

AN ACT

ENTITLED, An Act to revise certain retirement provisions regarding retired members of the South Dakota Retirement System who return to covered employment and to declare an emergency.

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

Section 1. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

If, on or after the effective date of this Act, a retired member reenters covered employment within the three consecutive calendar months that start with the member's effective date of retirement, the member's retirement is deemed invalid. If the member received one or more retirement annuity payments during the invalid retirement, the member shall either repay the payments as a lump sum immediately or the repayments shall be by contractual payments over a period of up to three years, which payments shall include interest at the assumed rate of return, or the repayments shall be by an actuarial reduction in eventual monthly benefits based on the mortality table and scale used to determine an actuarial equivalent, as defined in subdivision 3-12-47(3).

Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as follows:

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

If the retired member's benefits have not been reduced pursuant to § 3-12-106, the member's monthly retirement annuity shall be reduced by fifteen percent and the annual increase shall be eliminated throughout the period that the member reenters covered employment in accord with § 3-12-88. The reduction and elimination shall cease if the member again terminates covered employment. However, the foregoing provisions notwithstanding, the reduction and elimination do not apply if the member retired as a Class B member other than a justice, judge, or magistrate judge

and subsequently reenters covered employment as a Class A member.

If the retired member's benefits have been reduced pursuant to § 3-12-106, the member's benefits shall be suspended during the period that the member reenters covered employment and the annual increase shall be eliminated during the period that the member reenters covered employment, both in accord with § 3-12-111.1. The suspension and elimination shall cease if the member again terminates covered employment.

Whether the member's retirement benefits are unreduced or have been reduced, contributions required of the member pursuant to § 3-12-71 shall be deposited by the member's participating unit with the system for the benefit of the member to be transferred to an account within the deferred compensation program established pursuant to chapter 3-13. The contributions shall be governed by § 457 of the Internal Revenue Code of 1954, as amended and in effect on January 1, 2010. The foregoing notwithstanding, the contributions required of the member's employer unit pursuant to § 3-12-71 shall be deposited into the member trust fund created by this chapter, but without any association with or credit to the member. The member may not earn any additional benefits associated with the period that the member reenters covered employment.

Section 3. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Effective date of retirement," the first day of the month in which retirement benefits are payable pursuant to § 3-12-90;

Section 4. That subdivision (70) of § 3-12-47 be amended to read as follows:

(70) "Terminated," complete severance of employment from public service of any member by resignation or discharge, not including leave of absence, layoff, vacation leave, sick leave, or jury duty, and involving all termination proceedings routinely followed by the member's participating unit, including payment to the member for unused vacation leave,

payment to the member for unused sick leave, payment to the member for severance of an employment contract, severance of employer-provided health insurance coverage, severance of employer-provided life insurance coverage, or severance of any other such employer-provided perquisite of employment granted by the member's participating unit to an active employee;

Section 5. That § 3-12-71 be amended to read as follows:

3-12-71. The member shall make a contribution to the system, except as specified in section 2 of this Act, and the employer shall make an equal contribution to the system, except as otherwise specified, at the following rates:

- (1) Class A members five percent of compensation through June 30, 2002, and six percent of compensation after June 30, 2002;
- (2) Justices, judges, and magistrate judges nine percent of compensation;
- (3) All other Class B members eight percent of compensation.

The employer shall cause to be deducted on each payroll of a member for each payroll period the contribution payable by the member as provided in this section.

Except for those contributions specified in section 2 of this Act, contributions required of members by this section shall be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal Revenue Code of 1954, as amended and in effect on January 1, 1984. Such contributions shall be classified as member contributions for all purposes under this chapter. A member may not receive the amount of such contributions directly rather than as contributions under this section.

Section 6. That § 3-12-82 be amended to read as follows:

3-12-82. If less than three years of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of subdivision 3-12-47(24) is acquired after a retired member's

reentry into covered employment, the member upon subsequent retirement shall receive a refund of the member's contributions and seventy-five percent of the employer's contributions, plus interest on both at the effective rate, made during the period after reentry.

If three years or more of contributory service or noncontributory service as delineated in subsections (b), (e), (g) and (h) of subdivision 3-12-47(24) are acquired after a retired member's reentry into covered employment, the member upon subsequent retirement shall receive an additional allowance based upon the member's credited service and final compensation earned during such reentry. Only the member's credited service from the subsequent employment shall be taken into account in calculating a reduction pursuant to § 3-12-106, if any, in the member's additional allowance. In addition, the annual increase applied to the original allowance pursuant to § 3-12-88 shall be eliminated for such period of reemployment, unless the member retired as a Class B member other than a justice, judge, or magistrate judge and subsequently has reentered covered employment as a Class A member.

The provisions of this section apply to any member who retired without any reduction in benefits pursuant to § 3-12-106 and who reenters covered employment on or after July 1, 2004, but prior to the effective date of this Act.

Section 7. That § 3-12-111.1 be amended to read as follows:

3-12-111.1. If a retired member whose benefits have been reduced pursuant to § 3-12-106 becomes employed as a permanent full-time employee by a participating unit on or after July 1, 2004, but prior to the effective date of this Act, the payment of the member's retirement allowance shall be suspended during the period of reemployment. If the member remains in reemployment for at least three years pursuant to the provisions of § 3-12-82, the member upon subsequent retirement shall receive an additional allowance based upon the member's credited service and final compensation earned during the reentry. Only the member's credited service from the subsequent

employment shall be taken into account in calculating a reduction pursuant to § 3-12-106, if any, in the member's additional allowance. In addition, the annual increase applied to the original allowance pursuant to § 3-12-88 shall be eliminated for the period of reemployment.

Section 8. That § 3-12-81.1 be amended to read as follows:

3-12-81.1. If a retired member becomes reemployed as a permanent full-time employee by a participating unit, the member first shall have terminated the member's employment relationship with the initial participating unit, as outlined in subdivision 3-12-47(70) and as required pursuant to Revenue Ruling 57-115 by the Internal Revenue Service. The initial participating unit's system representative shall certify to the system that the termination of the employment relationship took place. In addition, the member shall have been subject to all proceedings and requirements associated with the hiring and employment of any new employee by the second participating unit, and that unit's system representative shall so certify to the system. If a single participating unit is both the member's initial participating unit and the member's second participating unit, it shall follow all termination procedures and all hiring procedures relative to the member as outlined by this section, and its chief executive officer, the officer's agent, or the chair of its governing commission or board shall so certify.

Section 9. That § 3-12-197 be amended to read as follows:

3-12-197. Supplemental pension benefits are not subject to the duplicate benefit provisions of § 3-12-109, to the participant reemployment restrictions of § 3-12-82, 3-12-88, 3-12-111, 3-12-111.1, section 1 of this Act or section 2 of this Act, nor to the benefit adjustment provisions of § 3-12-106 or 3-12-107. Supplemental pension benefits are optional benefits granted the protections of the provisions of § 3-12-115.

Section 10. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be effective April 1,

2010.

An Act to revise certain retirement provisions regarding retired members of the South Dakota Retirement System who return to covered employment and to declare an emergency.

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I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 18

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 18  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State