House Engrossed Senate Bill

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KEN BENNETT
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CHAPTER 136

SENATE BILL 1116

AN ACT

AMENDING SECTIONS 35-1002, 38-816, 38-822, 38-843.05, 38-844, 38-846, 38-847, 38-849, 38-853, 38-853.01, 38-859, 38-860, 38-884 AND 38-893, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-895.02; AMENDING SECTIONS 38-904, 38-909 AND 38-910, ARIZONA REVISED STATUTES; RELATING TO THE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM, THE CORRECTIONS OFFICER RETIREMENT PLAN AND THE ELECTED OFFICIALS' RETIREMENT PLAN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 35-1002, Arizona Revised Statutes, is amended to read:

35-1002. Swap agreements; provisions; purposes; credit enhancement

A. A governmental entity may enter into, modify, amend and terminate one or more swap agreements that it determines to be necessary or desirable in connection with, or incidental to, the conduct of its activities, including in connection with the issuance, carrying or securing of obligations or the acquisition or carrying of investments. A governmental entity may enter into swap agreements ~~which~~ THAT are to be effective at a future date or ~~which~~ THAT constitute an option to enter into swap agreements. Swap agreements entered into by a governmental entity shall contain such provisions, including payment, term, security, collateralization, termination penalty, default and remedy provisions, and shall be with such parties as the governmental entity determines to be necessary or desirable after due consideration to the creditworthiness of the parties. If the party to the swap agreement ~~which~~ THAT is not the governmental entity is not rated by a nationally recognized rating agency in one of the top two rating categories of the rating agency at the time the swap agreement is entered into, the party shall collateralize its obligations under the swap agreement with securities or cash acceptable to the governmental entity. Swap agreements may be payable from revenues of a utility undertaking, excise taxes, ad valorem taxes, street and highway revenues, monies that may be pledged to pay debt service on any bonds or other long-term obligations relating to the swap agreements, or any other legally available monies, as determined by the governmental entity.

B. A governmental entity shall not enter into a swap agreement other than TO IMPLEMENT ITS INVESTMENT POLICY OR for the purpose of managing an interest rate, commodity price, investment or similar risk that arises in connection with, or incidental to, the activities of the governmental entity. A governmental entity shall not carry on a business of acting as a dealer in swap agreements.

C. In connection with entering into any swap agreement a governmental entity may enter into agreements ~~which~~ THAT enhance the governmental entity's credit in the swap agreement or enhance the liquidity of the swap agreement, including a line of credit, letter of credit, insurance policy or other security.

Sec. 2. Section 38-816, Arizona Revised Statutes, is amended to read:

38-816. Redemption of prior service

A. Any present active elected official who has at least ten years of credited service with the plan may elect to redeem up to sixty months of any part of the following prior service or employment by paying into the fund the amounts required under subsection B of this section if the prior service or employment is not on account with any other retirement system or plan:

1. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official has received a refund from a prior retirement system or plan on termination of employment before the elected official's application for redemption of prior service.

2. Prior service in this state as an elected official with an employer now covered by the plan before the effective date of participation if the elected official was not covered by a retirement system or plan during the elected official's prior elected official service.

3. Prior service as an elected official of this state or a city, town or county of this state if the elected official was not covered by a retirement system or plan during that service whether or not the city, town or county is an employer now covered by the plan.

4. Prior employment with the United States government, a state of the United States or a political subdivision of a state of the United States.

B. Any present active elected official who elects to redeem any part of the prior service or employment for which the elected official is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the elected official as a refund of the elected official's accumulated contributions, if any, plus the additional amount, if any, that is computed by the plan's actuary and that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions that are prescribed by the plan's actuary. THE DISCOUNT RATE USED BY THE ACTUARY FOR THE CALCULATION OF THE ACTUARIAL PRESENT VALUE OF THE PROJECTED BENEFITS RESULTING FROM THE REDEMPTION CALCULATION PURSUANT TO THIS SUBSECTION IS AN AMOUNT EQUAL TO THE LESSER OF THE ASSUMED RATE OF RETURN THAT IS PRESCRIBED BY THE BOARD OR AN AMOUNT EQUAL TO THE YIELD ON A TEN YEAR TREASURY NOTE AS OF MARCH 1 THAT IS PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PER CENT. THIS DISCOUNT RATE IS EFFECTIVE BEGINNING IN THE NEXT FISCAL YEAR AND THE BOARD SHALL RECALCULATE THE RATE EACH YEAR.

C. On approval by the governing body of an incorporated city or town that executes a joinder agreement under section 38-815, the city or town may pay into the fund all or any part of the amount sufficient to provide retirement benefits for elected officials or former elected officials for the time of service as an elected official of the city or town before the joinder agreement if no retirement benefits were in effect for elected officials during the time of service being redeemed under this section.

D. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Sec. 3. Section 38-822, Arizona Revised Statutes, is amended to read:

38-822. Domestic relations orders; procedures; payments

A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the plan that would otherwise be payable to that participant shall instead be paid by the plan to an alternate payee.

B. A domestic relations order is not effective against the plan unless the domestic relations order is approved by the plan and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K and shall also meet all of the following requirements:

1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing address of the alternate payee that is covered by the domestic relations order.

2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the plan to the alternate payee or the precise manner in which the amount or percentage is to be determined.

3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.

4. The domestic relations order shall state that the domestic relations order applies to the plan.

5. The domestic relations order shall not require the plan to provide any type or form of benefit or any option not otherwise provided by this article.

6. The domestic relations order shall not require the plan to provide increased benefits determined on the basis of actuarial value.

7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.

8. THE DOMESTIC RELATIONS ORDER SHALL HAVE BEEN ISSUED BY A COURT OF COMPETENT JURISDICTION OF A STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

C. On receipt by the plan of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the plan shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.

D. The plan has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period, and if the plan can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds and shall pay the remaining portion of the benefits to the participant. If the plan determines the domestic relations order is a plan approved domestic relations order, the plan shall pay the participant and alternate payee pursuant to the plan approved domestic relations order in the month following the month in which the determination was issued, or in the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the plan determines the domestic relations order fails to qualify as a plan approved domestic relations order, the plan shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations order. If the participant is currently receiving benefits, and if the plan can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the plan shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the plan shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the plan shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the plan that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the plan.

E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any participant or alternate payee. The plan has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the plan. If the

address of an alternate payee is unknown to the plan, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the plan shall either:

1. Hold the alternate payee's portion until such a time as the alternate payee provides the plan with a current address. Once the plan is notified of the alternate payee's current address, the plan shall prospectively pay the alternate payee's portion to the alternate payee.

2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J, until such a time as the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.

F. If the address of a participant is unknown to the plan, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the plan shall hold the participant's portion until the participant provides the plan with a current address.

G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest the plan shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any personal representative. The plan is not responsible for making benefit payments to a personal representative until the personal representative has both:

1. Persuaded the plan that the personal representative is authorized to receive payments designated for the deceased alternate payee.

2. Provided the plan with an address to which the payments should be sent.

H. If, within thirty days after the date the plan verifies an alternate payee's death, a personal representative does not make demand on the plan for the alternate payee's portion, the plan shall either:

1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.

2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the plan to the participant to the personal representative.

Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.

I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.

J. The plan is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the plan pursuant to this section. If one or more payments are made by the plan to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.

K. The plan may adopt policies and procedures that govern the implementation of this section.

Sec. 4. Section 38-843.05, Arizona Revised Statutes, is amended to read:

38-843.05. Retired members; return to work; employer contributions

A. An employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work in any capacity in a position ordinarily filled by an employee of the employer of an eligible group. ~~This section applies to a retired member who returns to work with another participating employer and a retired member who returns to work after sixty consecutive days with the same employer from which the member retired.~~ FOR THE PURPOSES OF THIS SUBSECTION, "RETURNS TO WORK IN ANY CAPACITY" INCLUDES A RETIRED MEMBER WHO RETURNS TO WORK AND IS INELIGIBLE FOR BENEFITS PURSUANT TO SECTION 38-849, SUBSECTION E.

B. The alternate contribution rate shall be equal to that portion of the total required contribution that is applied to the amortization of the unfunded actuarial accrued liability for the fiscal year beginning July 1, based on the system's actuary's calculation of the total required contribution for the preceding fiscal year ended on June 30. The alternate contribution rate shall be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than eight per cent in any fiscal year.

D. All contributions made by the employer and allocated to the fund are irrevocable and shall be used as benefits under this article or to pay the expenses of the system. Payments made pursuant to this section by employers become delinquent after the due date prescribed in SECTION 38-843, subsection D, and thereafter shall be increased by interest from and after that date until payment is received by the system.

E. An employer of a retired member shall IMMEDIATELY NOTIFY THE LOCAL BOARD AFTER THE EMPLOYMENT OF A RETIRED MEMBER AND SHALL submit any reports, data, paperwork or materials that are requested by the board ~~and~~ OR THE LOCAL BOARD that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, use, efficacy or operation of the return to work program.

Sec. 5. Section 38-844, Arizona Revised Statutes, is amended to read:

38-844. Requirements for retirement benefits and disability pensions

A. A member shall be eligible for a normal pension on retirement on or after the member's normal retirement date. Payment of a normal pension shall commence as of the first day of the month following the date of retirement, and the last payment shall be made as of the last day of the month in which the death of the retired member occurs.

B. A member is eligible for an accidental disability pension if the member's employment is terminated by reason of accidental disability. A member is eligible for an ordinary disability pension if the member's employment is terminated before the member's normal retirement date by reason of ordinary disability. A member shall file an application for a disability pension after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental, catastrophic or ordinary disability pension is a prerequisite to receipt of the pension. Payment of an accidental, catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the member is receiving sick leave payments or a temporary disability pension, whichever is later. The last payment shall be made as of the last day of the month in which the death of the retired member occurs, or if disability ceases before the member's normal retirement date, the first day of the month in which disability ceases.

C. A member is eligible for a catastrophic disability pension if the member's employment is terminated by reason of catastrophic disability. If more than the allowable catastrophic disability pensions are approved by the local boards in a calendar year, from and after December 31 of the following calendar year a member of the system is not eligible to apply for a catastrophic disability pension. On or before January 31, the board of trustees shall report to the president of the senate and the speaker of the house of representatives the number of catastrophic disability pensions that were approved by the local boards in the preceding calendar year. For the purposes of this subsection, "allowable catastrophic disability pensions" means for calendar year 2004, ten, and for subsequent calendar years the number of allowable catastrophic disability pensions allowed in the prior calendar year minus the number of catastrophic disability pensions approved by the local boards in the prior calendar year plus four.

D. Notwithstanding any other provision of this section, no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.

2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.

3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.

E. Accidental or ordinary disability shall be considered to have ceased and an accidental or ordinary disability pension terminates if the member:

1. Has sufficiently recovered, in the opinion of the local board, based on a medical examination by a physician or clinic appointed by the local board, to be able to engage in a reasonable range of duties within the member's department and the member refuses an offer of employment by an employer in the system.

2. Refuses to undergo any medical examination requested by the local board, provided that a medical examination shall not be required more frequently than once in any calendar year.

F. Sixty months after the award of a catastrophic disability pension, the local board shall reevaluate the member. If the member still qualifies for the catastrophic disability pension, the member is entitled to continue to receive the pension at the reduced amount prescribed in section 38-845, subsection E. A catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a physician or a clinic appointed by the local board. After the sixty month review, the catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a physician or a clinic appointed by the local board, except that the medical examination shall not be required more frequently than once in a calendar year. The medical review after the sixty month period does not apply after the date the catastrophic disability pensioner would have attained twenty-five years of service assuming the pensioner remained a member of the system. The local board shall also terminate a catastrophic disability pension if the member refuses to undergo any medical examination requested by the local board. A member whose catastrophic disability pension is terminated may apply for and if eligible is entitled to receive an accidental disability pension as provided in this section.

G. Subsection E of this section does not apply after a disability pensioner's normal retirement date. The amount of a disability pension shall not be recomputed at a disability pensioner's normal retirement date.

H. If accidental or ordinary disability ceases before a retired member attains the member's normal retirement date and the member is reemployed by an employer, the pension payable on the member's subsequent retirement shall be determined as provided in section 38-849, subsection ~~D~~ E.

I. A member shall be eligible for a temporary disability pension if the member's employment is terminated before the member's normal retirement date by reason of temporary disability. Payment of a temporary disability pension shall commence as of the first day of the month following the date of disability or the expiration of a period during which the member is receiving compensation and sick leave payments, whichever is later. The last payment shall be made as of the first day of the month in which either the death of the member occurs or the local board deems the member is no longer under temporary disability, whichever first occurs, provided that no more than twelve monthly temporary disability payments shall be made in total to the member.

J. If on the expiration of a temporary disability pension the local board finds on application that the member has an accidental or ordinary disability, the member shall be eligible for an accidental or ordinary disability pension, as provided in this section.

K. The system shall make payments pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section. Notwithstanding any other provision of the system, beginning January 1, 1987 payment of benefits to a member shall commence no later than April 1 of the calendar year following the later of:

1. The calendar year in which the member attains seventy and one-half years of age.

2. The date the member terminates employment.

Sec. 6. Section 38-846, Arizona Revised Statutes, is amended to read:

38-846. Death benefits

A. The surviving spouse of a deceased retired member shall be paid a surviving spouse's pension if the spouse was married to the member for a period of at least two consecutive years at the time of the member's death. Payment of a surviving spouse's pension shall commence as of the last day of the month following the retired member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs.

B. The surviving spouse of a deceased member shall be paid a surviving spouse's pension if the spouse was married to the member on the date of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs.

C. The surviving spouse of a deceased retired member is entitled to receive a monthly amount equal to four-fifths of the monthly amount of pension that the decedent would have received immediately before death.

D. The surviving spouse of a deceased member who was not killed in the line of duty or did not die from injuries suffered in the line of duty is entitled to receive a monthly amount calculated in the same manner as an accidental disability pension is calculated pursuant to section 38-845,

subsection B. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation less any amount payable for an eligible child under this section. A member who was eligible for or receiving a temporary disability pension at the time of the member's death is not deemed to be retired for the purposes of this subsection. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of the performance of the decedent's public safety duties and does not include suicide.

E. A surviving spouse shall file a written application with the system in order to receive a survivor benefit.

F. If at least one eligible child is surviving at the death of a member or retired member, but no surviving spouse's pension then becomes payable, a guardian's or conservator's pension shall be payable to the person who is serving, or who is deemed by the local board to be serving, as the legally appointed guardian or custodian of the eligible child. If an eligible child of a member or retired member is surviving at the member's or retired member's death, the eligible child is entitled to receive a child's pension payable to the person who is serving or who is deemed by the local board to be serving as the legally appointed guardian or custodian of the eligible child. A child's pension or a guardian's or conservator's pension terminates if the child is adopted. In the case of a disabled child, the child's pension or the guardian's or conservator's pension terminates if the child ceases to be under a disability or ceases to be a dependent of the surviving spouse or guardian. The member may also direct by designation to the local board that the guardian or conservator pension or child's pension be paid to the trustee of a trust created for the benefit of the eligible child. A guardian's or conservator's pension shall also become payable if at least one eligible child is surviving when a surviving spouse's pension terminates. The guardian or conservator shall file a written application with the system in order to receive the guardian's or conservator's pension and child's pension.

G. The board shall pay a guardian's or conservator's pension during the same period in which a pension is payable to at least one eligible child. The guardian, conservator or designated trustee is entitled to receive the same monthly amount as would have been payable to the decedent's surviving spouse had a surviving spouse's pension become payable on the decedent's death.

H. Each eligible child is entitled to a monthly amount equal to one-tenth of the monthly amount of pension that the deceased member or retired member would have received immediately before death. The pension for a child of a deceased member shall be calculated in the same manner as an accidental disability is calculated pursuant to section 38-845, subsection B. A deceased member shall be assumed to be retired for reasons of accidental

disability immediately before the member's death. If there are three or more children eligible for a child's pension, a maximum of two shares of the child's pension shall be payable, the aggregate of such shares to be apportioned in equal measure to each eligible child.

I. If a member has accumulated contributions remaining in the system at the date of death of the last beneficiary, a lump sum refund of such accumulated contributions shall be payable to the person whom the member has designated TO THE LOCAL BOARD as the member's refund beneficiary, or if the member's refund beneficiary is not then surviving, to the designated contingent refund beneficiary, or if the designated contingent refund beneficiary is not then surviving~~, to such person~~ OR IF THE SURVIVING DESIGNATED BENEFICIARY DOES NOT APPLY FOR THE BENEFIT WITHIN TWELVE MONTHS FROM THE DATE OF THE MEMBER'S DEATH, AT THE ELECTION OF THE LOCAL BOARD TO THE PERSON'S nearest of kin as ~~selected~~ DETERMINED by the local board OR TO THE ESTATE OF THE DECEASED MEMBER. The amount of the lump sum refund shall be the remaining accumulated contributions. The beneficiary or person who is ~~selected as~~ CLAIMING TO BE THE nearest of kin shall file a written application in order to receive the refund.

J. In calculating the right to and the amount of the surviving spouse's pension, the law in effect on the date of the death of the member or retired member controls, unless the law under which the member retired provides for a greater benefit amount for a surviving spouse.

Sec. 7. Section 38-847, Arizona Revised Statutes, is amended to read:

38-847. Local boards

A. The administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation fire fighting agency shall have a local board. A nonprofit corporation operating pursuant to sections 28-8423 and 28-8424 shall have one local board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, or the head's designee from among the other members of the merit system, if it exists for the group of members, appointed by the mayor or chief elected official and

with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in a city or Indian tribes where both fire and police department employees are members.

2. For state agencies and nonprofit corporations operating pursuant to sections 28-8423 and 28-8424, two members elected by secret ballot by members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairman.

3. For fire districts organized pursuant to section 48-804, the secretary-treasurer as chairman, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the secretary-treasurer, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.

B. On the taking effect of this system for an employer, the appointments and elections of local board members shall take place with one elective and appointive local board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the system. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees may appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Each local board shall meet at least twice a year. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility and service credits, and determine the amount, manner and time of payment of any benefits under the system.

2. To prescribe procedures to be followed by claimants in filing applications for benefits.

3. To make a determination as to the right of any claimant to a benefit and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination. EXCEPT AS OTHERWISE REQUIRED BY LAW, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board. The granting and approval of this relief is considered final and binding unless a timely request for rehearing or appeal is made as provided in this article, unless the board of trustees determines that granting the relief requested would violate the internal revenue code or threaten to impair the system's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the system's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to title 12, chapter 7, article 6.

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for benefits and to forward such information to the board of trustees.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the board of trustees.

6. To furnish the employer, the board of trustees and the legislature, on request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

9. To appoint medical boards as provided in section 38-859.

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board shall have no power to add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or benefits under the system. Notwithstanding any limitations periods imposed in this article, including subsection D, paragraph 3 and subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or

threatens to impair the system's status as a qualified plan under the internal revenue code, the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board, from time to time, shall establish and adopt such rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, any action by a majority vote of the members of a local board that is not inconsistent with the provisions of the system and the internal revenue code shall be final, conclusive and binding on all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and ALL documents ~~supporting the local board's action~~ SUBMITTED TO THE LOCAL BOARD FOR THE ACTION TAKEN, INCLUDING THE REPORTS OF A MEDICAL BOARD. The board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the system's status as a qualified plan under the internal revenue code.

H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the system's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely on information furnished by the employer, A MEDICAL BOARD, the board of trustees, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer and not the board of trustees or system at such rates and in such amounts as the local board shall approve. Legal counsel that is employed by the local board is independent of the employer and any employee organization or member and owes its duty of loyalty only to the local board in connection with its representation of the local board.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the employer for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Sec. 8. Section 38-849, Arizona Revised Statutes, is amended to read:

38-849. <u>Limitations on receiving pension; violation; classification; reemployment after severance; reinstatement of service credits; reemployment of retired or disabled member</u>

A. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member shall be subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the retirement system.

B. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the system with an intent to defraud the system is guilty of a class 5 felony. If any change or error in the records results in any member or beneficiary receiving from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime specified in this subsection, section 13-713 applies.

C. IF A MEMBER WHO RECEIVED A SEVERANCE REFUND ON TERMINATION OF EMPLOYMENT PURSUANT TO SECTION 38-846.02 BECOMES REEMPLOYED WITH THE SAME EMPLOYER WITHIN TWO YEARS AFTER THE FORMER MEMBER'S TERMINATION DATE, THE MEMBER MAY HAVE FORFEITED CREDITED SERVICE ATTRIBUTABLE TO SERVICE RENDERED DURING A PRIOR PERIOD OF SERVICE AS AN EMPLOYEE RESTORED ON SATISFACTION OF EACH OF THE FOLLOWING CONDITIONS:

1. THE MEMBER FILES WITH THE SYSTEM A WRITTEN APPLICATION FOR REINSTATEMENT OF FORFEITED CREDITED SERVICE WITHIN NINETY DAYS AFTER AGAIN BECOMING AN EMPLOYEE.

2. THE RETIREMENT FUND IS PAID THE TOTAL AMOUNT PREVIOUSLY WITHDRAWN PURSUANT TO SECTION 38-846.02 PLUS COMPOUND INTEREST FROM THE DATE OF WITHDRAWAL TO THE DATE OF REPAYMENT. INTEREST SHALL BE COMPUTED AT THE RATE OF NINE PER CENT FOR EACH YEAR COMPOUNDED EACH YEAR FROM THE DATE OF WITHDRAWAL TO THE DATE OF REPAYMENT. FORFEITED CREDITED SERVICE SHALL NOT BE RESTORED UNTIL COMPLETE PAYMENT IS RECEIVED BY THE FUND.

3. THE REQUIRED PAYMENT IS COMPLETED WITHIN ONE YEAR AFTER RETURNING TO EMPLOYEE STATUS.

~~C.~~ D. If a member who received a severance refund on termination of employment, as provided in section 38-846.02, is subsequently reemployed by an employer, the member's prior service credits shall be cancelled and service shall be credited only from the date the member's most recent reemployment period commenced. However, ~~if the former member's reemployment with the same employer occurred within two years after the former member's termination date, and, within ninety days after reemployment the former member signs a written election consenting to reimburse the fund within one year, the former member shall be required to redeposit the amount withdrawn at the time of the former member's separation from service, with interest thereon at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment~~ A PRESENT ACTIVE MEMBER OF THE SYSTEM WHO FORFEITED CREDITED SERVICE, RECEIVED A SEVERANCE REFUND PURSUANT TO SECTION 38-846.02 AND BECOMES REEMPLOYED WITH THE SAME EMPLOYER TWO YEARS OR MORE AFTER THE MEMBER'S TERMINATION DATE OR BECOMES REEMPLOYED WITH ANOTHER EMPLOYER MAY ELECT TO REDEEM ANY PART OF THAT FORFEITED CREDITED SERVICE BY PAYING INTO THE SYSTEM ANY AMOUNTS REQUIRED PURSUANT TO THIS SUBSECTION. A PRESENT ACTIVE MEMBER WHO ELECTS TO REDEEM ANY PART OF

FORFEITED CREDITED SERVICE FOR WHICH THE MEMBER IS DEEMED ELIGIBLE BY THE BOARD SHALL PAY INTO THE SYSTEM THE AMOUNTS PREVIOUSLY PAID OR TRANSFERRED TO THE MEMBER AS A SEVERANCE REFUND PLUS AN AMOUNT, COMPUTED BY THE SYSTEM'S ACTUARY THAT IS NECESSARY TO EQUAL THE INCREASE IN THE ACTUARIAL PRESENT VALUE OF PROJECTED BENEFITS RESULTING FROM THE REDEMPTION CALCULATED USING THE ACTUARIAL METHODS AND ASSUMPTIONS PRESCRIBED BY THE SYSTEM'S ACTUARY. On satisfaction of this obligation the member's prior service credits shall be reinstated.

~~D.~~ E. If a retired member becomes employed in any capacity by the employer from which the member retired before ~~sixty consecutive days~~ ONE YEAR after the member's date of retirement, the system shall not make pension payments to the retired member during the period of reemployment. If a retired member is reemployed by an employer, no employee contributions shall be made on the retired member's account, nor any service credited, during the period of the reemployment. THIS SUBSECTION DOES NOT APPLY TO A RETIRED MEMBER WHO IS ASSIGNED VOLUNTARY DUTIES ACTING AS A LIMITED AUTHORITY PEACE OFFICER FOR AN EMPLOYER PURSUANT TO THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD RULES, TO A RETIRED MEMBER WHO SUBSEQUENTLY BECOMES EMPLOYED BY AN EMPLOYER FROM WHICH THE MEMBER RETIRED AFTER NO LESS THAN SIXTY CONSECUTIVE DAYS FROM THE MEMBER'S RETIREMENT DATE IF THE RETIRED MEMBER IS HIRED AS A RESULT OF PARTICIPATING IN AN OPEN COMPETITIVE NEW HIRE PROCESS FOR AN ENTRY LEVEL NONSUPERVISORY POSITION OR IF THE RETIRED MEMBER IS HIRED AS A FIRE INSPECTOR OR ARSON INVESTIGATOR. Notwithstanding this subsection, if a retired member subsequently becomes employed in the same position by the employer from which the member retired, the system shall not make pension payments to the retired member during the period of reemployment. On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. If a member who retired under disability is reemployed by an employer as an employee, that member shall be treated as if the member had been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. Within ten days after a retired member is reemployed by the employer from which the member retired, the employer shall advise the board in writing as to whether the retired member has been reemployed in the same position from which the member retired. The board shall review all reemployment determinations. If the board is not provided the necessary information to make a reemployment determination, the board shall suspend pension payments until information is received and a determination is made that the reemployment meets the requirements of this subsection. For the purposes of this subsection, "same position" means the member is in a position where the member performs substantially similar duties that were performed and exercises substantially similar authority that was exercised by the retired member before retirement.

~~E.~~ F. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the board's written request is subject to civil suit by the system in the superior court in Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the system a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the system, plus interest at the rate prescribed by section 44-1201, until all amounts owed are paid to the system.

~~F.~~ G. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the board and system and assessed against the member or survivor.

Sec. 9. Section 38-853, Arizona Revised Statutes, is amended to read:

38-853. Transfer of credited service

A. A member who terminates employment with an employer and accepts~~, within two years,~~ a position with the same or another employer participating in the system, AFTER COMPLETING AN APPLICATION THAT IS ACCEPTABLE TO THE BOARD, shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The termination of employment shall not constitute a break in service. However, the period not employed shall not be considered as service.

B. The new employer's account shall be credited with the member's accumulated contributions plus the amount, if any, necessary to equal the increase in the actuarial present value of projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation resulting from the transfer as calculated by the system's actuary using the actuarial methods and assumptions adopted by the board.

Sec. 10. Section 38-853.01, Arizona Revised Statutes, is amended to read:

38-853.01. Redemption of prior service; calculation

A. Each present active member of the system who has at least ten years of service with the system may elect to redeem up to sixty months of any part of the following prior service or employment by paying into the system any amounts required under subsection B if the prior service or employment is not on account with any other retirement system:

1. Prior service in this state as an employee with an employer now covered by the system or prior service with an agency of the United States government, a state of the United States or a political subdivision of this

state or of a state of the United States as a full-time paid firefighter or full-time paid certified peace officer.

2. Subject to any limitations prescribed by federal law, prior employment as an employee of a corporation that contracted with an employer now covered by the system to provide firefighting services on behalf of that employer as a full-time paid firefighter or that provided firefighting services for a political subdivision of this state.

B. Any present active member who elects to redeem any part of the prior service or employment for which the employee is deemed eligible by the board under this section shall pay into the system the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the board and the additional amount, if any, computed by the system's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the system's actuary. THE DISCOUNT RATE USED BY THE ACTUARY FOR THE REDEMPTION CALCULATION PURSUANT TO THIS SUBSECTION IS AN AMOUNT EQUAL TO THE LESSER OF THE ASSUMED RATE OF RETURN THAT IS PRESCRIBED BY THE BOARD OR AN AMOUNT EQUAL TO THE YIELD ON A TEN-YEAR TREASURY NOTE AS OF MARCH 1 THAT IS PUBLISHED BY THE FEDERAL RESERVE BOARD PLUS TWO PER CENT. THE DISCOUNT RATE IS EFFECTIVE BEGINNING IN THE NEXT FISCAL YEAR, AND THE BOARD SHALL RECALCULATE THE RATE EACH YEAR.

C. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the system, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Sec. 11. Section 38-859, Arizona Revised Statutes, is amended to read:

38-859. <u>Medical boards; purposes; composition; medical examinations</u>

A. The purposes of a medical board are to:

1. Identify a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system and for which benefits may otherwise be limited by section 38-844, subsection D.

2. Evaluate a member's eligibility for an accidental disability pension.

3. Evaluate a member's eligibility for an ordinary disability pension.

4. Evaluate a member's eligibility for a temporary disability pension.

5. Evaluate a member's eligibility for a catastrophic disability pension.

6. FOR THE PURPOSES OF SECTION 38-846, DETERMINE THROUGH APPROPRIATE MEDICAL EVIDENCE THE PROXIMATE CAUSE OF DEATH FOR MEMBERS WHO ARE KILLED IN

THE LINE OF DUTY IF THE DEATH OCCURS MORE THAN ONE YEAR AFTER THE DATE OF INJURY.

B. For the purpose of determining a disability, the medical board shall be composed of a designated physician or a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by section 38-844, subsection D, and for this purpose, the medical board shall be composed of a designated physician or a clinic that may be the employer's regular employee or contractee.

C. A finding of accidental, ordinary, temporary or catastrophic disability shall be based on medical evidence by a physician or clinic appointed by the local board pursuant to section 38-847, subsection D, paragraph 9 that established the disability. The local board shall resolve material conflicts in medical evidence. If required, the local board may employ other physicians or clinics to report on special cases. With the approval of the local board, a physician or clinic employed by the local board may employ occupational specialists to assist the physician or clinic in rendering an opinion.

D. All employees shall undergo medical examinations before a physician or clinic appointed by the local board pursuant to and for the reasons prescribed in this article. An employee who fails to comply with this subsection waives all rights to disability benefits under this article.

E. The examining physician or clinic shall report the results of examinations to the local board, and the secretary of the local board shall preserve the report as a permanent record. Medical examinations conducted pursuant to this article shall not be conducted or utilized for the purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to the receipt of or qualification for pension benefits or service credits under the system.

F. This section does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

Sec. 12. Section 38-860, Arizona Revised Statutes, is amended to read:

38-860. <u>Domestic relations orders; procedures; payments</u>

A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the system that would otherwise be payable to that participant shall instead be paid by the system to an alternate payee.

B. A domestic relations order is not effective against the system unless the domestic relations order is approved by the system and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K and shall also meet all of the following requirements:

1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing address of the alternate payee that is covered by the domestic relations order.

2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the system to the alternate payee or the precise manner in which the amount or percentage is to be determined.

3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.

4. The domestic relations order shall state that the domestic relations order applies to the system.

5. The domestic relations order shall not require the system to provide any type or form of benefit or any option not otherwise provided by this article.

6. The domestic relations order shall not require the system to provide increased benefits determined on the basis of actuarial value.

7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.

8. THE DOMESTIC RELATIONS ORDER SHALL HAVE BEEN ISSUED BY A COURT OF COMPETENT JURISDICTION OF A STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

C. On receipt by the system of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the system shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.

D. The system has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period, and if the system can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the system shall hold the segregated funds and shall pay the remaining portion of the benefits to the participant. If the system determines the domestic relations order is a plan approved domestic relations order, the

system shall pay the participant and alternate payee pursuant to the plan approved domestic relations order in the month following the month in which the determination was issued, or in the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the system determines the domestic relations order fails to qualify as a plan approved domestic relations order, the system shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations order. If the participant is currently receiving benefits, and if the system can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the system shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the system shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the system shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the system shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the system that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the system.

E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the system. The system has no duty to attempt to locate any participant or alternate payee. The system has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the system. If the address of an alternate payee is unknown to the system, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the system shall either:

1. Hold the alternate payee's portion until such a time as the alternate payee provides the system with a current address. Once the system is notified of the alternate payee's current address, the system shall prospectively pay the alternate payee's portion to the alternate payee.

2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J,

until such a time as the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.

F. If the address of a participant is unknown to the system, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the system shall hold the participant's portion until the participant provides the system with a current address.

G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest the system shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the system. The system has no duty to attempt to locate any personal representative. The system is not responsible for making benefit payments to a personal representative until the personal representative has both:

1. Persuaded the system that the personal representative is authorized to receive payments designated for the deceased alternate payee.

2. Provided the system with an address to which the payments should be sent.

H. If, within thirty days after the date the system verifies an alternate payee's death, a personal representative does not make demand on the system for the alternate payee's portion, the system shall either:

1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.

2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the system to the participant to the personal representative.

Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.

I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.

J. The system is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the system pursuant to this section. If one or more payments are made by the system to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.

K. The system may adopt policies and procedures that govern the implementation of this section.

Sec. 13. Section 38-884, Arizona Revised Statutes, is amended to read:

38-884. Membership of retirement plan; termination; credited service; redemption

A. Each employee of a participating employer is a member of the plan unless the employee is receiving a pension from the plan. A person employed shall undergo a medical examination performed by a doctor or clinic appointed by the local board or, in the case of a state correctional officer who is employed by the state department of corrections, complete a physical examination pursuant to section 41-1822, subsection B. For the purposes of subsection B of this section, the doctor or clinic appointed by the local board may be the employer's regular employee or contractor.

B. The purpose of the medical examination authorized by this section is to identify a member's physical or mental condition or injury that existed or occurred before the member's date of membership in the plan. Any employee who fails or refuses to submit to the medical examination prescribed in this section is deemed to waive all rights to disability benefits under this article. Medical examinations conducted under this article shall not be conducted or used for purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to receipt or qualification for pension benefits or service credits from the fund. This subsection does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

C. If a member who becomes a member of the plan before January 1, 2012 ceases to be an employee for any reason other than death or retirement, within twenty days after filing a completed application with the board, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:

1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.

2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:

(a) 5.0 to 5.9 years of credited service, twenty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(b) 6.0 to 6.9 years of credited service, forty per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(c) 7.0 to 7.9 years of credited service, fifty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(d) 8.0 to 8.9 years of credited service, seventy per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(e) 9.0 to 9.9 years of credited service, eighty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

(f) 10.0 or more years of credited service, one hundred per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

D. If a member who becomes a member of the plan before January 1, 2012 has more than ten years of credited service with the plan, leaves the monies prescribed in subsection C of this section on account with the plan for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection C of this section plus interest at a rate determined by the board for each year computed from and after the member's termination of employment.

E. The accumulated member contributions of a member who ceases to be an employee for a reason other than death or retirement and who becomes a member of the plan on or after January 1, 2012 shall be paid to the member plus interest at a rate determined by the board as of the date of termination within twenty days after filing with the plan a written application for payment.

F. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board.

G. Service shall be credited to a member's individual credited service account in accordance with rules the local board prescribes. In no case shall more than twelve months of credited service be credited on account of all service rendered by a member in any one year. In no case shall service be credited for any period during which the member is not employed in a designated position, except as provided by sections 38-921 and 38-922.

H. Credited service is forfeited if the amounts prescribed in subsection C, D or E of this section are paid or are transferred in accordance with this section.

I. If a former member becomes reemployed with the same employer within two years after the former member's termination date, a member may have

forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:

1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.

2. The retirement fund is paid the total amount previously withdrawn pursuant to subsection C, D or E of this section plus compound interest from the date of withdrawal to the dates of repayment. Interest shall be computed at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.

3. The required payment is completed within one year after returning to employee status.

J. IF A MEMBER WHO RECEIVES A SEVERANCE REFUND ON TERMINATION OF EMPLOYMENT PURSUANT TO SUBSECTION C, D OR E OF THIS SECTION IS SUBSEQUENTLY REEMPLOYED BY AN EMPLOYER, THE MEMBER'S PRIOR SERVICE CREDITS ARE CANCELLED, AND THE BOARD SHALL CREDIT SERVICE ONLY FROM THE DATE THE MEMBER'S MOST RECENT REEMPLOYMENT PERIOD COMMENCED. HOWEVER, a present active member of the plan who received a refund of accumulated contributions from the plan pursuant to subsection C, D or E of this section ~~and~~, forfeited credited service pursuant to subsection H of this section AND BECOMES REEMPLOYED WITH THE SAME EMPLOYER TWO YEARS OR MORE AFTER THE MEMBER'S TERMINATION DATE OR BECOMES REEMPLOYED WITH ANOTHER EMPLOYER may elect to redeem any part of that forfeited credited service by paying into the plan any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited service for which the member is deemed eligible by the board shall pay into the plan the amounts previously paid or transferred as a refund of the member's accumulated contributions plus an amount, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary. ON SATISFACTION OF THIS OBLIGATION, THE BOARD SHALL REINSTATE THE MEMBER'S PRIOR SERVICE CREDITS.

K. A retired member may become employed by an employer in a designated position and continue to receive a pension if the employment occurs at least twelve months after retirement. The retired member shall not contribute to the fund and shall not accrue credited service. If a retired member becomes employed by an employer in a designated position before twelve months after retirement:

1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.

2. The retired member shall not contribute to the fund and shall not accrue credited service.

Sec. 14. Section 38-893, Arizona Revised Statutes, is amended to read:

38-893. Local boards; powers and duties; rules; hearings; administrative review

A. The administration of the plan and the responsibility for making the provisions of the plan effective for each employer are vested in a local board. The state department of corrections, the department of juvenile corrections, the department of public safety, each participating county sheriff's department, each participating city or town, each participating employer of full-time dispatchers for eligible groups as defined in section 38-842 and the judiciary shall have a local board. Each local board is constituted as follows:

1. For the state departments, two members who are elected by secret ballot by members employed by that department in a designated position and two citizens who are appointed by the governor. The director of each state department shall appoint one member to the local board who is knowledgeable in personnel actions. Each state department local board shall elect a chairman.

2. For each participating county, the chairman of the board of supervisors, or the chairman's designee who is approved by the board of supervisors, as chairman, two members who are elected by secret ballot by members employed by the participating county in a designated position and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, who are appointed by the chairman of the board of supervisors with the approval of the board of supervisors.

3. For political subdivisions, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer.

4. For the judiciary, two members who are elected by secret ballot by members who are employed as a probation, surveillance or juvenile detention officer, a designee of the chief justice of the Arizona supreme court and two citizens, one of whom shall be the head of a human resource department for the group of members, appointed by the chief justice.

B. The appointments and elections of local board members shall take place with one elective and one appointive board member, as designated by the appointing authority, serving a term ending two years after the date of appointment or election and the other local board members serving a term ending four years after the date of appointment or election. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as provided in this section.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the plan. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees shall appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two year or four year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Within ten days after the member's appointment or election, each member of a local board shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the plan.

D. Except as limited by subsection E of this section, a local board shall:

1. Decide all questions of eligibility and service credits and determine the amount, manner and time of payment of any benefit under the plan.

2. Make a determination as to the right of a claimant to a benefit and afford a claimant or the board of trustees, or both, a right to a rehearing on the original determination. ~~,~~ EXCEPT AS OTHERWISE REQUIRED BY LAW, UNLESS ALL PARTIES INVOLVED IN A MATTER PRESENTED TO THE LOCAL BOARD FOR DETERMINATION OTHERWISE AGREE, THE LOCAL BOARD SHALL COMMENCE A HEARING ON THE MATTER WITHIN NINETY DAYS AFTER THE DATE THE MATTER IS PRESENTED TO THE LOCAL BOARD FOR DETERMINATION. IF A LOCAL BOARD FAILS TO COMMENCE A HEARING AS PROVIDED IN THIS PARAGRAPH, ON A MATTER PRESENTED TO THE LOCAL BOARD FOR DETERMINATION, THE RELIEF DEMANDED BY THE PARTY PETITIONING THE LOCAL BOARD IS DEEMED GRANTED AND APPROVED BY THE LOCAL BOARD. THE GRANTING AND APPROVAL OF THIS RELIEF IS CONSIDERED FINAL AND BINDING UNLESS A TIMELY REQUEST FOR REHEARING OR APPEAL IS MADE AS PROVIDED IN THIS ARTICLE, unless the board of trustees determines that granting the relief requested would violate the internal revenue code or threaten to impair the plan's status as a qualified plan under the internal revenue code. If the board of trustees determines that granting the requested relief would violate the internal revenue code or threaten to impair the plan's status as a qualified plan, the board of trustees may refuse to grant the relief by issuing a written determination to the local board and the party petitioning the local board for relief. The decision by the board of trustees is subject to judicial review pursuant to title 12, chapter 7, article 6.

3. Request and receive from the employers and from members information as is necessary for the proper administration of the plan and action on claims for benefits and forward the information to the board of trustees.

4. Distribute, in the manner the local board determines to be appropriate, information explaining the plan that is received from the board of trustees.

5. Furnish the employer, the board of trustees and the legislature, on request, with annual reports with respect to the administration of the plan that are reasonable and appropriate.

6. Appoint a medical board, which is composed of a designated physician or clinic other than the employer's regular employee or contractor. If required, the local board may employ other physicians to report on special cases. The examining physician or clinic shall report the results of examinations made to the local board, and the secretary of the local board shall preserve the report as a permanent record.

7. Sue and be sued to effectuate the duties and responsibilities set forth in this article.

8. Prescribe procedures to be followed by claimants in filing applications for benefits.

9. Receive and review the actuarial valuation of the plan for its group of members.

10. Receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

E. A local board has no power to add to, subtract from, modify or waive any of the terms of the plan, change or add to any benefits provided by the plan or waive or fail to apply any requirement of eligibility for membership or benefits under the plan. Notwithstanding any limitations periods imposed in this article, including subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the plan's status as a qualified plan under the internal revenue code the local board's decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board, from time to time, shall establish and adopt rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, an action by a majority vote of the members of a local board that is not inconsistent with the provisions of the plan and the internal revenue code is final, conclusive and binding on all persons affected by it, unless a timely application for a rehearing or appeal is filed as provided in this article. No later than twenty days after taking action, the local board shall submit to the board of

trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and ALL documents ~~supporting the local board's action~~ SUBMITTED TO THE LOCAL BOARD FOR THE ACTION TAKEN, INCLUDING THE REPORTS OF A MEDICAL BOARD. The board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the plan's status as a qualified plan under the internal revenue code.

H. A claimant or the board of trustees may apply for a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the plan's status as a qualified plan under the internal revenue code, no limitation period for the board of trustees to seek a rehearing of a local board decision applies. A claimant or the board of trustees shall file an application for rehearing in writing with a member of the local board or its secretary within sixty days after:

1. The claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the plan pursuant to the local board's original action, whichever occurs first.

2. The board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board is entitled to rely on information furnished by the employer, the board of trustees, independent legal counsel or the actuary for the plan.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt bylaws as it deems necessary. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section.

N. The employer and not the board of trustees or plan shall pay the fees of the medical board and of the local board's legal counsel and all other expenses of the local board necessary for the administration of the plan at rates and in amounts as the local board approves.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account

pursuant to the provisions of the fund. The local board shall keep on file, in the manner it deems convenient and proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board are indemnified from the assets of the fund for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Sec. 15. Title 38, chapter 5, article 6, Arizona Revised Statutes, is amended by adding section 38-895.02, to read:

38-895.02. Payment of pension

THE BOARD SHALL NOT MAKE A RETROACTIVE PAYMENT OF A PENSION TO A PERSON FOR A PERIOD OF MORE THAN NINETY DAYS BEFORE THE DATE OF THE PERSON'S APPLICATION FOR BENEFITS.

Sec. 16. Section 38-904, Arizona Revised Statutes, is amended to read:

38-904. Death benefits; amount

A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the board. If the designated person or persons do not survive the deceased member OR IF THE DESIGNATED PERSON DOES NOT CLAIM THE BENEFIT, the payment is payable, AT THE ELECTION OF THE LOCAL BOARD, TO THE DESIGNATED PERSON'S NEAREST OF KIN AS DETERMINED BY THE LOCAL BOARD OR to the estate of the deceased member. THE BENEFICIARY OR PERSON WHO IS CLAIMING TO BE THE NEAREST OF KIN SHALL FILE A WRITTEN APPLICATION IN ORDER TO RECEIVE THE REFUND. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.

B. If the deceased retired or active member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each eligible child is entitled to a child's pension. A child's pension terminates if the child is adopted. In the case of a disabled child, the child's pension terminates if the child ceases to be under a disability or ceases to be a dependent of the surviving spouse or guardian. The amount of the pension of each eligible child is an equal share of the amount of the surviving spouse's pension. The board shall pay the surviving minor or disabled child's pension to the person who is the legally appointed guardian or custodian of the eligible child.

Sec. 17. Section 38-909, Arizona Revised Statutes, is amended to read:

38-909. Redemption of prior service; calculation

A. Each present active member of the plan who has at least ten years of credited service with the plan who had previous service in this state as an employee with an employer now covered by the plan or who had previous

service with an agency of the United States government, a state of the United States or a political subdivision of THIS STATE OR a state of the United States as a full-time paid corrections officer or full-time paid certified peace officer may elect to redeem up to sixty months of any part of the prior service by paying into the plan any amounts required under subsection B if the prior service is not on account with any other retirement system.

B. Any present active member who elects to redeem any part of the prior service OR EMPLOYMENT for which the employee is deemed eligible by the board under this section shall pay into the plan the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the board and the additional amount, if any, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.

C. The discount rate used by the actuary for the redemption calculation pursuant to subsection B is an amount equal to the lesser of the assumed rate of return that is prescribed by the board or an amount equal to the yield on a ten year treasury note as of March 1 that is published by the federal reserve board plus two per cent. This discount rate is effective beginning in the next fiscal year and shall be recalculated each year.

D. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the plan, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

Sec. 18. Section 38-910, Arizona Revised Statutes, is amended to read:

38-910. <u>Domestic relations orders; procedures; payments</u>

A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the plan that would otherwise be payable to that participant shall instead be paid by the plan to an alternate payee.

B. A domestic relations order is not effective against the plan unless the domestic relations order is approved by the plan and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K and shall also meet all of the following requirements:

1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing

address of the alternate payee that is covered by the domestic relations order.

2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the plan to the alternate payee or the precise manner in which the amount or percentage is to be determined.

3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.

4. The domestic relations order shall state that the domestic relations order applies to the plan.

5. The domestic relations order shall not require the plan to provide any type or form of benefit or any option not otherwise provided by this article.

6. The domestic relations order shall not require the plan to provide increased benefits determined on the basis of actuarial value.

7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.

8. THE DOMESTIC RELATIONS ORDER SHALL HAVE BEEN ISSUED BY A COURT OF COMPETENT JURISDICTION OF A STATE, TERRITORY OR POSSESSION OF THE UNITED STATES.

C. On receipt by the plan of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the plan shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.

D. The plan has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period, and if the plan can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds and shall pay the remaining portion of the benefits to the participant. If the plan determines the domestic relations order is a plan approved domestic relations order, the plan shall pay the participant and alternate payee pursuant to the plan approved domestic relations order in the month following the month in which the determination was issued, or in the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the plan determines the domestic relations order fails to qualify as a plan approved domestic relations order, the plan shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations

order. If the participant is currently receiving benefits, and if the plan can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the plan shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the plan shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the plan shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the plan that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the plan.

E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any participant or alternate payee. The plan has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the plan. If the address of an alternate payee is unknown to the plan, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the plan shall either:

1. Hold the alternate payee's portion until such a time as the alternate payee provides the plan with a current address. Once the plan is notified of the alternate payee's current address, the plan shall prospectively pay the alternate payee's portion to the alternate payee.

2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J, until such a time as the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.

F. If the address of a participant is unknown to the plan, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the plan shall hold the participant's portion until the participant provides the plan with a current address.

G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest the plan shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any personal representative. The plan is not responsible for making benefit payments to a personal representative until the personal representative has both:

1. Persuaded the plan that the personal representative is authorized to receive payments designated for the deceased alternate payee.

2. Provided the plan with an address to which the payments should be sent.

H. If, within thirty days after the date the plan verifies an alternate payee's death, a personal representative does not make demand on the plan for the alternate payee's portion, the plan shall either:

1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.

2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the plan to the participant to the personal representative.

Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.

I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.

J. The plan is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the plan pursuant to this section. If one or more payments are made by the plan to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.

K. The plan may adopt policies and procedures that govern the implementation of this section.

APPROVED BY THE GOVERNOR MARCH 29, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 29, 2012.

Passed the House March 19, 2012,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate January 24, 2012,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Steve Pierce LV
President of the Senate

Charmian Billington
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA~~
~~OFFICE OF GOVERNOR~~
~~This Bill was received by the Governor this~~

~~_____ day of _____, 20___,~~

~~at _____ o'clock _____ M.~~

~~_____~~
~~Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20_____,~~

~~at _____ o'clock _____ M.~~

~~_____~~
~~Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA~~
~~OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20___,~~

~~at _____ o'clock _____ M.~~

~~_____~~
~~Secretary of State~~

S.B. 1116

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 26, 2012

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Steve Pierce
President of the Senate

Shannon Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

27 day of March, 2012

at 8:30 o'clock A M.

Secretary to the Governor

Approved this 29th day of

March

at 10:40 o'clock A M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29th day of March, 2012

S.B. 1116

at 4:58 o'clock P M.

Ken Bennett
Secretary of State