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FILED
Jane Dee Hull
Secretary of State

CHAPTER 185

SENATE BILL 1305

AN ACT

AMENDING SECTIONS 15-1451, 38-705, 38-711, 38-727, 38-729, 38-742, 38-743, 38-744, 38-745, 38-746, 38-747, 38-762, 38-764, 38-768, 38-769 AND 38-797.07, ARIZONA REVISED STATUTES; AMENDING SECTION 38-715, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1995, CHAPTER 32, SECTION 14; REPEALING SECTION 38-715, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1995, CHAPTER 134, SECTION 3; BLENDING MULTIPLE ENACTMENTS; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

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

Section 1. Section 15-1451, Arizona Revised Statutes, is amended to read:

15-1451. Optional retirement plans

A. Notwithstanding section 38-729, subsection ~~H~~ I, a community college district board may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for employees of the institutions under its jurisdiction as designated by the community college district board.

B. An optional retirement program established pursuant to this section shall:

1. Be designed to be a qualified governmental plan under section 401(a) of the internal revenue code.

2. Comply with all requirements of the internal revenue code applicable to governmental plans.

3. Be a qualified plan under section 401(a) of the internal revenue code.

4. Apply for and maintain a current letter of determination issued by the United States internal revenue service.

5. Be a qualified pick-up plan as defined by section 414(h)(2) of the internal revenue code as confirmed by a private letter ruling issued by the United States internal revenue service.

6. Provide benefits through annuity contracts that are fixed or variable in nature or that are a combination of fixed and variable.

7. Have at all times at least fifty active participants.

C. Eligible employees may elect to participate in an optional retirement plan established by the community college district board. The eligible employee shall make the election in writing and file the election with the Arizona state retirement system and the disbursing officer of the employing institution. The eligible employee shall make the election within ninety days of the employee's effective date of employment or, if the employee is a member of the Arizona state retirement system on the date the optional retirement program becomes effective, within ninety days of the effective date of the optional retirement program. If an employee who is a member of the Arizona state retirement system elects to participate in an optional retirement program within ninety days of the employee's effective date of employment or the effective date of the optional retirement program, the Arizona state retirement system shall transfer the employee's contributions to the Arizona state retirement system and interest as determined by the board of the Arizona state retirement system to the optional retirement program within the later of ninety days after the election or ninety days after receipt by the optional retirement program of a favorable letter of determination issued by the United States internal revenue service. If an eligible employee fails to make an election as provided in this subsection, the employee is deemed to have elected to participate in the Arizona state retirement system. The election to participate in an optional retirement program is irrevocable and constitutes a waiver of all benefits provided by the Arizona state retirement system. All eligible employees WHO ELECT TO PARTICIPATE IN AN OPTIONAL RETIREMENT PROGRAM shall remain participants in the optional retirement program during the continuance of employment with the community college district.

D. The community college district board shall make contributions from public monies appropriated or any other monies available for this purpose on behalf of each participant in the optional retirement program in an amount equal to the employer contribution prescribed in title 38, chapter 5, article 2.

E. Subject to subsection G of this section, each community college district board that establishes an optional retirement program shall establish program provisions including:

1. Categories of employees that are eligible to elect to participate in the optional retirement program.

2. The employee contribution rate. This rate may be greater than the employee contribution rate prescribed in title 38, chapter 5, article 2.

3. A vesting period for employer contributions, if any. All employee contributions that are picked up by the employer are fully vested at all times.

4. Restrictions on benefits, except that the optional retirement program shall not allow a participant to withdraw employer contributions except as retirement income payable for life or to provide for loans on retirement income.

F. A community college district board may elect to provide health or long-term disability coverage to optional retirement program participants under separate benefit plans. The community college district board may allocate a portion of its employer contribution that would otherwise be made to the optional retirement program under subsection D of this section to the separate benefit plans to provide health or long-term disability coverage.

G. Community college district boards that establish an optional retirement program under this section shall enter into intergovernmental agreements appointing a single administrator or designating a single community college district board to administer the optional retirement program. The administration shall include, without limitation, the design and implementation of the plan document establishing the optional retirement program, compliance with the qualification requirements prescribed in subsection B of this section and such other duties that are not inconsistent with this section as may be delegated to the administrator pursuant to the intergovernmental agreements entered into among the community college district boards.

H. Although designated as employee contributions, all employee contributions made to an optional retirement program shall be picked up and paid by the community college district in lieu of contributions by the employee. The contributions picked up by a community college district may be made through a reduction in the employees' salary or an offset against future salary increases, or a combination of both. The employees participating in the optional retirement program do not have the option of choosing to receive the contributed amounts directly instead of the community college district paying the amounts to the optional retirement program. It is intended that all employee contributions that are picked up by the community college district as provided in this subsection shall be treated as employer contributions under section 414(h) of the internal revenue code and shall be excluded from the employees' gross income for federal and state income tax purposes and are includable in the gross income of the employees or their beneficiaries only in the taxable year in which they are distributed.

I. A community college district board shall not be liable to any employee, retiree or other person for any reason relating to the community college district board's provision of or failure to provide for an optional retirement program or health or long-term disability coverage.

Sec. 2. Section 38-705, Arizona Revised Statutes, is amended to read:

38-705. Studies and reports by state agency

The state agency ~~shall~~ MAY:

1. Conduct studies concerning the problem of old age and survivors insurance protection for employees and concerning the operation of agreements made and plans approved under this article.

2. Submit a report to the legislature at the beginning of each regular session covering the administration and operation of this article during the preceding calendar year, including recommendations for amendments to this article it considers proper.

Sec. 3. Section 38-711, Arizona Revised Statutes, is amended to read:

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 22, subdivision (b) or (c) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who either is currently making member contributions as prescribed in section 38-736 or is receiving credited service under ~~a benefit program of ASRS~~ ARTICLE 2.1 OF THIS CHAPTER.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked.

(b) Effective July 1, 1985, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the

last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked. This subdivision applies only to members whose membership in ASRS was effective after December 31, 1983 or who agree in writing as a binding condition of eligibility for being granted the benefit advantages available under this subdivision to have their benefit computed on the basis of the definition of compensation.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation, as provided in paragraph 5, subdivision (b) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the ~~compensation~~ CONTRIBUTIONS for the period ~~on which contributions are based~~ shall be BASED ON the amount OF COMPENSATION that would have been paid if the service had been performed.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement, as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

11. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement. ~~Effective dates after July 1, 1970 fall on July 1 of any subsequent year.~~

12. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

13. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

14. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

15. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

16. "Interest" means the assumed actuarial investment earnings rate approved by the board.

17. "Internal revenue code" has the same meaning prescribed in section 42-101.

18. "Investment management" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

19. "Late retirement" means retirement after normal retirement.

20. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

21. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

22. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible FOR MEMBERSHIP pursuant to ~~this article,~~ SECTION 38-727 AND who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week ~~and who are required to be covered by ASRS~~.

(c) Means all employees of an employer who are eligible pursuant to this article and whose work for more than one employer totals at least twenty weeks in a fiscal year and at least twenty hours each week and includes work provided on a part-time basis to an employer who is not the full-time employer of the employee.

(d) Means any person receiving a benefit under ASRS.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

23. "Member contributions" means all amounts paid to ASRS by a member.

24. "Normal costs" means costs of ASRS as computed under the projected unit credit method of actuarial computation that would have arisen if the benefits in effect at the time of the computation had always been in effect from the time of earliest eligibility of the current members.

25. "Normal retirement date" means the earliest of the following:

(a) A member's sixty-fifth birthday.

(b) A member's sixty-second birthday and completion of at least ten years of credited service.

(c) The first day immediately following the day that the sum of a member's age and years of total credited service equals eighty.

26. "Political subdivision" means any political subdivision of this state.

27. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

~~28. "Retirement" means the receipt of retirement benefits.~~

~~29.~~ 28. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

~~30.~~ 29. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

~~31.~~ 30. "Vested" means that a member is eligible to receive a future retirement benefit.

Sec. 4. Section 38-715, Arizona Revised Statutes, as added by Laws 1995, chapter 32, section 14, is amended to read:

38-715. Director; powers and duties

A. The board shall appoint a director. ~~to serve at the pleasure of the board.~~ THE TERM OF THE DIRECTOR IS ONE YEAR AND EXPIRES ON JUNE 30. ON EXPIRATION OF A DIRECTOR'S TERM, THE BOARD MAY REAPPOINT THE DIRECTOR FOR ANOTHER TERM. THE BOARD MAY REMOVE THE DIRECTOR AT ANY TIME FOR CAUSE.

B. The director shall appoint a deputy director and assistant directors with the approval of the board.

C. The director, under the supervision of the board, shall:

1. Administer this article, except the investment powers and duties of investment management.

2. Hire employees and services the director deems necessary and prescribe their duties.

3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.

4. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) The investment of temporary surplus monies only in obligations of the United States government or agencies whose obligations are guaranteed by the United States government, commercial paper or banker's acceptances for a term of not more than fifteen days.

(d) Providing continuing education programs for the board and the investment advisory council to keep them informed of current issues and information needed to carry out their duties.

5. Provide or procure necessary materials and services for the investment advisory council to administer its duties and responsibilities under this article.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Invest marketable securities owned by ASRS by entering into security loan agreements. For the purpose of this paragraph:

(a) "Marketable securities" means securities that are freely and regularly traded on recognized exchanges or marketplaces.

(b) "Security loan agreement" means a written contract under which ASRS, as lender, agrees to lend specific marketable securities for a period of not more than one year. ASRS, under a security loan agreement, shall retain the right to collect from the borrower all dividends, interest, premiums and rights and any other distributions to which ASRS otherwise would have been entitled. During the term of a security loan agreement ASRS shall waive the right to vote the securities that are the subject of the agreement. A security loan agreement shall provide for termination by either party on terms mutually acceptable to the parties. The borrower shall deliver collateral to ASRS or its designated representative in the form of cash. At all times during the term of any security loan agreement the collateral shall be in an amount equal to at least one hundred per cent of the market value of the loaned securities. A security loan agreement shall provide for payment of additional collateral on a daily basis, or at such other less frequent intervals as the value of the loaned securities increases. Each security loan agreement shall be subject to a custodial agreement between ASRS and the custodian appointed pursuant to paragraph 2 of this subsection. the custodial agreement shall contain the terms and conditions of the fees to be paid to the custodian for servicing the security loan agreement. ASRS shall pay the fees approved by the board to the custodian for servicing the security loan agreements from the income of the investment of marketable securities pursuant to this paragraph.

4. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means ~~either:~~

~~(a)~~ an account to which contributions have not been paid for six months or more.

~~(b) An account with less than five years of credited service.~~

~~(c) An account with a balance of less than one thousand dollars and on which the member has failed to contact ASRS for three years or more.~~

5. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if both of the following conditions are met:

(a) The member was unable to apply before the retroactive effective date through no fault of the member.

(b) The retroactive effective date is not more than ~~sixty~~ NINETY days before the date the director receives the retirement application.

E. The director, under supervision of the governing committee for tax deferred annuity and deferred compensation plans, may hire and supervise

employees and obtain services the director deems necessary to administer article 5 of this chapter. The tax deferred annuity and deferred compensation programs established pursuant to article 5 of this chapter shall bear the costs for these employees and services.

F. The director and all persons employed by the director shall be compensated as determined pursuant to section 38-611.

Sec. 5. Repeal

Section 38-715, Arizona Revised Statutes, as amended by Laws 1995, chapter 134, section 3, is repealed.

Sec. 6. Section 38-727, Arizona Revised Statutes, is amended to read:

38-727. Eligibility

The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article who as a result of state service or service for the political subdivision are included in agreements providing for their coverage under the federal old age and survivors insurance system are subject to this article ~~and shall participate in ASRS~~, except that membership is not mandatory on the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer is ineligible for membership in ASRS.

Sec. 7. Section 38-729, Arizona Revised Statutes, is amended to read:

38-729. Political subdivision plans

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision who are included within agreements entered into between the governing body and the state agency providing for the extension of federal old age and survivors insurance benefits to the officers and employees. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of ~~any fiscal year including July 1, 1971, and fiscal years thereafter, and that~~ THE MONTH FOLLOWING BOARD APPROVAL OF THE SUPPLEMENTAL PLAN OF THE POLITICAL SUBDIVISION AS PROVIDED IN THIS SECTION.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.

B. THE GOVERNING BODY OF THE POLITICAL SUBDIVISION SHALL SUBMIT THE SUPPLEMENTAL RETIREMENT PLAN TO THE BOARD IN THE FORM OF AN AGREEMENT. THE AGREEMENT SHALL STATE THE TERMS OF THE SUPPLEMENTAL RETIREMENT PLAN AS PROVIDED IN THIS SECTION. THE BOARD SHALL EITHER APPROVE OR DISAPPROVE THE SUPPLEMENTAL RETIREMENT PLAN SUBMITTED BY THE GOVERNING BODY OF THE POLITICAL SUBDIVISION.

~~B.~~ C. ON APPROVAL, the board shall administer the supplemental plan of the political subdivision.

~~C.~~ D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

~~D.~~ E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer

contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

~~E.~~ F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amounts, as determined by the board, required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

~~F.~~ G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection ~~E~~ F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

~~G.~~ H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

~~H.~~ I. Before the effective date of membership and as a condition of an employer's membership in ASRS, the employer shall formally terminate any existing retirement program administered by the board on behalf of the designated eligible employee group included in ASRS and shall formally agree that no retirement program, exclusive of ASRS and the federal social security system, may thereafter be established on behalf of that group.

~~I.~~ J. The board shall transfer all assets under any existing retirement program administered by the board, to the extent attributable to the employer's designated employee group, from that program to ASRS no later than sixty days after the effective date of the supplemental retirement

plan. The transferred assets shall be considered in determining any additional payments prescribed in subsections ~~E and~~ F AND G of this section.

~~J.~~ K. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

Sec. 8. Section 38-742, Arizona Revised Statutes, is amended to read:

38-742. Reinstatement

~~A. All active members of ASRS who had previous service in ASRS and who forfeited accumulated retirement benefits at or after termination of employment may elect at the time of retirement to redeem any part of the credited service by paying into ASRS the amounts required under subsection B of this section.~~

~~B. A person who elects to redeem any part of the person's credited service under subsection A of this section shall pay into ASRS a lump sum equal to the increase in the actuarial present value of benefits computed at the time of retirement that results from adding the number of years or partial years of credited service received under subsection A of this section.~~

~~C.~~ A. If ~~a~~ AN ACTIVE member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

~~D.~~ B. Notwithstanding subsection ~~C~~ A of this section, ~~if a member's reemployment occurred within two years after the member's termination date and, within one hundred eighty days after reemployment, the member signs a written election consenting to a timely reimbursement to ASRS,~~ the member ~~shall~~ MAY redeposit the amount of the member's accumulated contributions at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated.

Sec. 9. Section 38-743, Arizona Revised Statutes, is amended to read:

38-743. Out of state service credit

A. ~~A teacher, professor, instructor or administrator of a school district, community college or university who is~~ An active member of ASRS~~,~~ who previously was a member of ~~a~~ ANOTHER public employee retirement system ~~in another state while employed as a teacher, professor, instructor or school administrator of a school district, community college or university~~ may receive ~~up to five years of~~ credited service for this prior employment if the

~~teacher, professor, instructor or administrator~~ MEMBER pays into ASRS the amount prescribed in subsection B.

B. A ~~teacher, professor, instructor or administrator~~ MEMBER who elects to receive credit for service ~~outside this state~~ WITH ANOTHER PUBLIC EMPLOYEE RETIREMENT SYSTEM shall pay to ASRS the amount equal to the ~~increase in the actuarial present value of projected benefits resulting from adding the number of years or partial years of credited service received under subsection A.~~ PRODUCT OF THE MEMBER'S CURRENT ANNUAL COMPENSATION TIMES THE NORMAL COST RATE FOR ASRS FOR THE FISCAL YEAR DURING WHICH THE PURCHASE OF CREDITED SERVICE IS BEING MADE TIMES THE YEARS OR PARTIAL YEARS OF CREDITED SERVICE BEING PURCHASED.

C. A ~~teacher, professor, instructor or administrator of a school district, community college or university who is a~~ member of ASRS, who previously was a member of ~~a~~ ANOTHER public employee retirement system ~~in another state while employed as a teacher, professor, instructor or school administrator of a school district, community college or university~~ and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

Sec. 10. Section 38-744, Arizona Revised Statutes, is amended to read:

38-744. Leave of absence; credit for leave without pay

A. Any active member of ASRS who is officially granted a leave of absence from employment without pay AND WHO RETURNS TO EMPLOYMENT WITH THE SAME EMPLOYER, UNLESS EMPLOYMENT COULD NOT BE RESUMED BECAUSE OF DISABILITY OR NONAVAILABILITY OF A POSITION, may elect to be credited with service for retirement purposes for not more than one year of the leave by paying to ASRS the amounts as provided in subsection B, if the member has not withdrawn contributions from ASRS and the member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. An active member of ASRS who elects to be credited with a leave period as provided in subsection A shall pay to ASRS, ~~within five years after terminating the leave and resuming employment,~~ unless ~~employment could not be resumed because of disability or nonavailability of a position with the same employer, the~~ AN amount equal to the employer and member contributions for the leave period together with interest at the interest rate assumption approved by the board for actuarial equivalency, based on the salary received by the member before the leave of absence began.

C. For the purposes of subsection A, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

Sec. 11. Section 38-745, Arizona Revised Statutes, is amended to read:

38-745. Credit for military service

A. An active member of ASRS may receive credited service for active military service if:

1. The member was honorably separated from the military service.

~~2. The period of military service for which the member receives credited service does not exceed forty-eight months.~~

~~3.~~ 2. The period of military service for which the participant receives credited service is not on account with any other retirement system.

B. Except as provided in subsection C, the cost to purchase military service credit is ~~based on the~~ AN amount ~~necessary to~~ equal ~~the increase in the actuarial present value of projected benefits resulting from the credit.~~ TO THE PRODUCT OF THE MEMBER'S CURRENT ANNUAL COMPENSATION TIMES THE NORMAL COST RATE FOR ASRS FOR THE FISCAL YEAR DURING WHICH THE PURCHASE OF CREDITED SERVICE IS BEING MADE TIMES THE YEARS OR PARTIAL YEARS OF CREDITED SERVICE BEING PURCHASED.

C. For a period of time of active military service but for not more than forty-eight months, an employer shall make employer contributions and member contributions for a person who was an active member of ASRS on the day before the member began active military service, who satisfies the requirements of subsection A, paragraph ~~3~~ 2 and who meets the following requirements:

1. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.

2. Volunteers or is ordered into active military service of the United States as part of a presidential call-up.

3. Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated, is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization or dies as a result of the military service.

D. Contributions made pursuant to subsection C shall be for the period of time beginning on the date the member began active military service and ending on one of the following dates:

1. The date the member is separated from active military service.

2. The date the member is released from service related hospitalization or one year after initiation of service related hospitalization, whichever date is earlier.

3. The date the member dies as a result of active military service.

E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than forty-eight months.

F. The employer shall make contributions pursuant to subsection C based on the salary being received by the member immediately before the member volunteered or was ordered into active military service in a lump sum

and without penalty when the member returns to employment or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

G. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

H. An applicant shall submit a copy of ~~the military discharge certificate (DD-256A) and a copy of~~ the military service record (DD-214) or its equivalent with the application when applying for military service credit~~, except that members of the Arizona national guard and military reserves ordered into active military service as part of a presidential call-up are only required to submit a copy of the military service record (DD-214) or its equivalent~~.

I. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection C.

Sec. 12. Section 38-746, Arizona Revised Statutes, is amended to read:

38-746. Compensation limitation; adjustments

A. ~~Effective~~ EXCEPT AS PROVIDED IN SUBSECTION E, BEGINNING ON July 1, ~~1989~~ 1996, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed ~~two~~ ONE hundred FIFTY thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. The annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. IF THE MAXIMUM COMPENSATION IS ADJUSTED PURSUANT TO SUBSECTION D, THE ADJUSTED LIMITATION SHALL BE PRORATED AMONG THE AFFECTED MEMBERS' COMPENSATION DETERMINED PURSUANT TO THIS SECTION BEFORE APPLICATION OF THE ADJUSTED LIMITATION TO THE OTHER PROVISIONS OF THIS ARTICLE.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section ~~415(d)~~ 401(a)(17)(B) of the internal

revenue code. ~~If, pursuant to this subsection, the maximum compensation is adjusted, the adjusted limitation shall be prorated among the affected member's compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.~~

E. THE DOLLAR LIMITATION PRESCRIBED IN SUBSECTION A DOES NOT APPLY TO AN ELIGIBLE MEMBER TO THE EXTENT THAT THE ANNUAL COMPENSATION OF AN ELIGIBLE MEMBER TAKEN INTO ACCOUNT BY ASRS FOR ANY FISCAL YEAR OR FOR ANY OTHER SPECIFIED TWELVE CONSECUTIVE MONTH PERIOD WOULD BE REDUCED BELOW TWO HUNDRED THIRTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS. THIS WAS THE AMOUNT ALLOWED TO BE TAKEN INTO ACCOUNT BY ASRS AS OF JULY 1, 1993. THE BOARD SHALL ADJUST THIS AMOUNT AS OF THE EFFECTIVE DATE OF THE INCREASE PRESCRIBED BY THE UNITED STATES SECRETARY OF THE TREASURY. FOR THE PURPOSES OF THIS SUBSECTION, "ELIGIBLE MEMBER" MEANS A PERSON WHO FIRST BECAME A MEMBER OF ASRS BEFORE JULY 1, 1996.

Sec. 13. Section 38-747, Arizona Revised Statutes, is amended to read:

38-747. Purchase of credited service; payment; definition

A. A member who purchases credited service pursuant to section 38-742, 38-743, 38-744, 38-745 or ~~38-771~~ 38-922 shall make payments ~~in a lump sum~~ to ASRS.

B. In any one limitation year, ~~payments~~ THE ANNUAL ADDITIONS CREDITED TO ASRS FOR OR ON BEHALF OF A MEMBER WHO PURCHASES CREDITED SERVICE UNDER THE SECTIONS PRESCRIBED IN SUBSECTION A OF THIS SECTION shall not exceed the lesser of either:

1. Thirty thousand dollars or ~~one-fourth of the dollar limitation prescribed in section 38-769, subsection A, paragraph 1, as adjusted by the board as provided in section 38-769, whichever is more~~ A LARGER AMOUNT THAT IS PRESCRIBED BY THE BOARD AND THAT IS DUE TO ANY COST OF LIVING ADJUSTMENT ANNOUNCED BY THE UNITED STATES SECRETARY OF THE TREASURY PURSUANT TO SECTION 415(d) OF THE INTERNAL REVENUE CODE. THE BOARD SHALL INCREASE THE AMOUNT PRESCRIBED BY THIS PARAGRAPH AS OF THE EFFECTIVE DATE OF THE INCREASE ANNOUNCED BY THE UNITED STATES SECRETARY OF THE TREASURY.

2. Twenty-five per cent of the member's compensation for the limitation year.

C. A MEMBER'S CONTRIBUTIONS UNDER THIS SECTION ARE TREATED AS BEING MADE TO A SEPARATE DEFINED CONTRIBUTION PLAN. If the member's payments ~~due to ASRS~~ under this section exceed the limits prescribed in subsection B of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection B of this section and the ~~reduced~~ REMAINING amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

D. IF, AFTER THE APPLICATION OF SUBSECTION C OF THIS SECTION, THE ANNUAL ADDITIONS ON BEHALF OF A MEMBER EXCEED THE LIMITATIONS PRESCRIBED IN SUBSECTION B OF THIS SECTION, ASRS SHALL DISPOSE OF EXCESS AMOUNTS BY EITHER OF THE FOLLOWING:

1. RETURNING TO THE MEMBER ANY CONTRIBUTIONS THAT ARE MADE BY THE MEMBER AND THAT ARE NONDEDUCTIBLE UNDER THE INTERNAL REVENUE CODE.

2. HOLDING THE AMOUNTS IN A SUSPENSE ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION F OF THIS SECTION AND ALLOCATING THE AMOUNTS AS EITHER MEMBER OR EMPLOYER CONTRIBUTIONS FOR THE BENEFIT OF THE MEMBER IN THE NEXT LIMITATION YEAR AND BEFORE ANY FURTHER MEMBER OR EMPLOYER CONTRIBUTIONS ARE MADE THAT WOULD CONSTITUTE ANNUAL ADDITIONS MADE TO A DEFINED CONTRIBUTION PLAN PURSUANT TO SECTION 415 OF THE INTERNAL REVENUE CODE. ASRS SHALL ALLOCATE CONTRIBUTIONS AS PRESCRIBED IN THIS SECTION, AND THE AMOUNT ALLOCATED SHALL REDUCE THE AMOUNT OF THE MEMBER OR EMPLOYER CONTRIBUTIONS FOR THE LIMITATION YEAR IN WHICH THE ALLOCATION IS MADE.

E. THE BOARD MAY ACCEPT MEMBER CONTRIBUTIONS FOR THE PAYMENT FOR CREDITED SERVICE PURCHASES PURSUANT TO SECTIONS 38-742, 38-743, 38-744, 38-745 OR 38-922, IN WHOLE OR IN PART, BY EITHER OR BOTH OF THE FOLLOWING METHODS:

1. ACCEPTING ELIGIBLE ROLLOVER DISTRIBUTIONS FROM ONE OR MORE QUALIFIED RETIREMENT PROGRAMS, SUBJECT TO THE LIMITATIONS PRESCRIBED IN SECTION 402(c) OF THE INTERNAL REVENUE CODE.

2. PROVIDING BY RULE THAT THE CONTRIBUTIONS MAY BE MADE IN INSTALLMENT PAYMENTS OVER A PERIOD OF TIME, EXCEPT THAT ASRS SHALL NOT GRANT CREDITED SERVICE FOR CONTRIBUTIONS THAT HAVE NOT BEEN RECEIVED BY ASRS.

F. ASRS SHALL ESTABLISH A SUSPENSE ACCOUNT THAT CONFORMS WITH 26 CODE OF FEDERAL REGULATIONS SECTION 1.415-6(b)(6) REGARDING EXCESS ANNUAL ADDITIONS.

~~D.~~ G. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

~~E.~~ H. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

I. ANNUAL ADDITIONS ON BEHALF OF A MEMBER IN ANY LIMITATION YEAR SHALL BE THE SUM OF:

1. THE AMOUNT OF THE MEMBER CONTRIBUTIONS MADE TO ASRS TO PURCHASE CREDITED SERVICE PURSUANT TO SECTION 38-742, 38-743, 38-744, 38-745 OR 38-922.

2. ANY MEMBER OR EMPLOYER CONTRIBUTIONS MADE TO ASRS OR ANY OTHER PLAN THAT ARE TREATED AS BEING MADE TO A DEFINED CONTRIBUTION PLAN MAINTAINED BY AN EMPLOYER OF THE MEMBER.

3. ANY FORFEITURES, INCLUDING ANY INCOME ATTRIBUTABLE TO FORFEITURES, ALLOCATED FOR OR ON BEHALF OF A MEMBER OF ASRS OR ANY OTHER PLAN THAT ARE

TREATED AS BEING ALLOCATED UNDER A DEFINED CONTRIBUTION PLAN MAINTAINED BY AN EMPLOYER OF THE MEMBER.

J. SUBSECTION I OF THIS SECTION SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH 26 CODE OF FEDERAL REGULATIONS SECTION 1.415-6 TO THE EXTENT THAT SECTION IS APPLICABLE.

~~F.~~ K. For the purposes of this section: ~~, the terms~~

1. "Limitation year", "DEFINED CONTRIBUTION PLAN" and "compensation" have the same meaning prescribed in section 38-769.

2. IN DETERMINING THE ANNUAL ADDITIONS CREDITED TO A MEMBER OF ASRS, "ANNUAL ADDITIONS" HAS THE SAME MEANING PRESCRIBED IN 26 CODE OF FEDERAL REGULATIONS SECTION 1.415-6(b).

Sec. 14. Section 38-762, Arizona Revised Statutes, is amended to read:

38-762. Survivor benefits before retirement; definition

A. On the termination of employment by death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. Two times the member's contribution to ~~ASRS~~ THE DEFINED BENEFIT PLAN ESTABLISHED BY THIS ARTICLE.

2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. SUBSECTION A, paragraphs 1 and 2 ~~of this subsection~~ shall be accumulated at compound interest at the valuation rate established by the board to the first day of the month next preceding the date of death.

~~B.~~ C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of more than five thousand dollars may elect to receive the actuarial equivalent of the survivor benefit pursuant to one of the following options:

1. A monthly income for five, ten or fifteen years certain and for life thereafter.

2. Another form of optional benefits approved by the board.

~~C.~~ D. On the death of an active or inactive member who has reached an early retirement date applicable to the member or who has a minimum of fifteen years of credited service and whose designated beneficiary is a spouse, child under the age of twenty-one or handicapped child age twenty-one or older, including a legally adopted child or a stepchild, ASRS shall pay the designated beneficiary a survivor benefit equal to the present value, on the date following the date of the member's death, of the life annuity that would have been payable to the designated beneficiary if the member had retired on the date of the member's death and elected to receive an annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount that would have been payable during the lifetime of the member. If there is more than one

designated beneficiary under this subsection, ASRS shall determine the amount of the annuity and its present value as if the oldest of the beneficiaries was the sole beneficiary. Payment under this subsection shall be in lieu of, but not less than, any payment under subsection A. Payment under this subsection, at the election of the designated beneficiary, may be made in a single sum or may be made in accordance with subsection ~~B~~ C. A beneficiary may not elect this option unless a benefit of twenty-five dollars or more per month is payable to the designated beneficiary or the designated beneficiary's estate.

~~D.~~ E. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed no later than five years after the member's death, except to the extent that, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made in substantially equal installments over the life expectancy of the designated beneficiary or over a period not extending beyond the life expectancy of the beneficiary commencing no later than one year after the member's death.

~~E.~~ F. If a deceased member did not designate a beneficiary, the board, in its sole discretion, may direct payment to the member's estate or to another person or persons the board determines to be lawfully entitled to receive payment.

~~F.~~ G. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

~~G.~~ H. For purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

Sec. 15. Section 38-764, Arizona Revised Statutes, is amended to read:

38-764. Commencement of retirement; payment of retirement benefits; lump sum payments

A. RETIREMENT IS DEEMED TO COMMENCE ON A DATE ELECTED BY THE MEMBER. THAT DATE SHALL NOT BE EARLIER THAN THE DAY FOLLOWING THE DATE OF TERMINATION OF EMPLOYMENT OR THE DATE ASRS RECEIVES THE MEMBER'S COMPLETED RETIREMENT APPLICATION.

~~A.~~ B. Except as provided in subsection ~~B~~ C, all retirement benefits:

1. Are normally payable in monthly installments ~~commencing~~ BEGINNING on the COMMENCEMENT OF RETIREMENT AS PRESCRIBED IN SUBSECTION A. ~~latest of the following:~~

~~(a) The date of termination of employment.~~

~~(b) The date ASRS receives the member's completed retirement application.~~

~~(c) Another date the member elects on the application form prescribed by the board.~~

2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.

~~B.~~ C. In the case of incapacity of a retired member or contingent annuitant, or in the case of any other emergency, as determined by the board, the board may make the payment to or on behalf of the retired member or contingent annuitant or to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the retired member or contingent annuitant and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

~~C.~~ D. Except as provided in subsection ~~D~~ E, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

~~D.~~ E. The board may pay the entire retirement benefit in a lump sum pursuant to subsection ~~C~~ D only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

~~E.~~ F. If any benefit that is payable as a series of periodic payments amounts to less than twenty dollars per month, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid quarterly, semiannually, annually or in a lump sum.

~~F.~~ G. All distributions of retirement benefits to a member shall be distributed either:

1. Over a period not exceeding the life of the member or over the lives of the member and the member's contingent annuitant.

2. Over a period not extending beyond the life expectancy of the member or the life expectancy of the member and the member's contingent annuitant.

~~G.~~ H. Notwithstanding any other provision of this article, all distributions under this article shall be made in accordance with the distribution requirements of section 401(a)(9) of the internal revenue code.

Sec. 16. Section 38-768, Arizona Revised Statutes, is amended to read:

38-768. <u>Minimum retirement benefit</u>

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least

seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.

2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.

3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.

4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members is six hundred dollars.

2. For beneficiaries is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection ~~B~~ D is not eligible for a minimum benefit as provided by this section.

Sec. 17. Section 38-769, Arizona Revised Statutes, is amended to read:

38-769. <u>Maximum retirement benefits; termination; definitions</u>

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit, at any time within a limitation year, shall not exceed the lesser of:

1. Ninety thousand dollars or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States ~~internal revenue service~~ SECRETARY OF THE TREASURY pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this paragraph as of the effective date of the increase as prescribed by the United States secretary of the treasury ~~or the secretary's designee~~.

2. One hundred per cent of the member's average compensation for the member's high three consecutive years of service as provided in section 415 of the internal revenue code. For purposes of this paragraph, a member's high three consecutive years of service is the period of three consecutive years or the actual number of consecutive years of employment for a member who is employed less than three consecutive years with the employer during which the member had the greatest aggregate compensation from the employer.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. ~~Effective retroactively to July 1, 1987.~~ If a member has less than ten years of membership in ASRS, the MAXIMUM DOLLAR limitation determined under subsection A, PARAGRAPH 1 of this section shall be multiplied by a fraction, the numerator of which is the number of years, or ~~part of the number of~~ PARTIAL years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the one hundred per cent of compensation limitation PRESCRIBED IN SUBSECTION A, PARAGRAPH 2 OF THIS SECTION and the ten thousand dollar floor limitation provided in subsection B of this section, except that the reductions apply to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If a member's annual benefit commences before the member attains sixty-two years of age, the limitation determined under subsection A of this section shall be adjusted to the actuarial equivalent of an annual benefit equal to the dollar limitation commencing at sixty-two years of age. The actuarial equivalent under this paragraph shall not be less than seventy-five thousand dollars if a member's annual benefit commences at or after fifty-five years of age. If a member's annual benefit commences before fifty-five years of age, the actuarial equivalent shall equal the greater of:

(a) The actuarial equivalent of a seventy-five thousand dollar annual benefit for fifty-five years of age.

(b) The actuarial equivalent of a ninety thousand dollar annual benefit for sixty-two years of age.

Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the greater of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

3. If a member's annual benefit commences after sixty-five years of age, the limitation determined under subsection A of this section shall be adjusted to the actuarial equivalent of an annual benefit equal to the dollar limitation commencing at sixty-five years of age. Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the lesser of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

4. If the member's benefit is paid in a form other than an annual benefit, the benefit paid may not exceed the actuarial equivalent of the maximum annual benefit payable as a straight life annuity disregarding the portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code. Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the greater of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

D. THE BOARD SHALL LIMIT BENEFITS PAYABLE TO A MEMBER WHO IS A MEMBER OF ASRS AND ANY OTHER DEFINED BENEFIT PLAN MAINTAINED BY THE MEMBER'S EMPLOYER AND A DEFINED CONTRIBUTION PLAN MAINTAINED BY THE MEMBER'S EMPLOYER IN A MANNER IT DETERMINES TO BE NECESSARY TO PREVENT THE SUM OF THE FOLLOWING FRACTIONS FROM EXCEEDING 1.0:

1. THE PROJECTED ANNUAL BENEFIT OF THE MEMBER UNDER ASRS AND ANY OTHER DEFINED BENEFIT PLAN MAINTAINED BY THE MEMBER'S EMPLOYER IN WHICH THE MEMBER PARTICIPATED AS OF THE DATE OF DETERMINATION DIVIDED BY THE LESSER OF:

(a) THE PRODUCT OF 1.25 MULTIPLIED BY THE DOLLAR LIMITATION IN EFFECT UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION FOR THE LIMITATION YEAR.

(b) ONE HUNDRED FORTY PER CENT OF THE MEMBER'S AVERAGE COMPENSATION FOR THE MEMBER'S HIGH THREE CONSECUTIVE YEARS OF SERVICE AS DESCRIBED IN SUBSECTION A, PARAGRAPH 2 OF THIS SECTION.

2. THE SUM OF THE ANNUAL ADDITIONS ON BEHALF OF THE MEMBER AS OF THE LIMITATION YEAR IN WHICH THE DETERMINATION IS MADE UNDER ASRS AND ANY DEFINED CONTRIBUTION PLAN MAINTAINED BY THE MEMBER'S EMPLOYER DIVIDED BY THE LESSER OF THE FOLLOWING AMOUNTS DETERMINED FOR THE LIMITATION YEAR AND FOR EACH PRIOR YEAR OF SERVICE WITH THE EMPLOYER:

(a) THE PRODUCT OF 1.25 MULTIPLIED BY THE DOLLAR LIMITATION IN EFFECT UNDER SECTION 38-747, SUBSECTION B, PARAGRAPH 1 FOR THE LIMITATION YEAR.

(b) THIRTY-FIVE PER CENT OF THE MEMBER'S COMPENSATION IN THE LIMITATION YEAR.

E. ASRS SHALL COMPUTE THE FRACTIONS PRESCRIBED IN SUBSECTION D OF THIS SECTION AS OF THE CLOSE OF ANY LIMITATION YEAR. FOR THE PURPOSES OF DETERMINING A MEMBER'S PROJECTED ANNUAL BENEFIT ADJUSTED TO AN ACTUARIALLY EQUIVALENT STRAIGHT LIFE ANNUITY IF THE BENEFIT IS EXPRESSED IN A FORM OTHER THAN A STRAIGHT LIFE ANNUITY OR A QUALIFIED JOINT AND SURVIVOR ANNUITY AS DEFINED IN SECTION 417 OF THE INTERNAL REVENUE CODE UNDER ANY DEFINED BENEFIT PLAN MAINTAINED BY AN EMPLOYER AND SUBJECT TO THE LIMITATION PRESCRIBED BY

SUBSECTION D OF THIS SECTION, THE BENEFIT SHALL BE BASED ON THE FOLLOWING ASSUMPTIONS:

1. THE MEMBER WILL CONTINUE COVERED EMPLOYMENT UNTIL REACHING THE MEMBER'S NORMAL RETIREMENT DATE DETERMINED UNDER THE DEFINED BENEFIT PLAN OR THE CURRENT DATE, WHICHEVER IS LATER.

2. THE MEMBER'S COMPENSATION FOR THE LIMITATION YEAR UNDER CONSIDERATION WILL REMAIN CONSTANT UNTIL THE MEMBER'S NORMAL RETIREMENT DATE OR ACTUAL RETIREMENT.

3. ALL OTHER RELEVANT FACTORS USED TO DETERMINE BENEFITS UNDER THE DEFINED BENEFIT PLAN WILL REMAIN CONSTANT FOR ALL FUTURE LIMITATION YEARS.

~~D.~~ F. Notwithstanding ~~subsections A, B, C and F~~ ANY OTHER PROVISION of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state~~, provided that for purposes of maximum benefits under this section, the benefit of ASRS is considered primary~~. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection.

~~E.~~ G. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States ~~internal revenue service~~ SECRETARY OF THE TREASURY pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury ~~or the secretary's designee~~ on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

~~G.~~ H. In determining the adjustments authorized by subsections A and B of this section, the board shall prescribe a larger amount if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. AN ADJUSTMENT TO THE DOLLAR LIMITATION PRESCRIBED IN SUBSECTION A, PARAGRAPH 1 OF THIS SECTION IS NOT EFFECTIVE BEFORE THE FIRST CALENDAR YEAR FOR WHICH THE UNITED STATES SECRETARY OF THE TREASURY PUBLISHES THE ADJUSTMENT. AFTER IT IS PRESCRIBED BY THE BOARD, THE NEW DOLLAR LIMITATION APPLIES TO THE LIMITATION YEAR ENDING WITH OR WITHIN THE CALENDAR YEAR FOR WHICH THE SECRETARY OF THE TREASURY MAKES THE ADJUSTMENT.

To the extent provided in regulations promulgated by the United States secretary of the treasury, the adjustments to the limitation made by the board pursuant to subsection C, paragraph 1 of this section shall be applied separately to each change in the benefit structure of ASRS.

I. RETROACTIVE TO JULY 1, 1996, EXCEPT FOR THE LIMITATIONS PRESCRIBED IN SUBSECTION B OF THIS SECTION, FOR THE PURPOSES OF THE LIMITATIONS PRESCRIBED BY THIS SECTION, ALL MEMBER AND EMPLOYER CONTRIBUTIONS MADE TO ASRS TO PROVIDE A MEMBER BENEFITS PURSUANT TO SECTION 38-771 AND ALL MEMBER CONTRIBUTIONS THAT ARE NOT TREATED AS PICKED UP BY THE EMPLOYER UNDER SECTION 414(h)(2) OF THE INTERNAL REVENUE CODE SHALL BE TREATED AS MADE TO A SEPARATE DEFINED CONTRIBUTION PLAN.

~~F.~~ J. On termination of ASRS the accrued benefit of each member is, as of the date of termination, fully vested and nonforfeitable.

K. IF ASRS TERMINATES, THE BENEFIT OF ANY HIGHLY COMPENSATED EMPLOYEE AS DEFINED IN SECTION 414(q) OF THE INTERNAL REVENUE CODE AND ANY HIGHLY COMPENSATED FORMER EMPLOYEE IS LIMITED TO A BENEFIT THAT IS NONDISCRIMINATORY UNDER SECTION 401(a)(4) OF THE INTERNAL REVENUE CODE AND AS FOLLOWS:

1. BENEFITS DISTRIBUTED TO ANY OF THE TWENTY-FIVE ACTIVE AND FORMER HIGHLY COMPENSATED EMPLOYEES WITH THE GREATEST COMPENSATION IN THE CURRENT OR ANY PRIOR FISCAL YEAR ARE RESTRICTED SO THAT THE ANNUAL PAYMENTS ARE NO GREATER THAN AN AMOUNT EQUAL TO THE PAYMENT THAT WOULD BE MADE ON BEHALF OF THE MEMBER UNDER A STRAIGHT LIFE ANNUITY THAT IS THE ACTUARIAL EQUIVALENT OF THE SUM OF THE MEMBER'S ACCRUED BENEFIT, THE MEMBER'S OTHER BENEFITS UNDER ASRS, EXCLUDING A SOCIAL SECURITY SUPPLEMENT AS DEFINED IN 26 CODE OF FEDERAL REGULATIONS SECTION 1.411(a)-7(C)(4)(ii), AND THE AMOUNT THE MEMBER IS ENTITLED TO RECEIVE UNDER A SOCIAL SECURITY SUPPLEMENT.

2. PARAGRAPH 1 OF THIS SUBSECTION DOES NOT APPLY IF EITHER:

(a) AFTER PAYMENT OF THE BENEFIT TO A MEMBER DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION, THE VALUE OF ASRS ASSETS EQUALS OR EXCEEDS ONE HUNDRED TEN PER CENT OF THE VALUE OF THE CURRENT LIABILITIES, AS DEFINED IN SECTION 412(l)(7) OF THE INTERNAL REVENUE CODE, OF ASRS.

(b) THE VALUE OF THE BENEFITS FOR A MEMBER DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION IS LESS THAN ONE PER CENT OF THE VALUE OF THE CURRENT LIABILITIES, AS DEFINED IN SECTION 412(l)(7) OF THE INTERNAL REVENUE CODE, OF ASRS BEFORE DISTRIBUTION.

(c) THE VALUE OF THE BENEFITS PAYABLE BY ASRS TO A MEMBER DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION DOES NOT EXCEED THREE THOUSAND FIVE HUNDRED DOLLARS.

L. FOR THE PURPOSES OF SUBSECTION K OF THIS SECTION, "BENEFIT" INCLUDES LOANS IN EXCESS OF THE AMOUNT PRESCRIBED IN SECTION 72(p)(2)(A) OF THE INTERNAL REVENUE CODE, ANY PERIODIC INCOME, ANY WITHDRAWAL VALUES PAYABLE TO A LIVING MEMBER AND ANY DEATH BENEFITS NOT PROVIDED FOR BY INSURANCE ON THE MEMBER'S LIFE.

~~H.~~ M. For purposes of this section:

1. "ANNUAL ADDITIONS" HAS THE SAME MEANING PRESCRIBED IN 26 CODE OF FEDERAL REGULATIONS SECTION 1.415-6(b).

~~1.~~ 2. "Annual benefit" means a benefit, INCLUDING ANY PORTION OF A MEMBER'S RETIREMENT BENEFIT PAYABLE TO AN ALTERNATE PAYEE UNDER A QUALIFIED DOMESTIC RELATIONS ORDER THAT SATISFIES THE REQUIREMENTS PRESCRIBED IN SECTION 414(p)(1)(A)(i) OF THE INTERNAL REVENUE CODE AND SECTION 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection C, paragraph 1 of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this section in accordance with the regulations promulgated by the United States secretary of the treasury for determining the annual benefit attributable to member contributions. The factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS.

~~2.~~ 3. "Compensation" means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed, on behalf of an employee to a simplified employee pension plan described in section 408(k) of the internal revenue code and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when distributed, EXCEPT THAT ANY AMOUNT RECEIVED BY A MEMBER PURSUANT TO AN UNFUNDED NONQUALIFIED PLAN MAY BE CONSIDERED AS COMPENSATION FOR THE PURPOSES OF THIS SECTION IN THE YEAR THE AMOUNTS ARE INCLUDIBLE IN THE GROSS INCOME OF THE MEMBER UNDER THE INTERNAL REVENUE CODE.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, or contributions made by

the employer, whether or not under a salary reduction agreement, towards the purchase of an annuity contract described in section 403(b) of the internal revenue code, whether or not the contributions are excludable from the gross income of the employee.

~~3.~~ 4. "Defined benefit plan" has the same meaning prescribed in section 414(j) of the internal revenue code.

~~4.~~ 5. "Defined contribution plan" has the same meaning prescribed in section 414(i) of the internal revenue code.

~~5.~~ 6. "Limitation year" and "years of service" means the fiscal year.

Sec. 18. Section 38-797.07, Arizona Revised Statutes, is amended to read:

38-797.07. <u>LTD program benefits; limitations</u>

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 7, monthly benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) Sixty-four per cent of social security disability benefits that the member or the member's dependents are eligible to receive.

(b) Eighty-three per cent of social security retirement benefits that the member is eligible to receive.

(c) All of any workers' compensation benefits.

(d) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(e) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave.

(f) Fifty per cent of any salary, wages, commissions or similar pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. Monthly benefits are not payable to a member who is receiving retirement benefits from ASRS.

4. Monthly benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) An injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been a member for twelve continuous months nor to a member who is employed by an employer as of June 30, 1988. For the purposes of this subdivision, "received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

5. Monthly benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member ceases to be under the direct care of a doctor or refuses to undergo any medical examination requested by the insurance company selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

6. Monthly benefits are payable under the LTD program only for disabilities that commence on or after July 1, 1988.

7. The minimum benefit for a member who is entitled to receive benefits under the LTD program is fifty dollars per month.

8. Members are eligible to receive the benefits and payments described in paragraph 1, and the reductions provided by paragraph 1 apply even though the benefits are not actually paid as follows:

(a) For primary or dependent social security benefits, the members are eligible for the benefits until the benefits are actually awarded, or if the benefits are denied, until notice of the denial of the appeal of the first denial is received.

(b) For benefits and payments from any other source provided in paragraph 1, the members are eligible for the benefits if it is reasonable to believe that the benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

1 9. A member shall be considered totally disabled if:
2 (a) During the first thirty months of a period of disability, the
3 member is unable to perform all duties of the position held by the member
4 when the member became totally disabled.
5 (b) For a member who has received monthly benefits for twenty-four
6 consecutive months, that a member is unable to perform any work for
7 compensation or gain for which the member is reasonably qualified by
8 education, training or experience.
9 B. A member who receives monthly benefits from the LTD program is
10 entitled to receive service credit pursuant to article 2 of this chapter from
11 the time disability commences until benefits cease to be payable, except that
12 the number of years of service credited to a member's retirement account
13 during the period the member receives LTD benefit payments shall not cause
14 the member's total credited service for retirement benefits to exceed the
15 greater of twenty-five years or the total years of service credited to the
16 member's retirement account on the commencement of disability.
17 C. FOR THE PURPOSES OF THIS SECTION "SOCIAL SECURITY" AND "SOCIAL
18 SECURITY DISABILITY" INCLUDES THE RAILROAD RETIREMENT ACT OF 1974 (45 UNITED
19 STATES CODES SECTIONS 231 THROUGH 231u).

APPROVED BY THE GOVERNOR APRIL 15, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 15, 1996