

If a member on leave of absence performing initial qualified military service becomes disabled pursuant to the disability criteria set out in this chapter, the member shall be considered to have returned from the leave of absence on the day before the member's discharge date and become a contributing member for purposes of eligibility for disability benefits pursuant to § 3-12-201, if the member has at least three years of credited service including the period of initial qualified military service. The provisions of § 3-12-201 notwithstanding, the member need not have been deemed to be a contributing member on the date of the member's disabling event.

Section 17. That § 3-12-80 be repealed.

Section 18. That § 3-12-84.1 be amended to read:

3-12-84.1. A contributing member may acquire credited service by utilizing a trustee to trustee transfer of funds, excluding any after tax employee contributions, from a member's individual retirement plan that meets the requirements of sections 403(b) or 457 of the Internal Revenue Code to pay the cost of purchase pursuant to § 3-12-83, 3-12-84, or 3-12-84.2.

Section 19. That § 3-12-89.2 be amended to read:

3-12-89.2. For any foundation member, the term, accumulated contributions, means the sum of:

- (1) All contributions made by the member, including member contributions made by an employer after June 30, 1984, pursuant to § 3-12-71;
- (2) For a member whose contributory service concluded after June 30, 2010, eighty-five

percent of the employer contributions or noncontributory service if the member had three years or more of contributory service and fifty percent of the employer contributions if the member had less than three years of service; or for a member whose contributory service concluded before July 1, 2010, one hundred percent of the employer contributions or noncontributory service if the member had three years or more of contributory service and seventy-five percent of the employer contributions if the member had less than three years of service;

- (3) Member redeposits and member credited service purchases pursuant to §§ 3-12-83, 3-12-84, and 3-12-84.2; and
- (4) The effective rate of interest earned on the sum of subdivisions (1), (2), and (3).

Section 20. That § 3-12-77.1 be amended to read:

3-12-77.1. If any payment from the system remains uncollected, the payment shall revert to the system and all rights to the payment shall terminate, if the system has made reasonable efforts to notify the person entitled to the payment of the person's right to the payment and the effect of this section.

Section 21. That § 3-12-77.4 be amended to read:

3-12-77.4. No member or former member of the system who has withdrawn contributions from the system before July 1, 1998, may receive any additional refund pursuant to this chapter.

Section 22. That the code be amended by adding a NEW SECTION to read:

A member who leaves the employment of a participating unit is not entitled to disability benefits and the member's surviving spouse and minor children are not entitled to any benefits pursuant to this chapter.

Section 23. That the code be amended by adding a NEW SECTION to read:

The COLA payable is the baseline COLA or the restricted COLA, as applicable. The baseline

COLA is equal to the increase in the consumer price index, but no less than one-half percent and no greater than three and one-half percent. The restricted COLA is equal to the increase in the consumer price index, but no less than one-half percent and no greater than the restricted COLA maximum as determined in subdivision (2) of this section. The board shall establish the COLA payable for each fiscal year, based on the fair value funded ratio and actuarially determined contribution rate of the system as of the prior July first and the increase in the consumer price index for the preceding third calendar quarter compared to the consumer price index for the third calendar quarter for the base year (the previous year in which the consumer price index was the highest), by utilizing one of the following subdivisions, as applicable:

- (1) If the system meets the criteria in subdivisions 3-12-122(1) and (2) based on the baseline COLA assumption adopted by the board, the COLA payable is the baseline COLA; or
- (2) If the system does not meet the criteria in subdivisions 3-12-122(1) and (2) based on the baseline COLA assumption adopted by the board, the system shall calculate a restricted COLA maximum in accordance with the board's funding policy that is equal to the actuarially determined annual COLA rate that results in the criteria in subdivisions 3-12-122(1) and (2) being satisfied, if achievable. The COLA payable is the restricted COLA. If the criteria in subdivisions 3-12-122(1) and (2) cannot be satisfied with a COLA equal to or exceeding one-half percent, the COLA payable is one-half percent.

Section 24. That § 3-12-108 be amended to read:

3-12-108. The board may provide under its rules for a modified monthly benefit to a member or beneficiary in lieu of the monthly benefit payable under any provision of this chapter if the benefit is not greater than the actuarial equivalent of the benefit due the member or beneficiary under this chapter.

Section 25. That the code be amended by adding a NEW SECTION to read:

To calculate benefits pursuant to §§ 3-12-95, 3-12-99, and 3-12-105 before July 1, 2004, the system shall use the member's highest annual compensation earned by the member during any one of the last three years of contributory service, so long as it is not more than one hundred fifteen percent of the member's final compensation calculated as of the date of the member's death or disability.

Section 26. That § 3-12-95.5 be amended to read:

3-12-95.5. If no family benefit is being paid pursuant to § 3-12-95.4, a surviving spouse of a contributing foundation member who had acquired at least three years of contributory service or noncontributory service or died while performing usual duties for the employer and who died after June 30, 2015, is, upon attaining the age of sixty-five, eligible to receive a surviving spouse benefit calculated as follows, whichever is applicable:

- (1) If a family benefit had been paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the COLA from the date the last family benefit was paid; or
- (2) If a family benefit had not been paid, sixty percent of the amount calculated pursuant to subsection (a) or (b), whichever is greater, increased by the COLA from the date of the member's death:
 - (a) Twenty-five percent of the member's final average compensation at the time of the member's death; or
 - (b) The member's unreduced accrued retirement benefit at the time of the member's death.

The surviving spouse benefit shall be paid in monthly installments for the life of the surviving spouse.

Section 27. That the code be amended by adding a NEW SECTION to read:

The provisions of §§ 3-12-201 to 3-12-216, inclusive, apply to any member whose application for disability benefits is received by the system after June 30, 2015.

Section 28. That § 3-12-201 be amended to read:

3-12-201. A contributing member who becomes disabled and who has acquired at least three years of contributory service or noncontributory service since the member's most recent entry into active status and before becoming disabled, or was disabled by accidental means while performing usual duties for an employer, is eligible for disability benefits if the disability is expected to be of long, continued, and indefinite duration of at least one year and the member is disabled on the date the member's contributory service ends. For purposes of this section, a transfer within a participating unit, or a change in employment from one participating unit to another participating unit if there is no break in contributory service, does not constitute a new entry into active status.

Section 29. That § 3-12-208 be amended to read:

3-12-208. No member may receive credited service for the period during which the member receives disability benefits.

Section 30. That § 3-12-209 be amended to read:

3-12-209. If a member receiving disability benefits becomes employed by a participating unit, the member and employer shall make active contributions pursuant to § 3-12-71 during the period of the employment. The contributions required of the member pursuant to § 3-12-71 shall be deposited by the member's employer with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by § 457 of the Internal Revenue Code. Notwithstanding the provisions of § 3-12-71, the contributions required of the member's employer pursuant to § 3-12-71 shall be deposited into the member trust fund created by this chapter, but without any association with or credit to the member.

Section 31. That § 3-12-210 be amended to read:

3-12-210. A member's disability benefits terminate if the member is no longer disabled, as certified by a health care provider. Upon receipt of certification the executive director shall determine whether the member meets the qualifications for disability benefits. In making this determination the executive director shall follow the same procedure used in making the initial determination of disability provided in § 3-12-205. A member's disability benefits shall be suspended and subject to termination if the member refuses to undergo an examination or assessment requested by the disability advisory committee or the executive director. If the executive director finds that the member no longer meets the qualifications for disability benefits, the executive director shall notify the member of this finding by certified mail and the payment of disability benefits shall terminate thirty days after receipt of the notice. The finding by the executive director is subject to appeal and review as a contested case.

Section 32. That § 3-12-211 be amended to read:

3-12-211. If a member's disability benefits have terminated and the member returns to covered employment, the member and employer shall make contributions pursuant to § 3-12-71.

Section 33. That § 3-12-212 be amended to read:

3-12-212. Upon retirement, a member who received disability benefits and whose benefits were terminated and who returned to covered employment shall receive a retirement benefit based on the member's credited service before receiving disability benefits and after receiving disability benefits.

The final average compensation used in the calculation of the retirement benefit is the greater of:

- (1) The member's final average compensation at the date of retirement; or
- (2) The member's final average compensation at the date of disability, increased by the COLA from the date of the termination of disability benefits to the date of retirement.

Section 34. That § 3-12-213 be amended to read:

3-12-213. Upon retirement, a member who received disability benefits and whose benefits were terminated and who did not return to covered employment shall receive a retirement benefit based on the member's credited service before receiving disability benefits. The final average compensation used in the calculation of the retirement benefit shall be the final average compensation at the date of disability, increased by the COLA from the date of the termination of disability benefits to the date of retirement.

Section 35. That § 3-12-214 be amended to read:

3-12-214. Upon the death of a member receiving disability benefits, who dies prior to normal retirement age, a family benefit shall be paid on behalf of any eligible child of the member. The monthly amount of the family benefit is the amount of the monthly disability benefits the member received before death. The monthly family benefit shall be equally apportioned among any eligible children of the member and shall be paid on behalf of any child to the conservator or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit is payable directly to the child. As a child becomes ineligible, the family benefit shall be reallocated among any remaining eligible children of the deceased member. The family benefit terminates if there are no eligible children of the deceased member.

Section 36. That § 3-12-215 be amended to read:

3-12-215. If no family benefit is being paid, a surviving spouse of a foundation or generational member who received disability benefits shall, upon attaining the age of sixty-five or sixty-seven, respectively, receive a monthly benefit, payable for the life of the surviving spouse, equal to one of the following calculations, whichever is applicable:

- (1) If there was a family benefit paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the COLA from the date the last family benefit was paid; or

- (2) If there was no family benefit paid, sixty percent of the deceased member's disability benefit paid at the time of the member's death, increased by the COLA from the date of the member's death.

Section 37. That § 3-12-216 be amended to read:

3-12-216. If a member dies after normal retirement age while receiving disability benefits, and no other benefits are being paid on behalf of the member, the member's surviving spouse shall receive a surviving spouse benefit, payable in monthly installments, equal to sixty percent of the monthly disability benefit that the member received before death.

Section 38. That § 3-12-516 be amended to read:

3-12-516. If no family benefit is being paid pursuant to § 3-12-95.4, a surviving spouse of a contributing generational member who had acquired at least three years of contributory service or noncontributory service or died while performing usual duties for the employer is, upon attaining the age sixty-seven, eligible to receive a surviving spouse benefit as follows:

- (1) If a family benefit had been paid, sixty percent of the family benefit paid at the time the family benefit ended, increased by the COLA from the date the last family benefit was paid; or
- (2) If a family benefit had not been paid, sixty percent of the amount calculated pursuant to subsection (a) or (b), whichever is greater, increased by the COLA from the date of the member's death:
 - (a) Twenty-five percent of the member's final average compensation at the time of the member's death; or
 - (b) The member's unreduced accrued retirement benefit at the time of the member's death.

The surviving spouse benefit shall be paid in monthly installments for the life of the surviving

spouse.

Section 39. That § 3-12-93 be amended to read:

3-12-93. Any justice of the Supreme Court or judge of the circuit court of this state who is automatically retired pursuant to the provisions of § 16-1-4.1 or 16-6-31, or who, having reached age seventy, retired before January 7, 1975, and who has not fully qualified for retirement benefits as provided by this chapter shall nevertheless receive retirement benefits in the proportion that his or her total time served bears to fifteen years, or if the justice or judge has served in excess of fifteen years then receive full benefits.

Section 40. That § 3-12-113 be amended to read:

3-12-113. Monthly benefits paid to a member cease on the last day of the month in which the member died. Monthly benefits paid to a surviving spouse cease on the last day of the month in which the surviving spouse died. Monthly benefits paid to a child cease on the last day of the month in which the child died or the last day of the month in which the child became ineligible, whichever occurs first.

Section 41. That § 3-12-200 be amended to read:

3-12-200. If a retired member reenters covered employment at some time after the three consecutive calendar months that start with the member's effective date of retirement, the member's retirement benefits and continued membership shall be administered pursuant to this section.

If the retired member's benefits have not been reduced, the member's monthly retirement benefit shall be reduced by fifteen percent and the annual increase shall be eliminated throughout the period that the member reenters covered employment. The reduction and elimination shall cease if the member again terminates covered employment. However, the reduction and elimination do not apply if the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently reenters covered employment as a Class A member.

If the retired member's benefits have been reduced, the member's benefits shall be suspended during the period that the member reenters covered employment and the annual increase shall be eliminated during the period that the member reenters covered employment. The suspension and elimination shall cease if the member again terminates covered employment.

Whether the member's retirement benefits are unreduced or reduced, contributions required of the member shall be deposited by the member's participating unit with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by § 457 of the Internal Revenue Code. However, the contributions required of the member's employer unit shall be deposited into the fund created by this chapter, but with no association or credit to the member. The member may not earn any additional benefits associated with the period that the member reenters covered employment.

Section 42. That § 3-12-518 be repealed.

Section 43. That § 3-12-69 be amended to read:

3-12-69. Employees of an eligible political subdivision or public corporation not participating in the systems consolidated into the system created by this chapter, may become a participating unit in the system if the unit commits to deposit an amount equal to the present value of benefits earned to date, based on the employee's prior service to the unit to be covered by the system. The expense of the actuarial determination of this amount shall be borne by the applicant. All eligible employees of an applicant shall participate in the system upon admission. If the unit is unable to deposit this amount in a single sum, the unit shall have the option to pay the amount by periodic level installments over a period up to twenty years, the value of which, when discounted for compound interest at the assumed rate of return, is equal to the amount due at the date of participation.

Section 44. The provisions of Articles 20:16 and 62:01 of the Administrative Rules of South

Dakota promulgated pursuant to chapter 3-12 in effect as of January 1, 2019, shall continue with full force and effect until those rules are amended by the board.

Section 45. Pursuant to § 2-16-9, the Code Counsel shall transfer sections 2 to 43, inclusive, of this Act, to a NEW CHAPTER 3-12C. Pursuant to § 2-16-9, the Code Commission and Code Counsel are requested to correct and integrate all cross-references from chapter 3-12 that have been transferred to a NEW CHAPTER 3-12C pursuant to this Act.

An Act to recodify, to make certain form and style changes, to clarify, and to repeal certain provisions related to the South Dakota Retirement System.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1010

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1010
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State