

CHAPTER 278

---

**GOVERNMENT - STATE**

---

SENATE BILL 02-231

BY SENATOR(S) Owen;  
also REPRESENTATIVE(S) Stengel and King.

**AN ACT**

**CONCERNING THE ADMINISTRATION OF RETIREMENT PLANS BY THE STATE DEFERRED  
COMPENSATION COMMITTEE.**

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

**SECTION 1.** 24-52-101 (3), Colorado Revised Statutes, is amended to read:

**24-52-101. Definitions.** As used in this article, unless the context otherwise requires:

(3) "Deferred compensation" means ~~that~~ THE income ~~which~~ THAT an employee may legally defer pursuant to current rulings of the internal revenue service and ~~which~~ THAT, while invested under a deferred compensation plan adopted pursuant to this ~~article~~ PART 1, is exempt from federal income taxes on both the employer's contribution and all interest, dividends, and capital gains until the ultimate distribution to the employee.

**SECTION 2.** 24-52-102 (1) (a) (I) (B), (1) (a) (II), (1) (c) (II), (1) (d) (I), (1) (e), (1) (f) (II), (2), (3), (4), and (5), Colorado Revised Statutes, are amended, and the said 24-52-102 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**24-52-102. Deferred compensation plan - state deferred compensation committee.** (1) (a) (I) (B) Thirty days after August 5, 1998, there is hereby created the state deferred compensation committee consisting of the following nine members: The state treasurer, the state controller, or their designees; four employees who are participants in the DEFERRED COMPENSATION plan and who are elected by participants in the plan; a participant in the DEFERRED COMPENSATION plan who shall be appointed by the governor; and two members of the general assembly, one a senator,

---

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

or former senator who is no longer serving in the general assembly at the time of appointment and who is a participant in the DEFERRED COMPENSATION plan, to be appointed by the president of the senate and one a representative, or former representative who is no longer serving in the general assembly and who is a participant in the DEFERRED COMPENSATION plan, to be appointed by the speaker of the house of representatives. Each member who is a state official or the member's designee shall serve on the committee for the duration of the member's elected or appointed term of office. Members who are members of the general assembly shall serve on the committee for the duration of their elected terms of office as members of the general assembly; except that a former senator or representative who was not serving in the general assembly at the time of appointment shall serve at the pleasure of the official who appointed such individual to the committee and the participant in the plan appointed by the governor shall serve at the pleasure of the governor.

(II) Thirty days after August 5, 1998, the committee members elected by participants in the DEFERRED COMPENSATION plan shall be elected for terms of four years; except that elected members who represented DEFERRED COMPENSATION plan participants on the state deferred compensation committee abolished pursuant to sub-subparagraph (A) of subparagraph (I) of this paragraph (a) at the time such committee was abolished shall serve on the committee created in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) as the members elected by participants in the plan for terms ending on the date that their terms on the abolished committee were scheduled to expire. The procedure for the election of the committee members elected by participants in the DEFERRED COMPENSATION plan shall be established by the committee. Vacancies of elected committee members elected by participants in the DEFERRED COMPENSATION plan shall be filled by election for the unexpired term.

(III) NOTWITHSTANDING ANY PROVISION OF THIS PARAGRAPH (a) TO THE CONTRARY, ON JULY 1, 2002, THE TERM OF THE PARTICIPANT IN THE DEFERRED COMPENSATION PLAN APPOINTED BY THE GOVERNOR PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL TERMINATE, AND SUCH MEMBER SHALL THEREAFTER BE REPLACED BY A MEMBER OF THE PUBLIC OFFICIALS' AND EMPLOYEES' DEFINED CONTRIBUTION PLAN ESTABLISHED AND ADMINISTERED PURSUANT TO PART 2 OF THIS ARTICLE, WHO SHALL BE APPOINTED BY THE GOVERNOR.

(c) (II) The attorney general shall provide legal advice relating to ~~the state deferred compensation plan~~ ANY PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE upon the request of the committee.

(d) (I) The committee shall exercise its functions over which it has substantial discretion solely in the interest of the ~~plan~~ participants IN THE PLANS ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE and their beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses incurred in administering ~~the plan~~ SUCH PLANS. The committee shall act in accordance with the provisions of this article and with the care, skill, and diligence in light of the circumstances then prevailing that a person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. The committee shall be the trustee of any trust established pursuant to the provisions of this article.

(e) The members of the committee shall not engage in any activities ~~which~~ THAT might result in a conflict of interest with their functions as administrators of ~~the plan~~ A PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE.

(f) (II) The committee, in its capacity as committee and trustee, may obtain, and ~~the plan~~ EACH PLAN ESTABLISHED PURSUANT TO THIS ARTICLE shall pay for, insurance or shall self-insure against liability ~~which~~ THAT may arise out of, or is in connection with, the performance of duties by any member of the committee or employee of the plan.

(2) (a) The administrator may establish and administer a deferred compensation plan for employees in addition to any retirement, pension, benefit, or other deferred compensation plans established by the state or a political subdivision. All assets and income of the DEFERRED COMPENSATION plan shall be held in trust for the exclusive benefit of plan participants and their beneficiaries and to pay plan expenses in accordance with section 457 (g) of the federal "Internal Revenue Code of 1986", as amended. The DEFERRED COMPENSATION plan, including any associated trust, shall be an eligible deferred compensation plan as defined in section 457 (b) of the federal "Internal Revenue Code of 1986", as amended.

(b) The administrator may contract with any person, firm, or association in order to implement any of the provisions of this article ~~relating to the establishment and administration of a deferred compensation plan~~ RELATING TO THE ESTABLISHMENT OR ADMINISTRATION OF ANY PLAN, INCLUDING THE CONSOLIDATION OF ANY ADMINISTRATIVE OR OPERATIONAL FUNCTIONS WITH A SINGLE VENDOR.

(c) The state deferred compensation plan shall be managed by the state personnel director, who shall be the executive officer of the plan, and such assistants and employees as in the opinion of the ~~state personnel~~ director are necessary to carry out the provisions of this ~~article~~ PART 1. All assistants and employees shall be appointed pursuant to section 13 of article XII of the state constitution and shall receive such compensation and reimbursement of expenses incurred in the performance of their duties as other employees of the state government.

(3) An employee may enter into a written agreement with the state or a political subdivision to defer any part of the employee's compensation for investment as provided by this ~~article~~ PART 1. The total annual amount deferred shall not exceed the employee's annual salary under applicable salary schedules or compensation plans and shall not exceed any limits imposed under the plan.

(4) Compensation deferred pursuant to this ~~article~~ PART 1 is included as compensation for the purpose of computing retirement or pension benefits earned by the employee; except that such compensation is exempt from state income taxation to the same extent as it is exempt from federal income taxation. Such compensation shall be included in the determination of disposable earnings as defined in section 13-54-104 (1) (a), C.R.S., and shall be exempt from garnishment or levy under execution or attachment to the extent provided in section 13-54-104, C.R.S.

(5) (a) The committee may assess each state participant a fee for administering the state deferred compensation plan ~~which~~ THAT shall be automatically deducted and ~~which~~ THAT shall not exceed one percent of the participating employee's assets in the

state deferred compensation plan. All fees collected pursuant to this subsection (5) shall be transmitted to the state treasurer, who shall credit the same to the deferred compensation administration fund, which fund is hereby created. All investment income derived from moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. The general assembly shall make annual appropriations from such fund for the direct and indirect costs of administration of the DEFERRED COMPENSATION plan under this ~~article~~ PART 1. Any fees or other moneys COLLECTED PURSUANT TO THIS SUBSECTION (5) THAT ARE in excess of expenditures shall be used to reduce DEFERRED COMPENSATION plan participants' annual fees in subsequent years. IN ADDITION TO ASSESSING ALL OR A PORTION OF A FEE PURSUANT TO THIS PARAGRAPH (a), THE COMMITTEE MAY CONTRACT WITH A VENDOR TO PAY ALL OR A PORTION OF THE VENDOR'S COSTS AND REIMBURSE THE STATE FOR ANY OR A PORTION OF ANY COSTS OF ADMINISTERING THE DEFERRED COMPENSATION PLAN.

(b) Compensation deferred by participants in the state deferred compensation plan shall be credited to the deferred compensation plan asset fund, which fund is hereby created. All investment income derived from compensation deferred by DEFERRED COMPENSATION plan participants prior to the transmittal of such deferrals to the plan shall be credited to the state deferred compensation administration fund created in paragraph (a) of this subsection (5) for the purpose of reducing the administrative fees of plan participants.

**SECTION 3.** 24-52-103, Colorado Revised Statutes, is amended to read:

**24-52-103. Deferred compensation - investment.** (1) Notwithstanding any other provision of law, the administrator may invest, OR PERMIT PLAN PARTICIPANTS TO INVEST, the moneys held pursuant to a ~~deferred compensation plan~~ ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE in any legitimate investment, including but not limited to investment programs of any bank, as defined in section 11-1-102 (2), C.R.S., or savings and loan association, as defined in section 11-40-103, C.R.S., life insurance contracts, deferred annuities, equity products, government bonds, real estate investment trusts, or other investment products. The administrator shall not invest, OR PERMIT PLAN PARTICIPANTS TO INVEST, such moneys in any investment plan unless the plan is offered by a person authorized to do business in this state or by a person who irrevocably agrees to be subject to the jurisdiction of the state and federal courts in Colorado with respect to the investment plan and irrevocably appoints the Colorado secretary of state as its agent for service of process, and unless the plan is subject to applicable state and federal regulations.

(2) Assets and income of ~~the state deferred compensation plan~~ ANY PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE shall not be general assets of the state and, therefore, investments made pursuant to this section shall not be construed to be a prohibited use of the general assets of the state.

(3) The state or any city and county, county, city, town, or other political subdivision shall not be liable for any loss due to the investment or failure of investment of moneys and assets of ~~the plan~~ A PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THIS ARTICLE, nor shall the state or any such political subdivision be required to replace any loss ~~which~~ THAT may result from such investment or failure

of investment of any such moneys or assets.

**SECTION 4.** Article 52 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-52-105. Moneys not subject to legal process.** EXCEPT FOR ASSIGNMENTS FOR CHILD SUPPORT PURPOSES AS PROVIDED FOR IN SECTIONS 14-10-118 (1) AND 14-14-107, C.R.S., AS THEY EXISTED PRIOR TO JULY 1, 1996, FOR INCOME ASSIGNMENTS FOR CHILD SUPPORT PURPOSES PURSUANT TO SECTION 14-14-111.5, C.R.S., FOR WRITS OF GARNISHMENT THAT ARE THE RESULT OF A JUDGMENT TAKEN FOR ARREARAGES FOR CHILD SUPPORT OR FOR CHILD SUPPORT DEBT, AND FOR PAYMENTS MADE IN COMPLIANCE WITH A PROPERLY EXECUTED COURT ORDER APPROVING A WRITTEN AGREEMENT ENTERED INTO PURSUANT TO SECTION 14-10-113 (6), C.R.S., NO MONEYS, ASSETS, BENEFITS, OR PAYMENTS UNDER A PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE ASSIGNABLE EITHER IN LAW OR IN EQUITY OR BE SUBJECT TO EXECUTION, LEVY, ATTACHMENT, GARNISHMENT, OR ANY OTHER LEGAL PROCESS. NOTHING IN THIS SECTION SHALL BE DEEMED TO ALTER ANY GREATER RESTRICTIONS ON LEGAL PROCESS AGAINST THE DEFERRED COMPENSATION PLAN UNDER FEDERAL OR STATE LAW.

**SECTION 5.** Article 52 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 2  
PUBLIC OFFICIALS' AND EMPLOYEES'  
DEFINED CONTRIBUTION PLANS

**24-52-201. Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS ESSENTIAL FOR THE STATE GOVERNMENT TO BE ABLE TO ATTRACT AND RETAIN THE MOST QUALIFIED ELECTED OFFICIALS AND EMPLOYEES IN ORDER TO PRESERVE AND ENHANCE THE ABILITY OF THE STATE TO PROVIDE THE HIGHEST QUALITY SERVICE TO THE PEOPLE OF COLORADO. ACCORDINGLY, IN ORDER TO ATTRACT AND RETAIN SUCH OFFICIALS AND EMPLOYEES, THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IT IS IMPERATIVE THAT THE STATE GOVERNMENT SHOULD HAVE THE MAXIMUM FLEXIBILITY TO PROVIDE ALTERNATIVE DEFINED CONTRIBUTION PLANS. THESE PLANS ARE OFFERED AS AN ALTERNATIVE TO PARTICIPATION IN THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION FOR TERM LIMITED PUBLIC OFFICIALS AND OTHER EMPLOYEES EXPRESSLY PERMITTED TO OPT OUT OF THE ASSOCIATION'S DEFINED BENEFIT PLAN.

**24-52-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ASSOCIATION" MEANS THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION ESTABLISHED PURSUANT TO SECTION 24-51-201.

(2) "DEFINED CONTRIBUTION PLAN" MEANS A PLAN ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS PART 2 FOR THE BENEFIT OF ELIGIBLE EMPLOYEES.

(3) "ELIGIBLE EMPLOYEE" MEANS A MEMBER OF THE GENERAL ASSEMBLY, THE

GOVERNOR, THE LIEUTENANT GOVERNOR, THE ATTORNEY GENERAL, THE CHIEF DEPUTY ATTORNEY GENERAL, THE SOLICITOR GENERAL, THE SECRETARY OF STATE, THE DEPUTY SECRETARY OF STATE, THE STATE TREASURER, THE DEPUTY STATE TREASURER, A DISTRICT ATTORNEY, A MEMBER OF THE PUBLIC UTILITIES COMMISSION, AN EXECUTIVE DIRECTOR OF A DEPARTMENT OF STATE APPOINTED BY THE GOVERNOR, AN EMPLOYEE OF THE SENATE OR THE HOUSE OF REPRESENTATIVES, AND A NONCLASSIFIED EMPLOYEE OF THE OFFICE OF THE GOVERNOR, FOR WHOM A DEFINED CONTRIBUTION PLAN HAS BEEN ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS PART 2.

(4) "ELIGIBLE POSITION" MEANS A POSITION WITH AN EMPLOYER FOR WHICH A DEFINED CONTRIBUTION PLAN IS AVAILABLE PURSUANT TO THE PROVISIONS OF THIS PART 2.

(5) "EMPLOYER" MEANS THE STATE, THE GENERAL ASSEMBLY, AND ANY STATE DEPARTMENT THAT EMPLOYS AN ELIGIBLE EMPLOYEE.

**24-52-203. Establishment and administration of defined contribution plans.**

(1) THE COMMITTEE SHALL HAVE THE AUTHORITY TO ESTABLISH AND ADMINISTER ONE OR MORE DEFINED CONTRIBUTION PLANS PURSUANT TO THE PROVISIONS OF THIS PART 2. THE COMMITTEE SHALL MAINTAIN AT LEAST ONE SUCH PLAN ON AND AFTER JULY 1, 2002. THE DEPARTMENT OF PERSONNEL SHALL PROVIDE NECESSARY ADMINISTRATIVE SUPPORT TO THE COMMITTEE IN CONNECTION WITH THE ESTABLISHMENT AND ADMINISTRATION OF ANY DEFINED CONTRIBUTION PLAN ESTABLISHED OR ADMINISTERED BY THE COMMITTEE.

(2) THE COMMITTEE SHALL ESTABLISH THE TERMS AND CONDITIONS OF ANY DEFINED CONTRIBUTION PLAN ESTABLISHED BY THE COMMITTEE PURSUANT TO THIS PART 2. ANY SUCH DEFINED CONTRIBUTION PLAN MAY PROVIDE RETIREMENT AND DEATH BENEFITS.

(3) THE COMMITTEE, FOR EACH DEFINED CONTRIBUTION PLAN ESTABLISHED OR ADMINISTERED BY THE COMMITTEE PURSUANT TO THIS PART 2:

(a) SHALL PROVIDE FOR THE ADMINISTRATION OF SUCH DEFINED CONTRIBUTION PLANS;

(b) SHALL DESIGNATE FROM TIME TO TIME THE COMPANIES FROM WHICH INVESTMENT PRODUCTS SHALL BE PURCHASED. IN DESIGNATING SUCH COMPANIES, THE COMMITTEE SHALL TAKE INTO CONSIDERATION:

(I) THE SUITABILITY OF SUCH RIGHTS AND BENEFITS TO THE NEEDS AND INTERESTS OF ELIGIBLE EMPLOYEES ELECTING TO PARTICIPATE IN SUCH DEFINED CONTRIBUTION PLANS AND TO THE INTERESTS OF THE STATE GOVERNMENT IN THE EMPLOYMENT AND RETENTION OF ELIGIBLE EMPLOYEES;

(II) THE ABILITY OF THE DESIGNATED COMPANIES TO PROVIDE THE INVESTMENT PRODUCTS; AND

(III) THE EFFICACY OF SUCH CONTRACTS IN THE RECRUITMENT AND RETENTION OF QUALIFIED PUBLIC OFFICIALS AND EMPLOYEES.

(c) SHALL SELECT MORE THAN ONE SEPARATE AND DISTINCT PROVIDER OF INVESTMENT PRODUCTS FOR EACH DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS PART 2; AND

(d) MAY ASSESS EACH PARTICIPANT A FEE FOR ADMINISTERING THE DEFINED CONTRIBUTION PLAN THAT SHALL BE AUTOMATICALLY DEDUCTED AND THAT SHALL NOT EXCEED ONE PERCENT OF THE PARTICIPATING EMPLOYEE'S ASSETS IN THE STATE DEFINED CONTRIBUTION PLAN. ALL FEES COLLECTED PURSUANT TO THIS PARAGRAPH (d) SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DEFINED CONTRIBUTION PLAN ADMINISTRATION FUND, WHICH FUND IS HEREBY CREATED. THE GENERAL ASSEMBLY SHALL MAKE ANNUAL APPROPRIATIONS FROM SUCH FUND FOR THE DIRECT AND INDIRECT COSTS OF ADMINISTRATION OF ANY PLAN ESTABLISHED UNDER THIS PART 2. ALL INVESTMENT INCOME DERIVED FROM MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ANY FEES OR OTHER MONEYS IN EXCESS OF EXPENDITURES SHALL BE USED TO REDUCE DEFINED CONTRIBUTION PLAN PARTICIPANTS' ANNUAL FEES IN SUBSEQUENT YEARS. IN ADDITION TO ASSESSING ALL OR A PORTION OF A FEE PURSUANT TO THIS PARAGRAPH (d), THE COMMITTEE MAY CONTRACT WITH A VENDOR TO PAY ALL OR A PORTION OF THE VENDOR'S COSTS AND REIMBURSE THE STATE FOR ANY OR A PORTION OF ANY COSTS OF ADMINISTERING THE DEFINED CONTRIBUTION PLAN.

(4) TO THE EXTENT PRACTICABLE AND NOT OTHERWISE PROHIBITED BY THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, A PLAN ESTABLISHED PURSUANT TO THIS PART 2 SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS 24-52-102 AND 24-52-103, INCLUDING THE POWERS, DUTIES, FUNCTIONS, AND STANDARDS OF CONDUCT SET FORTH THEREIN. THE STATE AND THE COMMITTEE SHALL HAVE ALL OF THE IMMUNITIES, LIMITATIONS OF LIABILITY, AND PROTECTIONS SET FORTH IN SECTIONS 24-52-102 AND 24-52-103.

(5) THE COMMITTEE, IN ITS DISCRETION AND CONSISTENT WITH ANY APPLICABLE FEDERAL LAWS AND REGULATIONS:

(a) MAY ALLOW EMPLOYEES ELIGIBLE TO PARTICIPATE IN A DEFERRED COMPENSATION PLAN ESTABLISHED PURSUANT TO PART 1 OF THIS ARTICLE AND EMPLOYEES ELIGIBLE TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN PURSUANT TO THIS PART 2 TO INVEST IN THE SAME INVESTMENT PRODUCTS OR IN SEPARATE INVESTMENT PRODUCTS;

(b) MAY ESTABLISH AND ADMINISTER A SINGLE PLAN UNDER SECTION 401 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, FOR MORE THAN ONE GROUP OF PARTICIPANTS IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; AND

(c) SHALL MAINTAIN THE INTEGRITY OF PURPOSE OF ANY DEFINED CONTRIBUTION PLAN ESTABLISHED OR ADMINISTERED IN ACCORDANCE WITH THIS SECTION.

(6) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO IMPAIR ANY EXISTING CONTRACT WITH A VENDOR.

**24-52-204. Employer and employee contributions.** RATES FOR EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO A DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS PART 2 SHALL BE THE SAME AS THE RATES THAT WOULD BE PAYABLE BY SUCH EMPLOYER AND EMPLOYEE TO THE ASSOCIATION FOR THE STATE DIVISION PURSUANT TO SECTION 24-51-401.

**24-52-205. Participation.** (1) ONLY ELIGIBLE EMPLOYEES OF AN EMPLOYER FOR WHICH A DEFINED CONTRIBUTION PLAN IS OFFERED MAY ELECT TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN ESTABLISHED OR ADMINISTERED PURSUANT TO THIS PART 2.

(2) (a) ANY ELIGIBLE EMPLOYEE WHO IS NEITHER A MEMBER NOR AN INACTIVE MEMBER OF THE ASSOCIATION AND WHO IS INITIALLY APPOINTED TO AN ELIGIBLE POSITION ON OR AFTER THE EFFECTIVE DATE OF THE ESTABLISHMENT OF A DEFINED CONTRIBUTION PLAN AT SUCH ELIGIBLE EMPLOYEE'S EMPLOYING ENTITY SHALL MAKE A ONE-TIME IRREVOCABLE WRITTEN ELECTION WITHIN THIRTY DAYS OF COMMENCING EMPLOYMENT IN SUCH POSITION TO PARTICIPATE IN THE ASSOCIATION OR IN A DEFINED CONTRIBUTION PLAN IN WHICH THE EMPLOYEE IS ELIGIBLE TO PARTICIPATE PURSUANT TO THE PROVISIONS OF THIS PART 2. IN THE ABSENCE OF SUCH WRITTEN ELECTION, SUCH PERSON SHALL BE A MEMBER OF THE ASSOCIATION.

(b) ANY ELIGIBLE EMPLOYEE WHO IS A MEMBER OR INACTIVE MEMBER OF THE ASSOCIATION AT THE TIME SUCH EMPLOYEE IS INITIALLY APPOINTED TO OR INITIALLY HOLDS AN ELIGIBLE POSITION MAY, AS LONG AS SUCH EMPLOYEE REMAINS EMPLOYED IN SUCH POSITION, MAKE A ONE-TIME IRREVOCABLE WRITTEN ELECTION DURING THE MONTH OF JANUARY OF EACH YEAR TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN IN WHICH THE EMPLOYEE IS ELIGIBLE TO PARTICIPATE PURSUANT TO THE PROVISIONS OF THIS PART 2. IN THE ABSENCE OF SUCH WRITTEN ELECTION, SUCH PERSON SHALL BE A MEMBER OF THE ASSOCIATION.

(c) ANY ELIGIBLE EMPLOYEE WHO ELECTS TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN PURSUANT TO THE PROVISIONS OF PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL SPECIFY ONE OF THE FOLLOWING OPTIONS:

(I) TO TERMINATE FUTURE ASSOCIATION CONTRIBUTIONS BEGINNING ON THE DATE OF ELECTION WHILE MAINTAINING RIGHTS AS PROVIDED BY THE LAWS APPLICABLE TO THE ASSOCIATION RELATIVE TO ANY CONTRIBUTIONS OR BENEFITS ACCRUED PRIOR TO SUCH ELECTION; OR

(II) TO TERMINATE MEMBERSHIP IN THE ASSOCIATION AND TO REQUIRE PAYMENT BY THE ASSOCIATION OF ALL MEMBER CONTRIBUTIONS, ACCRUED INTEREST ON SUCH CONTRIBUTIONS, AND MATCHING EMPLOYER CONTRIBUTIONS AS PROVIDED BY THE LAWS APPLICABLE TO THE ASSOCIATION TO THE DEFINED CONTRIBUTION PLAN IN WHICH THE EMPLOYEE HAS ELECTED TO PARTICIPATE. SUCH ELECTION SHALL CONSTITUTE A WAIVER OF ALL RIGHTS AND BENEFITS PROVIDED BY THE ASSOCIATION EXCEPT AS OTHERWISE PROVIDED BY THE PROVISIONS OF THIS PART 2. WITHIN NINETY DAYS AFTER RECEIPT OF NOTICE OF AN ELECTION TO TERMINATE MEMBERSHIP PURSUANT TO THE PROVISIONS OF THIS SUBPARAGRAPH (II), THE ASSOCIATION SHALL PAY TO THE DEFINED CONTRIBUTION PLAN IN WHICH THE EMPLOYEE HAS ELECTED TO PARTICIPATE, ON BEHALF OF THE ELIGIBLE EMPLOYEE, AN AMOUNT EQUAL TO THE EMPLOYEE'S MEMBER CONTRIBUTIONS PLUS ACCRUED INTEREST CALCULATED



PURSUANT TO SECTION 24-51-407 AND MATCHING EMPLOYER CONTRIBUTIONS PAID PURSUANT TO SECTION 24-51-408.

(3) ANY ELECTION TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE IN WRITING AND SHALL BE FILED WITH THE ASSOCIATION AND WITH SUCH ELIGIBLE EMPLOYEE'S EMPLOYER IN THE MANNER IN WHICH SUCH EMPLOYER PRESCRIBES.

(4) ANY ELECTION BY AN ELIGIBLE EMPLOYEE TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN OF AN EMPLOYING ENTITY SHALL BE IRREVOCABLE AND SHALL BE ACCOMPANIED BY AN APPROPRIATE APPLICATION, WHERE REQUIRED, DESIGNATING THE INVESTMENT PRODUCT OR PRODUCTS SELECTED BY THE ELIGIBLE EMPLOYEE FOR INVESTMENT UNDER THE DEFINED CONTRIBUTION PLAN.

**24-52-206. Public employees' retirement association - ineligibility.**

(1) ELIGIBLE EMPLOYEES OF EMPLOYERS WHO DO NOT ELECT TO PARTICIPATE IN A DEFINED CONTRIBUTION PLAN IN WHICH THE EMPLOYEES ARE ELIGIBLE TO PARTICIPATE SHALL PARTICIPATE IN THE ASSOCIATION.

(2) ANY ELIGIBLE EMPLOYEE WHO PARTICIPATES IN A DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THIS PART 2 SHALL BE INELIGIBLE FOR MEMBERSHIP IN THE ASSOCIATION SO LONG AS SUCH ELIGIBLE EMPLOYEE IS EMPLOYED IN ANY ELIGIBLE POSITION.

**SECTION 6. Repeal.** Article 54.7 of title 24, Colorado Revised Statutes, is repealed.

**SECTION 7. Effective date.** This act shall take effect July 1, 2002.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2002