

CHAPTER 24

GOVERNMENT - LOCAL

HOUSE BILL 12-1018

BY REPRESENTATIVE(S) Labuda, Barker, Duran, Gardner B., Liston, Peniston, Ramirez, Schafer S., Scott, Waller, Fields, Kerr A., Wilson, Young;
also SENATOR(S) Tochtrop, Morse, King S., White.

AN ACT

CONCERNING MODIFICATIONS TO AVAILABLE AFFILIATION BY SOCIAL SECURITY EMPLOYERS WITH THE FIRE AND POLICE PENSION ASSOCIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 31-31-704 as follows:

31-31-704. Optional affiliation by social security employers. (1) PRIOR TO JANUARY 1, 2007, AND notwithstanding the exemption provided in section 31-31-401 (1) (a), any employer that covers members under the federal "Social Security Act", as amended, or any county that covers salaried employees whose duties are directly involved with the provision of law enforcement or fire protection, as certified by the county under the federal "Social Security Act", as amended, may ~~elect~~ HAVE ELECTED affiliation with the association, either as to coverage under the statewide death and disability plan or as to retirement under the statewide defined benefit plan, or as to both, by filing with the board a resolution of the governing body of such employer, but any such affiliation shall either exclude past service credit or include past service credit funded by contribution levels established by the board. ~~pursuant to subsection (6) of this section. The employer may make the election to exclude past service credit, but only if such election does not impair any vested rights of members.~~

~~(1.5) For purposes of administering to counties affiliated pursuant to this section, any county electing to affiliate shall be included in the definition of "employer" and any covered employee of such county shall be included in the definition of "member".~~

~~(2) The board shall establish rules as to the procedure for affiliation pursuant to~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

this section. An employer eligible for such affiliation may request of the board, prior to filing a resolution of affiliation, an estimate of the contribution rate necessary to comply with the contribution requirements established by this article. Election of coverage under the death and disability plan shall be irrevocable.

~~(3) If an employer that elects to affiliate as to retirement pursuant to this section provides any local defined benefit retirement pension plan in addition to social security, each member employed by such employer shall elect, not later than sixty days after affiliation, either to remain covered under the retirement provisions of such local defined benefit plan or to become covered under the retirement provisions of the statewide defined benefit plan established by part 4 of this article. If a member fails to make such an election for any reason, said member shall be deemed to have elected to remain covered under the retirement provisions of the local defined benefit plan. A member who elects to become covered under the retirement provisions of the statewide defined benefit plan established by part 4 of this article shall be deemed to have waived all rights to retirement benefits under the local defined benefit plan but shall receive full credit for all service credited under the local defined benefit plan, and a member electing to remain covered under the local defined benefit plan shall not be governed by the provisions of the statewide defined benefit plan relating to defined retirement benefits.~~

~~(3.5) If an employer that elects to affiliate as to retirement pursuant to this section provides any local defined contribution retirement pension plan in addition to social security, sixty-five percent of the employees eligible to participate in the supplemental statewide defined benefit plan shall approve the affiliation prior to it becoming effective.~~

~~(4) Notwithstanding the provisions of subsection (3) of this section, if an employer that elects to affiliate as to retirement pursuant to this section provides only social security coverage for retirement, each member of such employer shall become covered under the retirement provisions of the statewide defined benefit plan established by part 4 of this article. All members hired by an employer that elects to affiliate as to retirement pursuant to this section after the effective date of such affiliation shall be covered under the retirement provisions of the statewide defined benefit plan established by part 4 of this article. All members of an employer that elects to affiliate as to disability pursuant to this section shall be covered under the statewide death and disability plan established by part 8 of this article.~~

(5) Benefits provided pursuant to the statewide defined benefit and statewide death and disability plans established by this article to members of employers that have affiliated pursuant to this section PRIOR TO JANUARY 1, 2007, shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.

(6) The board shall set appropriate levels of employer and employee contributions for employers that affiliate pursuant to this section, substantially in the manner provided in sections 31-31-402 (3) and 31-31-701 (5), and taking into consideration the reduction in benefits provided in subsection (5) of this section.

~~(7) The provisions of section 31-31-701 (3) for transfer of old hire pension plan assets shall apply to an employer that affiliates as to retirement pursuant to this section to the extent that it has such assets. The provisions of section 31-31-701 (3) for payment of benefits of a former old hire plan shall apply to an employer that affiliates as to retirement pursuant to this section to the extent that it has an old hire retirement pension plan other than social security.~~

~~(8) Nothing contained in this section shall affect the ability of employers to terminate social security coverage or the procedures for such termination.~~

~~(9) The board may terminate the affiliation of an employer with the statewide defined benefit plan pursuant to this section and require the affiliated employer to participate in the social security supplemental plan established pursuant section 31-31-704.6. The board shall provide written notice of the change in affiliation to the employer and to members at least one hundred eighty days prior to the change in affiliation.~~

~~(10) Upon the receipt of written notice of a change in affiliation required pursuant to subsection (9) of this section, and prior to the change in affiliation, an employer may elect not to participate in the social security supplemental plan established pursuant to section 31-31-704.6. An employer's election not to participate in the social security supplemental plan shall end the employer's affiliation with the statewide defined benefit plan upon the date of termination established by the board. Such an election shall not affect the employer's affiliation with the statewide death and disability plan.~~

SECTION 2. In Colorado Revised Statutes, 31-31-704.5, **add** (7) as follows:

31-31-704.5. Entry into social security supplemental plan. (7) NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE ABILITY OF AN EMPLOYER TO TERMINATE SOCIAL SECURITY COVERAGE OR AFFECT THE PROCEDURES FOR SUCH TERMINATION.

SECTION 3. In Colorado Revised Statutes, **add** 31-31-704.7 as follows:

31-31-704.7. Participation in statewide death and disability plan. ANY EMPLOYER PARTICIPATING IN THE SOCIAL SECURITY SUPPLEMENTAL PLAN CREATED PURSUANT TO SECTION 31-31-704.6 MAY ALSO ELECT COVERAGE UNDER THE STATEWIDE DEATH AND DISABILITY PLAN BY FILING WITH THE BOARD A RESOLUTION TO THAT EFFECT FROM THE GOVERNING BODY OF SUCH EMPLOYER.

SECTION 4. In Colorado Revised Statutes, 31-31-803, **amend** (1) (a) (I) (A), (2) (a) (I), (2.1) (a) (I), and (2.2) (a) (I) as follows:

31-31-803. Retirement for disability. (1) (a) (I) Any member hired before, on, or after April 7, 1978, who becomes totally disabled, as defined in section 31-31-801 (4), shall be retired from active service for disability and shall be eligible to receive the disability benefit provided by this subsection (1) or section 31-31-806.5 if the member:

(A) Is not eligible for the normal retirement pension from a plan that is part of the

defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension ~~selected pursuant to section 31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

(2) (a) A member who becomes occupationally disabled, as defined in section 31-31-801 (3), and is awarded a disability retirement prior to October 1, 2002, shall be retired from active service for such time as the occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension ~~selected pursuant to section 31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

(2.1) (a) A member who becomes permanently occupationally disabled, as defined in section 31-31-801 (3.2), shall be retired from active service for such time as the permanent occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2.1) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension ~~selected pursuant to section 31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

(2.2) (a) A member who becomes temporarily occupationally disabled, as defined in section 31-31-801 (3.4), shall be retired from active service for such time as the temporary occupational disability continues for a period up to five years from the date of original disablement and shall be eligible to receive the disability benefit provided by this subsection (2.2) or section 31-31-806.5 if the member:

(I) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204 or a local defined benefit retirement pension ~~selected pursuant to section 31-31-704 (3)~~ or provided pursuant to article 30.5 of this title; or

SECTION 5. In Colorado Revised Statutes, 31-31-807, **amend** (1) (a) (II) (A) as follows:

31-31-807. Death of member - survivor benefits. (1) (a) If a member dies while in active service or while on temporary occupational disability under section 31-31-803 (2.2) and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1) shall be paid if the member:

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or ~~a local defined benefit retirement pension selected pursuant to section 31-31-704 (3); or~~

SECTION 6. In Colorado Revised Statutes, 31-31-807.5, **amend** (1) (a) (II) (A)

and (1.5) (a) (II) as follows:

31-31-807.5. Death of member - line-of-duty - survivor benefits. (1) (a) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in either paragraph (b) or (c) of this subsection (1) shall be paid if the member:

(II) (A) Is not eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or ~~a local defined benefit retirement pension selected pursuant to section 31-31-704 (3); or~~

(1.5) (a) On or after October 1, 2001, if a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, and if such member qualifies for line-of-duty status under section 101 (h) of the federal "Internal Revenue Code of 1986", as amended, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1.5) shall be paid if the member:

(II) Is eligible for the normal retirement pension from a plan that is part of the defined benefit system pursuant to section 31-31-204; or ~~a local defined benefit retirement pension selected pursuant to section 31-31-704 (3); or~~

SECTION 7. In Colorado Revised Statutes, 31-31-808, **amend** (2) as follows:

31-31-808. Reduction of survivor benefits. (2) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from the member's separate retirement account pursuant to section 31-31-406 ~~or a local defined benefit retirement pension selected pursuant to section 31-31-704~~, shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

SECTION 8. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2012, if adjournment sine die is on May 9, 2012); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2012 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 19, 2012