

## CHAPTER 168

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**GOVERNMENT - STATE**

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## SENATE BILL 03-233

BY SENATOR(S) Hillman, Owen, and Taylor;  
also REPRESENTATIVE(S) Fairbank and Frangas.

## AN ACT

**CONCERNING THE INCLUSION OF EMPLOYEES OF A DISTRICT ATTORNEY IN SPECIFIED RETIREMENT PLANS.**

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

**SECTION 1.** Part 3 of article 51 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-51-305.5. Employees of district attorneys.** (1) (a) THE BOARDS OF COUNTY COMMISSIONERS OF THE COUNTIES WITHIN A JUDICIAL DISTRICT, IN CONSULTATION WITH THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT, MAY AUTHORIZE ANY ASSISTANT DISTRICT ATTORNEY, CHIEF DEPUTY DISTRICT ATTORNEY, OR DEPUTY DISTRICT ATTORNEY IN THE JUDICIAL DISTRICT TO MAKE A ONE-TIME IRREVOCABLE WRITTEN ELECTION TO BECOME A MEMBER OF THE ASSOCIATION OR PARTICIPATE IN A DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 52 OF THIS TITLE. ANY SUCH AUTHORITY SHALL BE GRANTED ON OR BEFORE JANUARY 1, 2004, UNLESS THE BOARDS OF COUNTY COMMISSIONERS MAKE A FINDING THAT IT WAS NOT FISCALLY APPROPRIATE TO MAKE THE ELECTION PRIOR TO SUCH DATE. NO ELECTION SHALL BE MADE PURSUANT TO THIS SUBSECTION (1) UNLESS AUTHORIZED BY THE BOARDS OF COUNTY COMMISSIONERS PURSUANT TO THIS PARAGRAPH (a).

(b) AN ASSISTANT DISTRICT ATTORNEY, CHIEF DEPUTY DISTRICT ATTORNEY, OR DEPUTY DISTRICT ATTORNEY HIRED PRIOR TO THE DATE UPON WHICH THE BOARDS OF COUNTY COMMISSIONERS AUTHORIZE AN ELECTION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL HAVE SIXTY DAYS FROM SUCH DATE TO MAKE AN ELECTION. IN THE ABSENCE OF SUCH ELECTION, SUCH PERSON SHALL CONTINUE TO PARTICIPATE IN HIS OR HER EXISTING RETIREMENT SYSTEM.

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

(c) AN ASSISTANT DISTRICT ATTORNEY, CHIEF DEPUTY DISTRICT ATTORNEY, OR DEPUTY DISTRICT ATTORNEY HIRED ON OR AFTER THE DATE UPON WHICH THE BOARDS OF COUNTY COMMISSIONERS AUTHORIZE AN ELECTION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL HAVE SIXTY DAYS FROM THE DATE OF COMMENCING EMPLOYMENT TO MAKE AN ELECTION. IN THE ABSENCE OF SUCH ELECTION, SUCH PERSON SHALL BE A MEMBER OF THE ASSOCIATION.

(2) (a) THE BOARDS OF COUNTY COMMISSIONERS OF THE COUNTIES WITHIN A JUDICIAL DISTRICT, IN CONSULTATION WITH THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT, MAY ELECT TO HAVE THE EMPLOYEES OF THE DISTRICT ATTORNEY BECOME MEMBERS OF THE ASSOCIATION OR PARTICIPATE IN A DEFINED CONTRIBUTION PLAN ESTABLISHED PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 52 OF THIS TITLE. THE ELECTION SHALL BE APPROVED BY NOT LESS THAN SIXTY-FIVE PERCENT OF THE EMPLOYEES OF THE DISTRICT ATTORNEY. AN ELECTION PURSUANT TO THIS PARAGRAPH (a) SHALL BE MADE PRIOR TO JANUARY 1, 2004, UNLESS THE BOARDS OF COUNTY COMMISSIONERS MAKE A FINDING THAT IT WAS NOT FISCALLY APPROPRIATE TO MAKE THE ELECTION PRIOR TO SUCH DATE.

(b) IF AN ELECTION IS MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE BOARDS OF COUNTY COMMISSIONERS, IN CONSULTATION WITH THE DISTRICT ATTORNEY, SHALL FURTHER DETERMINE WHETHER TO HAVE THE EMPLOYEES EITHER BECOME MEMBERS OF THE ASSOCIATION OR PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN. THE DETERMINATION SHALL BE APPROVED BY NOT LESS THAN SIXTY-FIVE PERCENT OF THE EMPLOYEES OF THE DISTRICT ATTORNEY.

(c) IF EITHER THE ELECTION SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (2) OR THE DETERMINATION SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (2) IS NOT APPROVED AS PROVIDED IN SAID PARAGRAPHS, THEN THE EMPLOYEES OF THE DISTRICT ATTORNEY SHALL NOT BECOME MEMBERS OF THE ASSOCIATION OR PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN. NO MORE THAN ONE ELECTION MAY BE MADE IN A JUDICIAL DISTRICT IN ANY CALENDAR YEAR. IF THE BOARDS OF COUNTY COMMISSIONERS DETERMINE THAT THE EMPLOYEES SHALL BECOME MEMBERS OF THE ASSOCIATION, THEN NO EMPLOYEE OF THE DISTRICT ATTORNEY SHALL PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN. IF THE BOARDS DETERMINE THAT THE EMPLOYEES SHALL PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN, THEN NO EMPLOYEE SHALL BECOME A MEMBER OF THE ASSOCIATION.

(d) AN EMPLOYEE OF A DISTRICT ATTORNEY HIRED PRIOR TO THE DATE UPON WHICH THE EMPLOYEES OF THE DISTRICT ATTORNEY APPROVE THE DETERMINATION OF THE BOARDS OF COUNTY COMMISSIONERS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL HAVE SIXTY DAYS FROM SUCH DATE TO MAKE A ONE-TIME IRREVOCABLE ELECTION TO BECOME A MEMBER OF THE ASSOCIATION OR TO PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN IN ACCORDANCE WITH THE DETERMINATION. IN THE ABSENCE OF SUCH ELECTION, SUCH PERSON SHALL CONTINUE TO PARTICIPATE IN HIS OR HER EXISTING RETIREMENT PLAN.

(e) AN EMPLOYEE OF A DISTRICT ATTORNEY HIRED ON OR AFTER THE DATE UPON WHICH THE EMPLOYEES OF THE DISTRICT ATTORNEY APPROVE THE DETERMINATION OF THE BOARDS OF COUNTY COMMISSIONERS PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL BECOME A MEMBER OF THE ASSOCIATION OR PARTICIPATE IN THE DEFINED CONTRIBUTION PLAN IN ACCORDANCE WITH THE DETERMINATION.

(f) THE BOARDS OF COUNTY COMMISSIONERS OF THE COUNTIES WITHIN A JUDICIAL DISTRICT, IN CONSULTATION WITH THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT, MAY MAKE APPLICATION TO THE BOARD TO TERMINATE AFFILIATION WITH THE ASSOCIATION OR TO THE COMMITTEE ADMINISTERING A DEFINED CONTRIBUTION PLAN PURSUANT TO THE PROVISIONS OF PART 2 OF ARTICLE 52 OF THIS TITLE TO TERMINATE PARTICIPATION IN THE PLAN. SAID APPLICATION SHALL BE MADE BY SUBMITTING A RESOLUTION ADOPTED BY THE BOARDS OF COUNTY COMMISSIONERS THAT HAS BEEN APPROVED BY AT LEAST SIXTY-FIVE PERCENT OF THE EMPLOYEES OF THE DISTRICT ATTORNEY WHO ARE MEMBERS OR WHO PARTICIPATE IN THE PLAN. APPLICATIONS TO THE BOARD SHALL BE MADE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-51-313. APPLICATIONS TO THE COMMITTEE ADMINISTERING A DEFINED CONTRIBUTION PLAN SHALL BE APPROVED BY AND MEET ANY REQUIREMENTS SET FORTH BY THE COMMITTEE.

(g) FOR PURPOSES OF THIS SUBSECTION (2), THE TERM "EMPLOYEE OF A DISTRICT ATTORNEY" SHALL NOT INCLUDE AN ASSISTANT DISTRICT ATTORNEY, CHIEF DEPUTY DISTRICT ATTORNEY, OR DEPUTY DISTRICT ATTORNEY.

(3) AN ASSISTANT DISTRICT ATTORNEY, CHIEF DEPUTY DISTRICT ATTORNEY, DEPUTY DISTRICT ATTORNEY, OR OTHER EMPLOYEE OF A DISTRICT ATTORNEY WHO BECOMES A MEMBER OF THE ASSOCIATION SHALL BE A MEMBER OF THE STATE CATEGORY OF THE STATE AND SCHOOL DIVISION. THE JUDICIAL DISTRICT EMPLOYING SUCH MEMBER SHALL BE DESIGNATED AS A STATE EMPLOYER THAT HAS AFFILIATED WITH THE ASSOCIATION PURSUANT TO SECTION 24-51-309.

**SECTION 2. Repeal.** 24-51-310 (1) (g), Colorado Revised Statutes, is repealed as follows:

**24-51-310. Persons not eligible for membership.** (1) Persons not eligible for membership in the association include:

(g) ~~Employees in any office of a district attorney but not including such district attorney;~~

**SECTION 3.** 24-52-202 (3), Colorado Revised Statutes, is amended to read:

**24-52-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(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, AN ASSISTANT DISTRICT ATTORNEY, A CHIEF DEPUTY DISTRICT ATTORNEY, A DEPUTY DISTRICT ATTORNEY, OR OTHER EMPLOYEE OF 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.

**SECTION 4.** 24-52-205, Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBSECTION to read:

**24-52-205. Participation.** (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 2, PARTICIPATION OF AN ASSISTANT DISTRICT ATTORNEY, A CHIEF DEPUTY DISTRICT ATTORNEY, A DEPUTY DISTRICT ATTORNEY, OR OTHER EMPLOYEE OF A DISTRICT ATTORNEY SHALL BE GOVERNED BY THE PROVISIONS OF SECTION 24-51-305.5.

**SECTION 5. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 22, 2003