

**HOUSE BILL No. 2724**

By Committee on Appropriations

3-9

1 AN ACT concerning retirement and pensions; relating to the Kansas public  
2 employees retirement system; limits on calculations of members'  
3 benefits; amounts taxable under 409A and 457(f) plans; amending  
4 K.S.A. 2015 Supp. 74-4902 and repealing the existing section.

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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 74-4902 is hereby amended to read as  
8 follows: 74-4902. As used in articles 49 and 49a of chapter 74 of the  
9 Kansas Statutes Annotated, and amendments thereto, unless otherwise  
10 provided or the context otherwise requires:

11 (1) "Accumulated contributions" means the sum of all contributions  
12 by a member to the system which are credited to the member's account,  
13 with interest allowed thereon;

14 (2) "acts" means the provisions of articles 49 and 49a of the Kansas  
15 Statutes Annotated, and amendments thereto;

16 (3) "actuarial equivalent" means an annuity or benefit of equal value  
17 to the accumulated contributions, annuity or benefit, when computed upon  
18 the basis of the actuarial tables in use by the system. Whenever the amount  
19 of any benefit is to be determined on the basis of actuarial assumptions,  
20 the assumptions shall be specified in a way that precludes employer  
21 discretion;

22 (4) "actuarial tables" means the actuarial tables approved and in use  
23 by the board at any given time;

24 (5) "actuary" means the actuary or firm of actuaries employed or  
25 retained by the board at any given time;

26 (6) "agent" means the individual designated by each participating  
27 employer through whom system transactions and communication are  
28 directed;

29 (7) "beneficiary" means, subject to the provisions of K.S.A. 74-4927,  
30 and amendments thereto, any natural person or persons, estate or trust, or  
31 any combination thereof, named by a member to receive any benefits as  
32 provided for by this act. Designations of beneficiaries by a member who is  
33 a member of more than one retirement system made on or after July 1,  
34 1987, shall be the basis of any benefits payable under all systems unless  
35 otherwise provided by law. Except as otherwise provided by subsection  
36 (33) of this section, if there is no named beneficiary living at the time of

1 the member's death, any benefits provided for by this act shall be paid to:  
2 (A) The member's surviving spouse; (B) the member's dependent child or  
3 children; (C) the member's dependent parent or parents; (D) the member's  
4 nondependent child or children; (E) the member's nondependent parent or  
5 parents; *or* (F) the estate of the deceased member; in the order of  
6 preference as specified in this subsection;

7 (8) "board of trustees," "board" or "trustees" means the managing  
8 body of the system which is known as the Kansas public employees  
9 retirement system board of trustees;

10 (9) "compensation" means, except as otherwise provided, all salary,  
11 wages and other remuneration payable to a member for personal services  
12 performed for a participating employer, including maintenance or any  
13 allowance in lieu thereof provided a member as part of compensation, but  
14 not including reimbursement for travel or moving expenses or on and after  
15 July 1, 1994, payment pursuant to an early retirement incentive program  
16 made prior to the retirement of the member. Beginning with the employer's  
17 fiscal year which begins in calendar year 1991 or for employers other than  
18 the state of Kansas, beginning with the fiscal year which begins in  
19 calendar year 1992, when the compensation of a member who remains in  
20 substantially the same position during any two consecutive years of  
21 participating service used in calculating final average salary is increased  
22 by an amount which exceeds 15%, then the amount of such increase which  
23 exceeds 15% shall not be included in compensation, except that: (A) Any  
24 amount of compensation for accumulated sick leave or vacation or annual  
25 leave paid to the member; (B) any increase in compensation for any  
26 member due to a reclassification or reallocation of such member's position  
27 or a reassignment of such member's job classification to a higher range or  
28 level; and (C) any increase in compensation as provided in any contract  
29 entered into prior to January 1, 1991, and still in force on the effective date  
30 of this act, pursuant to an early retirement incentive program as provided  
31 in K.S.A. 72-5395 et seq., and amendments thereto, shall be included in  
32 the amount of compensation of such member used in determining such  
33 member's final average salary and shall not be subject to the 15%  
34 limitation provided in this subsection. Any contributions by such member  
35 on the amount of such increase which exceeds 15% which is not included  
36 in compensation shall be returned to the member. Unless otherwise  
37 provided by law, beginning with the employer's fiscal year coinciding with  
38 or following July 1, 1985, compensation shall include any amounts for tax  
39 sheltered annuities or deferred compensation plans. Beginning with the  
40 employer's fiscal year which begins in calendar year 1991, compensation  
41 shall include amounts under sections 403b, 457(b) and 125 of the federal  
42 internal revenue code of 1986 and, as the board deems appropriate, any  
43 other section of the federal internal revenue code of 1986 which defers or

1 excludes amounts from inclusion in income. *Beginning July 1, 2016,*  
2 *"compensation" shall not include amounts taxable under sections 409A or*  
3 *457(f) of the federal internal revenue code.* For purposes of applying limits  
4 under the federal internal revenue code "compensation" shall have the  
5 meaning as provided in K.S.A. 74-49,123, and amendments thereto. For  
6 purposes of this subsection and application to the provisions of ~~subsection~~  
7 ~~(4)~~ of K.S.A. 74-4927(4), and amendments thereto, "compensation" shall  
8 not include any payments made by the state board of regents pursuant to  
9 the provisions of ~~subsection (5)~~ of K.S.A. 74-4927a(5), and amendments  
10 thereto, to a member of the faculty or other person defined in ~~subsection~~  
11 ~~(1)(a)~~ of K.S.A. 74-4925(1)(a), and amendments thereto;

12 (10) "credited service" means the sum of participating service and  
13 prior service and in no event shall credited service include any service  
14 which is credited under another retirement plan authorized under any law  
15 of this state;

16 (11) "dependent" means a parent or child of a member who is  
17 dependent upon the member for at least  $\frac{1}{2}$  of such parent or child's  
18 support;

19 (12) "effective date" means the date upon which the system becomes  
20 effective by operation of law;

21 (13) "eligible employer" means the state of Kansas, and any county,  
22 city, township, special district or any instrumentality of any one or several  
23 of the aforementioned or any noncommercial public television or radio  
24 station located in this state which receives state funds allocated by the  
25 Kansas public broadcasting commission whose employees are covered by  
26 social security. If a class or several classes of employees of any above  
27 defined employer are not covered by social security, such employer shall  
28 be deemed an eligible employer only with respect to such class or those  
29 classes of employees who are covered by social security;

30 (14) "employee" means any appointed or elective officer or employee  
31 of a participating employer whose employment is not seasonal or  
32 temporary and whose employment requires at least 1,000 hours of work  
33 per year, and any such officer or employee who is concurrently employed  
34 performing similar or related tasks by two or more participating  
35 employers, who each remit employer and employee contributions on  
36 behalf of such officer or employee to the system, and whose combined  
37 employment is not seasonal or temporary, and whose combined  
38 employment requires at least 1,000 hours of work per year, but not  
39 including: (A) Any employee who is a contributing member of the United  
40 States civil service retirement system; (B) any employee who is a  
41 contributing member of the federal employees retirement system; (C) any  
42 employee who is a leased employee as provided in section 414 of the  
43 federal internal revenue code of a participating employer; and (D) any

1 employee or class of employees specifically exempted by law. After June  
2 30, 1975, no person who is otherwise eligible for membership in the  
3 Kansas public employees retirement system shall be barred from such  
4 membership by reason of coverage by, eligibility for or future eligibility  
5 for a retirement annuity under the provisions of K.S.A. 74-4925, and  
6 amendments thereto, except that no person shall receive service credit  
7 under the Kansas public employees retirement system for any period of  
8 service for which benefits accrue or are granted under a retirement annuity  
9 plan under the provisions of K.S.A. 74-4925, and amendments thereto.  
10 After June 30, 1982, no person who is otherwise eligible for membership  
11 in the Kansas public employees retirement system shall be barred from  
12 such membership by reason of coverage by, eligibility for or future  
13 eligibility for any benefit under another retirement plan authorized under  
14 any law of this state, except that no such person shall receive service credit  
15 under the Kansas public employees retirement system for any period of  
16 service for which any benefit accrues or is granted under any such  
17 retirement plan. Employee shall include persons who are in training at or  
18 employed by, or both, a sheltered workshop for the blind operated by the  
19 secretary for children and families. The entry date for such persons shall  
20 be the beginning of the first pay period of the fiscal year commencing in  
21 calendar year 1986. Such persons shall be granted prior service credit in  
22 accordance with K.S.A. 74-4913, and amendments thereto. However, such  
23 persons classified as home industry employees shall not be covered by the  
24 retirement system. Employees shall include any member of a board of  
25 county commissioners of any county and any council member or  
26 commissioner of a city whose compensation is equal to or exceeds \$5,000  
27 per year;

28 (15) "entry date" means the date as of which an eligible employer  
29 joins the system. The first entry date pursuant to this act is January 1,  
30 1962;

31 (16) "executive director" means the managing officer of the system  
32 employed by the board under this act;

33 (17) "final average salary" means in the case of a member who retires  
34 prior to January 1, 1977, and in the case of a member who retires after  
35 January 1, 1977, and who has less than five years of participating service  
36 after January 1, 1967, the average highest annual compensation paid to  
37 such member for any five years of the last 10 years of participating service  
38 immediately preceding retirement or termination of employment, or in the  
39 case of a member who retires on or after January 1, 1977, and who has five  
40 or more years of participating service after January 1, 1967, the average  
41 highest annual compensation paid to such member on or after January 1,  
42 1967, for any five years of participating service preceding retirement or  
43 termination of employment, or, in any case, if participating service is less

1 than five years, then the average annual compensation paid to the member  
2 during the full period of participating service, or, in any case, if the  
3 member has less than one calendar year of participating service such  
4 member's final average salary shall be computed by multiplying such  
5 member's highest monthly salary received in that year by 12; in the case of  
6 a member who became a member under ~~subsection (3)~~ of K.S.A. 74-  
7 4925(3), and amendments thereto, or who became a member with a  
8 participating employer as defined in ~~subsection (3)~~ of K.S.A. 74-4931(3),  
9 and amendments thereto, and who elects to have compensation paid in  
10 other than 12 equal installments, such compensation shall be annualized as  
11 if the member had elected to receive 12 equal installments for any such  
12 periods preceding retirement; in the case of a member who retires after  
13 July 1, 1987, the average highest annual compensation paid to such  
14 member for any four years of participating service preceding retirement or  
15 termination of employment; in the case of a member who retires on or  
16 after July 1, 1993, whose date of membership in the system is prior to July  
17 1, 1993, and any member who is in such member's membership waiting  
18 period on July 1, 1993, and whose date of membership in the system is on  
19 or after July 1, 1993, the average highest annual compensation, as defined  
20 in subsection (9), paid to such member for any four years of participating  
21 service preceding retirement or termination of employment or the average  
22 highest annual salary, as defined in ~~subsection (34)(33)~~, paid to such  
23 member for any three years of participating service preceding retirement  
24 or termination of employment, whichever is greater; and in the case of a  
25 member who retires on or after July 1, 1993, and whose date of  
26 membership in the system is on or after July 1, 1993, the average highest  
27 annual salary, as defined in ~~subsection (34)~~ (33), paid to such member for  
28 any three years of participating service preceding retirement or termination  
29 of employment. Final average salary shall not include any purchase of  
30 participating service credit by a member as provided in ~~subsection (2)~~ of  
31 K.S.A. 74-4919h(2), and amendments thereto, which is completed within  
32 five years of retirement. For any application to purchase or repurchase  
33 service credit for a certain period of service as provided by law received  
34 by the system after May 17, 1994, for any member who will have  
35 contributions deducted from such member's compensation at a percentage  
36 rate equal to two or three times the employee's rate of contribution or will  
37 begin paying to the system a lump-sum amount for such member's  
38 purchase or repurchase and such deductions or lump-sum payment  
39 commences after the commencement of the first payroll period in the third  
40 quarter, "final average salary" shall not include any amount of  
41 compensation or salary which is based on such member's purchase or  
42 repurchase. Any application to purchase or repurchase multiple periods of  
43 service shall be treated as multiple applications. For purposes of this

1 subsection, the date that such member is first hired as an employee for  
2 members who are employees of employers that elected to participate in the  
3 system on or after January 1, 1994, shall be the date that such employee's  
4 employer elected to participate in the system. In the case of any former  
5 member who was eligible for assistance pursuant to K.S.A. 74-4925, and  
6 amendments thereto, prior to July 1, 1998, for the purpose of calculating  
7 final average salary of such member, such member's final average salary  
8 shall be based on such member's salary while a member of the system or  
9 while eligible for assistance pursuant to K.S.A. 74-4925, and amendments  
10 thereto, whichever is greater;

11 (18) "fiscal year" means, for the Kansas public employees retirement  
12 system, the period commencing July 1 of any year and ending June 30 of  
13 the next;

14 (19) "Kansas public employees retirement fund" means the fund  
15 created by this act for payment of expenses and benefits under the system  
16 and referred to as the fund;

17 (20) "leave of absence" means a period of absence from employment  
18 without pay, authorized and approved by the employer, and which after the  
19 effective date does not exceed one year;

20 (21) "member" means an eligible employee who is in the system and  
21 is making the required employee contributions; any former employee who  
22 has made the required contributions to the system and has not received a  
23 refund if such member is within five years of termination of employment  
24 with a participating employer; or any former employee who has made the  
25 required contributions to the system, has not yet received a refund and has  
26 been granted a vested benefit;

27 (22) "military service" means service in the uniformed forces of the  
28 United States, for which retirement benefit credit must be given under the  
29 provisions of USERRA or service in the armed forces of the United States  
30 or in the commissioned corps of the United States public health service,  
31 which service is immediately preceded by a period of employment as an  
32 employee or by entering into an employment contract with a participating  
33 employer and is followed by return to employment as an employee with  
34 the same or another participating employer within 12 months immediately  
35 following discharge from such military service, except that if the board  
36 determines that such return within 12 months was made impossible by  
37 reason of a service-connected disability, the period within which the  
38 employee must return to employment with a participating employer shall  
39 be extended not more than two years from the date of discharge or  
40 separation from military service;

41 (23) "normal retirement date" means the date on or after which a  
42 member may retire with full retirement benefits pursuant to K.S.A. 74-  
43 4914, and amendments thereto;

1 (24) "participating employer" means an eligible employer who has  
2 agreed to make contributions to the system on behalf of its employees;

3 (25) "participating service" means the period of employment after the  
4 entry date for which credit is granted a member;

5 (26) "prior service" means the period of employment of a member  
6 prior to the entry date for which credit is granted a member under this act;

7 (27) "prior service annual salary" means the highest annual salary, not  
8 including any amounts received as payment for overtime or as  
9 reimbursement for travel or moving expense, received for personal  
10 services by the member from the current employer in any one of the three  
11 calendar years immediately preceding January 1, 1962, or the entry date of  
12 the employer, whichever is later, except that if a member entered the  
13 employment of the state during the calendar year 1961, the prior service  
14 annual salary shall be computed by multiplying such member's highest  
15 monthly salary received in that year by 12;

16 (28) "retirant" means a member who has retired under this system;

17 (29) "retirement benefit" means a monthly income or the actuarial  
18 equivalent thereof paid in such manner as specified by the member  
19 pursuant to this act or as otherwise allowed to be paid at the discretion of  
20 the board, with benefits accruing from the first day of the month  
21 coinciding with or following retirement and ending on the last day of the  
22 month in which death occurs. Upon proper identification a surviving  
23 spouse may negotiate the warrant issued in the name of the retirant. If  
24 there is no surviving spouse, the last warrant shall be payable to the  
25 designated beneficiary;

26 (30) "retirement system" or "system" means the Kansas public  
27 employees retirement system as established by this act and as it may be  
28 amended;

29 (31) "social security" means the old age, survivors and disability  
30 insurance section of the federal social security act;

31 (32) "trust" means an express trust, created by a trust instrument,  
32 including a will, designated by a member to receive payment of the  
33 insured death benefit under K.S.A. 74-4927, and amendments thereto, and  
34 payment of the member's accumulated contributions under ~~subsection (1)~~  
35 ~~of K.S.A. 74-4916(1)~~, and amendments thereto. A designation of a trust  
36 shall be filed with the board. If no will is admitted to probate within six  
37 months after the death of the member or no trustee qualifies within such  
38 six months or if the designated trust fails, for any reason whatsoever, the  
39 insured death benefit under K.S.A. 74-4927, and amendments thereto, and  
40 the member's accumulated contributions under ~~subsection (1)~~ of K.S.A.  
41 74-4916(1), and amendments thereto, shall be paid in accordance with the  
42 provisions of subsection (7) ~~of this section~~ as in other cases where there is  
43 no named beneficiary living at the time of the member's death and any

1 payments so made shall be a full discharge and release to the system from  
2 any further claims;

3 (33) "salary" means all salary and wages payable to a member for  
4 personal services performed for a participating employer, including  
5 maintenance or any allowance in lieu thereof provided a member as part of  
6 salary. Salary shall not include reimbursement for travel or moving  
7 expenses, payment for accumulated sick leave or vacation or annual leave,  
8 severance pay or any other payments to the member determined by the  
9 board to not be payments for personal services performed for a  
10 participating employer constituting salary or on and after July 1, 1994,  
11 payment pursuant to an early retirement incentive program made prior to  
12 the retirement of the member. When the salary of a member who remains  
13 in substantially the same position during any two consecutive years of  
14 participating service used in calculating final average salary is increased  
15 by an amount which exceeds 15%, then the amount of such increase which  
16 exceeds 15% shall not be included in salary. Any contributions by such  
17 member on the amount of such increase which exceeds 15% which is not  
18 included in compensation shall be returned to the member. Unless  
19 otherwise provided by law, salary shall include any amounts for tax  
20 sheltered annuities or deferred compensation plans. Salary shall include  
21 amounts under sections 403b, 457(b) and 125 of the federal internal  
22 revenue code of 1986 and, as the board deems appropriate, any other  
23 section of the federal internal revenue code of 1986 which defers or  
24 excludes amounts from inclusion in income. *Beginning July 1, 2016,*  
25 *"salary" shall not include amounts taxable under sections 409A or 457(f)*  
26 *of the federal internal revenue code.* For purposes of applying limits under  
27 the federal internal revenue code "salary" shall have the meaning as  
28 provided in K.S.A. 74-49,123, and amendments thereto. In any case, if  
29 participating service is less than three years, then the average annual salary  
30 paid to the member during the full period of participating service, or, in  
31 any case, if the member has less than one calendar year of participating  
32 service such member's final average salary shall be computed by  
33 multiplying such member's highest monthly salary received in that year by  
34 12;

35 (34) "federal internal revenue code" means the federal internal  
36 revenue code of 1954 or 1986, as in effect on July 1, 2008, and as  
37 applicable to a governmental plan; and

38 (35) "USERRA" means the federal uniformed services employment  
39 and reemployment rights act of 1994 as in effect on July 1, 2008.

40 Sec. 2. K.S.A. 2015 Supp. 74-4902 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its  
42 publication in the statute book.