

## CHAPTER 405

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**GOVERNMENT - STATE**

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**SENATE BILL 03-098**

BY SENATOR(S) Arnold, Anderson, and Entz;  
also REPRESENTATIVE(S) Fritz, Marshall, Frangas, Jahn, Stafford, and Vigil.

**AN ACT****CONCERNING BENEFIT PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION.**

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

**SECTION 1.** 24-51-101 (20), Colorado Revised Statutes, is amended to read:

**24-51-101. Definitions.** As used in this article, unless the context otherwise requires:

(20) "Employer" means the state of Colorado, the general assembly, any state department, board, commission, bureau, agency, or institution, the Colorado association of school boards, the Colorado high school activities association, THE COLORADO ASSOCIATION OF SCHOOL EXECUTIVES, the fire and police pension association, the special districts association, the Colorado water resources and power development authority, the public employees' retirement association, all school districts in Colorado including a charter school district except in the city and county of Denver, and any political subdivision, city, municipality, county, housing authority, special district, library district, regional planning commission, public hospital, county or district health department, state university, state college, state junior college, or other public entity that is affiliated with the plan.

**SECTION 2.** 24-51-213 (1) and (2), Colorado Revised Statutes, are amended to read:

**24-51-213. Confidentiality.** (1) ALL INFORMATION CONTAINED IN records of members, former members, inactive members, and benefit recipients and their dependents ~~which specifically identify financial information of such persons~~ shall be kept confidential by the association.

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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.*

~~(2) Medical records of members, former members, inactive members, and benefit recipients and their dependents which specifically identify the medical or psychological state of such persons shall be kept confidential by the association.~~

**SECTION 3.** 24-51-208 (1) (f), Colorado Revised Statutes, is amended to read:

**24-51-208. Allocation of moneys.** (1) The moneys of the association shall be divided into several trust funds, including, but not limited to:

(f) The health care trust fund, created pursuant to the provisions of section 24-51-1201, which consists of a portion of the employer contributions equal to one and one-tenth percent of member salaries; A PORTION OF THE AMOUNT PAID BY MEMBERS TO PURCHASE SERVICE CREDIT RELATING TO NONCOVERED EMPLOYMENT AS DETERMINED PURSUANT TO SECTION 24-51-505 (7); thirty percent of the amount of any reduction in the employer contribution rates as determined in section 24-51-408.5 (5) to amortize any overfunding in each division's trust fund; deductions of premium amounts from monthly benefits of participating benefit recipients; premiums paid directly to the trust fund by participating benefit recipients, members, and dependents; monthly payments made by employers on behalf of participating benefit recipients, members, and dependents; and interest; in addition to a proportional share of investment income earned thereon;

**SECTION 4.** The introductory portion to 24-51-505 (1), Colorado Revised Statutes, is amended, and the said 24-51-505 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**24-51-505. Purchase of service credit relating to noncovered employment.**

(1) Service credit may be purchased for any period of previous employment with any public or private employer in the United States, ~~or~~ its territories, ~~OR ANY FOREIGN COUNTRY~~ subject to the following conditions:

(7) A PORTION OF THE AMOUNT PAID BY A MEMBER TO PURCHASE SERVICE CREDIT RELATED TO NONCOVERED EMPLOYMENT SHALL BE TRANSFERRED TO THE HEALTH CARE TRUST FUND ON THE EFFECTIVE DATE OF THE MEMBER'S RETIREMENT OR, IN CASE OF DEATH PRIOR TO RETIREMENT, ON THE EFFECTIVE DATE OF THE SURVIVOR BENEFIT. THE AMOUNT TRANSFERRED SHALL BE ONE AND ONE-TENTH PERCENT OF THE MEMBER'S HIGHEST AVERAGE SALARY AT THE TIME OF THE PURCHASE, WITH INTEREST AT THE RATE SPECIFIED IN SECTION 24-51-101 (28) (a).

**SECTION 5.** 24-51-505 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

**24-51-505. Purchase of service credit relating to noncovered employment.**

(2) (c) MEMBERS WHO INITIATE A PURCHASE ON OR AFTER NOVEMBER 1, 2003, MAY NOT PURCHASE SERVICE CREDIT THAT WOULD CAUSE THE TOTAL YEARS OF NONCOVERED SERVICE PURCHASED DURING THEIR MEMBERSHIP TO EXCEED TEN YEARS. THIS LIMIT SHALL NOT APPLY TO MEMBERS WHO PROVIDE ALL REQUIRED DOCUMENTATION OF PREVIOUS SERVICE TO THE ASSOCIATION BY OCTOBER 31, 2003, TOGETHER WITH APPLICATION TO PURCHASE THE SERVICE IF THE PURCHASE IS SUCCESSFULLY COMPLETED PURSUANT TO THE SERVICE CREDIT PURCHASE AGREEMENT RESULTING FROM SAID APPLICATION.

(d) MEMBERS EMPLOYED BY A PUBLIC ENTITY AFFILIATED WITH THE ASSOCIATION PURSUANT TO SECTION 24-51-309 MAY PURCHASE SERVICE CREDIT FOR YEARS EMPLOYED BY THE ENTITY WITHOUT LIMIT, IF THE PURCHASE IS COMPLETED BEFORE THE MEMBER TERMINATES EMPLOYMENT WITH THE ENTITY, AND ANY SUCH PURCHASE FOR YEARS EMPLOYED BY THE ENTITY IN EXCESS OF TEN YEARS IS COMPLETED OR INSTALLMENT PAYMENTS INITIATED WITHIN THREE YEARS AFTER THE DATE THE EMPLOYER AFFILIATES WITH THE ASSOCIATION OR NOVEMBER 1, 2006, WHICHEVER IS LATER.

**SECTION 6.** 24-51-606 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-51-606. Vested inactive member rights.** (2) (h) ELIGIBILITY TO MAKE DIRECT PAYMENTS IN LIEU OF MEMBER CONTRIBUTIONS SHALL BE LIMITED TO VESTED INACTIVE MEMBERS WHO TERMINATE MEMBERSHIP BEFORE JULY 1, 2003, AND MAKE PAYMENTS AS SPECIFIED IN THIS SECTION.

**SECTION 7.** 24-51-801 (1), Colorado Revised Statutes, is amended to read:

**24-51-801. Benefit options.** (1) Any member applying for service retirement or disability retirement may elect to receive a monthly retirement benefit paid in accordance with any one of the following options:

(a) **Option 1.** A single life benefit payable for the life of the retiree and, upon the death of the retiree, the benefit ends. If, upon the death of the retiree, the total amount of benefits ~~which~~ THAT have been paid to the retiree does not exceed the amount of moneys credited to the member contribution account, AN AMOUNT EQUAL TO TWICE THE AMOUNT OF any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the retiree.

(b) **Option 2.** A joint life benefit payable for the life of the retiree and, upon the death of the retiree, one-half of the benefit becomes payable to the cobeneficiary of said retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits ~~which~~ THAT have been paid to them does not exceed the amount of moneys credited to the member contribution account, AN AMOUNT EQUAL TO TWICE THE AMOUNT OF any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.

(c) **Option 3.** A joint life benefit payable for the life of the retiree and, upon the death of the retiree, the same benefit becomes payable to the cobeneficiary of the retiree for life. Upon the death of the cobeneficiary prior to the death of the retiree, an option 1 benefit shall become payable to the retiree. If, upon the death of both the retiree and the cobeneficiary, the total amount of benefits ~~which~~ THAT have been paid to them does not exceed the amount of moneys credited to the member contribution account, AN AMOUNT EQUAL TO TWICE THE AMOUNT OF any remaining moneys shall be paid to the named beneficiary of the retiree or, if no named beneficiary exists, to the estate of the person who survived the death of the other.

(d) Repealed.

**SECTION 8.** 24-51-802, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**24-51-802. Change in option or cobeneficiary.** (3.8) IN ANY DISSOLUTION OF MARRIAGE ACTION IN ANY DISTRICT COURT OF THE STATE THAT BECOMES FINAL ON OR AFTER JULY 1, 2003, IN WHICH THE RETIREE RETIRED ON OR AFTER JULY 1, 1988, AND ELECTED TO RECEIVE AN OPTION 2 OR 3 BENEFIT AND DESIGNATED HIS OR HER SPOUSE AS COBENEFICIARY, THE COURT SHALL HAVE THE JURISDICTION TO ORDER OR ALLOW A RETIREE WHO IS A PETITIONER OR RESPONDENT IN SUCH ACTION TO REMOVE THE SPOUSE THAT WAS NAMED COBENEFICIARY BY THE RETIREE AT RETIREMENT, IN WHICH CASE AN OPTION 1 BENEFIT SHALL BECOME PAYABLE. THE RETIREE MAY ELECT OPTION 2 OR 3 UPON REMARRIAGE AND DESIGNATE THE SPOUSE AS COBENEFICIARY.

**SECTION 9.** 24-51-1101 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-51-1101. Employment after service retirement - repeal.** (1) Except as otherwise provided in subsection (1.5) or (1.7) of this section, a service retiree from any division may be employed by an employer, whether or not in a position subject to membership, and receive a salary without reduction in benefits if the service retiree has not worked for any employer, as defined in section 24-51-101(20), during the month of the effective date of retirement, and if:

(e) THE SERVICE RETIREE IS WORKING IN A POSITION THAT HAS BEEN TEMPORARILY VACATED BY AN EMPLOYEE WHO HAS BEEN CALLED INTO ACTIVE DUTY IN THE ARMED FORCES OF THE UNITED STATES.

**SECTION 10.** 24-52-205 (2) (a), (2) (b), and (4), Colorado Revised Statutes, are amended to read:

**24-52-205. Participation.** (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~~ IS EMPLOYED IN AN ELIGIBLE POSITION, make a ~~one-time irrevocable~~ written election during the month of January of ~~each~~ ANY 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.

(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.

**SECTION 11.** 24-52-206 (2), Colorado Revised Statutes, is amended to read:

**24-52-206. Public employees' retirement association.** (2) (a) 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~~ MAY TERMINATE FUTURE CONTRIBUTIONS TO SUCH PLAN AND INSTEAD PARTICIPATE IN THE ASSOCIATION BY MAKING A WRITTEN ELECTION DURING THE MONTH OF JANUARY OF ANY YEAR. ANY SUCH ELECTION TO PARTICIPATE IN THE ASSOCIATION SHALL BE IN WRITING AND SHALL BE FILED WITH THE ASSOCIATION AND WITH SUCH ELIGIBLE EMPLOYEE'S EMPLOYER.

(b) ANY ELIGIBLE EMPLOYEE WHO TERMINATES PARTICIPATION IN THE DEFINED CONTRIBUTION PLAN AND BECOMES A MEMBER OF THE ASSOCIATION MAY, UPON MEETING THE REQUIREMENTS OF SECTION 24-51-505, PURCHASE SERVICE CREDIT FOR THE PERIOD OF EMPLOYMENT DURING WHICH THE EMPLOYEE WAS A PARTICIPANT IN A DEFINED CONTRIBUTION PLAN PURSUANT TO THIS PART 2. THE COST TO PURCHASE SUCH SERVICE SHALL BE THE FULL ACTUARIAL COST AS DETERMINED BY THE ACTUARY OF THE ASSOCIATION BUT NOT LESS THAN THE COST CHARGED FOR OTHER PURCHASES OF NONCOVERED EMPLOYMENT PURSUANT TO SECTION 24-51-505 (3). THE EMPLOYEE MAY ELECT TO HAVE ANY PORTION OF THE EMPLOYEE'S ACCOUNT PAID FROM THE DEFINED CONTRIBUTION PLAN TO THE ASSOCIATION TO FACILITATE THE PURCHASE OF SERVICE CREDIT THROUGH A DIRECT ROLLOVER IN ACCORDANCE WITH SECTION 401(a) (31) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. THE EMPLOYEE MAY NOT BE VESTED IN THE DEFINED CONTRIBUTION PLAN UPON PURCHASING SERVICE CREDIT FOR EMPLOYMENT THAT WAS COVERED BY THE DEFINED CONTRIBUTION PLAN.

**SECTION 12.** 24-54-106, Colorado Revised Statutes, is amended to read:

**24-54-106. Association shall be formed - withdrawal.** (1) Any county, or group of counties, any municipality or group of municipalities, any district or group of districts, or any other participating entity or group of participating entities adopting a retirement plan or system pursuant to the provisions of this article shall form and maintain an association for the purchase, establishment, or procurement of a group annuity retirement plan or a noninsured trust retirement plan. Any such association so formed shall be an instrumentality of the members thereof. The cost and expenses incident to the formation and maintenance of such an association and the consideration paid by any county, any municipality, any district, or any other participating entity as an employer pursuant to any such plan are proper charges against the county, the municipality, the district, or any other participating entity comprising the association.

(2) (a) ANY EMPLOYER MAY WITHDRAW FROM ITS PARTICIPATION IN AND CONTRIBUTIONS TO THE ASSOCIATION FORMED PURSUANT TO THIS ARTICLE. THE EMPLOYER MAY INITIATE WITHDRAWAL FROM THE ASSOCIATION BY FILING WITH THE BOARD OF THE ASSOCIATION A RESOLUTION ADOPTED BY THE EMPLOYER PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) NO LESS THAN NINETY DAYS PRIOR TO THE

EFFECTIVE DATE OF WITHDRAWAL UNLESS A SHORTER WAITING PERIOD IS APPROVED BY THE BOARD. THE EFFECTIVE DATE OF WITHDRAWAL SHALL BE THE FIRST DAY OF THE MONTH IMMEDIATELY FOLLOWING THE MONTH IN WHICH THE WAITING PERIOD EXPIRES.

(b) THE EMPLOYER'S WITHDRAWAL RESOLUTION SHALL BE ADOPTED BY THE GOVERNING BODY OF THE EMPLOYER AND SHALL STATE THE EMPLOYER'S INTENT TO WITHDRAW FROM PARTICIPATION IN THE ASSOCIATION.

(c) ANY WITHDRAWAL SHALL BE APPROVED BY AT LEAST SIXTY-FIVE PERCENT OF ALL ACTIVE MEMBERS EMPLOYED BY THE EMPLOYER WHO ARE PARTICIPATING IN THE ASSOCIATION AT THE TIME OF THE ELECTION.

(d) THE BOARD SHALL DISCLOSE ALL RAMIFICATIONS AND PROCEDURES FOR OBTAINING THE MEMBER APPROVAL PROVIDED FOR IN PARAGRAPH (c) OF THIS SUBSECTION (2).

(e) ALL WITHDRAWALS FROM THE ASSOCIATION SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS SECTION, AND, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ALL WITHDRAWALS MEETING SUCH REQUIREMENTS SHALL BE APPROVED BY THE BOARD OF THE ASSOCIATION. WITHDRAWAL REQUESTS THAT DO NOT MEET THE REQUIREMENTS OF THIS SECTION SHALL NOT BE APPROVED BY THE BOARD.

**SECTION 13.** Article 54 of title 24, Colorado Revised Statutes, is amended by the ADDITION OF A NEW SECTION to read:

**24-54-113. Direct rollovers.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, AN EMPLOYEE OR OFFICIAL WHO HAS TERMINATED CONTRIBUTIONS TO A PLAN ESTABLISHED PURSUANT TO THIS ARTICLE, OR A SURVIVING SPOUSE, MAY ELECT TO HAVE ANY PORTION OF AN ELIGIBLE ROLLOVER DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE RETIREMENT PLAN IN A DIRECT ROLLOVER IN ACCORDANCE WITH SECTION 401 (a) (31) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED. IF A DIRECT ROLLOVER IS ELECTED, SUCH DISTRIBUTION SHALL BE MADE BY THE DISTRIBUTING PLAN NOT LATER THAN NINETY DAYS AFTER THE LATER OF THE DATE THE LAST CONTRIBUTION IS RECEIVED OR THE DATE A DIRECT ROLLOVER ELECTION IS RECEIVED BY THE PLAN.

**SECTION 14. Effective date.** Sections 3, 4, and 5 of this act shall take effect November 1, 2003, sections 6 and 8 of this act shall take effect July 1, 2003, and the remainder of this act shall take effect on passage.

**SECTION 15. 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 5, 2003