



AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING DEFINITIONS; REVISING STATE RETIREMENT SYSTEM POLICY; AMENDING DUTIES OF AN EMPLOYER; CLARIFYING FAMILY LAW ORDERS; CLARIFYING PAYMENT OF OPTIONAL ALLOWANCES AND SURVIVOR BENEFITS; CLARIFYING BENEFICIARY DESIGNATIONS; CLARIFYING RESPONSIBILITY FOR CORRECTION OF ERRORS; PROVIDING FOR REPORTING OBLIGATIONS OF A RETIRED MEMBER; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-203, 19-20-208, 19-20-305, 19-20-405, 19-20-701, 19-20-702, 19-20-703, 19-20-705, 19-20-715, 19-20-717, 19-20-721, 19-20-731, 19-20-733, 19-20-805, 19-20-1001, 19-20-1002, 19-20-1003, AND 19-20-1101, MCA; REPEALING SECTION 19-20-720, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 19-20-101, MCA, is amended to read:

**"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means ~~the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b)~~

~~have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under 19-20-716(1)(b) a member's highest average earned compensation in 3 consecutive years, determined pursuant to 19-20-805, on which contributions have been made.~~

(4) "Beneficiary" means one or more persons formally designated by a member; ~~or retiree, or benefit recipient~~ to receive a retirement allowance or payment upon the death of the member; ~~or retiree, or benefit recipient~~ except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

~~(5)(6)~~ (6) "Creditable service" is that service defined by 19-20-401.

~~(6)(7)~~ (7) (a) "Earned compensation" means, except as limited by subsections (7)(b) and (7)(c) or by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not ~~mean~~ include:

(i) ~~direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health,~~ medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for:

(A) professional membership dues;

(B) maintenance;

(C) housing;

(D) day care;

(E) automobile, travel, lodging, or entertaining expenses; or

(F) any similar ~~payment for any~~ form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; ~~or~~

(iv) any noncash benefit provided by an employer to or on behalf of ~~an employee:~~ a member;

~~(e)(v) Unless termination pay unless~~ included pursuant to 19-20-716, ~~earned compensation does not~~

~~include termination pay:~~

~~—— (d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation;~~

~~—— (e) Earned compensation does not include:~~

~~(i)(vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);~~

~~(ii)(vii) payment for sick, annual, or other types of leave that is allowed paid to a member and that is prior to termination from employment or accrued in excess of that normally allowed; or~~

~~(iii)(viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;~~

or

~~(ix) any similar payment or reimbursement made to or on behalf of a member by an employer.~~

~~(c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.~~

~~(7)(8) "Employer" means:~~

- ~~(a) the state of Montana;~~
- ~~(b) a public school district, as provided in 20-6-101 and 20-6-701;~~
- ~~(c) the office of public instruction;~~
- ~~(d) the board of public education;~~
- ~~(e) an education cooperative;~~
- ~~(f) the Montana school for the deaf and blind, as described in 20-8-101;~~
- ~~(g) the Montana youth challenge program, as defined in 10-1-101;~~
- ~~(h) a state youth correctional facility, as defined in 41-5-103;~~
- ~~(i) the Montana university system;~~
- ~~(j) a community college; or~~
- ~~(k) any other agency or subdivision of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.~~

~~(8)(9) "Full-time service" means service that is:~~

- ~~(a) at least 180 days in a fiscal year;~~
- ~~(b) at least 140 hours a month during at least 9 months in a fiscal year; or~~

(c) ~~full-time~~ at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board that is ~~less than 180 days but meets minimum accreditation requirements of 1,080 hours~~ and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.

~~(9)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(11)~~ "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.

~~(10)~~(12) "Member" means a person who has an individual account in the annuity savings account. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(11)~~(13) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

~~(12)~~(14) "Normal retirement age" means an age no earlier than 55 years of age, with the right to receive immediate retirement benefits without an actuarial reduction in the benefits.

~~(13)~~(15) "Part-time service" means service that is ~~less than 180 days in a fiscal year or less than 140 hours a month during 9 months in a fiscal year~~ not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(14)~~(16) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

~~(15)~~(17) "~~Retired~~ Retired", "retired member", or "retiree" means a person who has terminated employment that ~~qualified~~ qualifies the person for membership ~~under 19-20-302~~ and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(16)~~(18) "Retirement allowance" or "retirement benefit" means a monthly payment due to a ~~person retired member~~ who has qualified for service or disability retirement or due to a joint annuitant or beneficiary ~~as provided in 19-20-1001~~.

~~(17)~~(19) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(18)~~(20) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of

Montana provided for in 19-20-102.

~~(19)~~(21) "Service" means the performance of ~~instructional duties or related activities~~ that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(20)~~(22) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(21)~~(23) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment ~~and on which employee and employer contributions have been paid as required by 19-20-716.~~

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

~~(22)~~(24) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, ~~as required by 19-20-602, 19-20-605, and 19-20-607,~~ and ~~who~~ has a right to a future retirement benefit.

~~(23)~~(25) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary."

**Section 2.** Section 19-20-102, MCA, is amended to read:

**"19-20-102. Retirement system -- policy.** (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers' retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers' retirement system is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have

the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service retirement and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731.

(3) It is the policy of the state to ensure that public employees are reported to the correct public retirement system. The retirement system shall enter into memoranda of understanding with the public employees' retirement board to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business."

**Section 3.** Section 19-20-203, MCA, is amended to read:

**"19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

~~— (b) appoint a secretary, who may be one of its members;~~

~~(c)~~(b) employ an executive director and other technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and

~~(d)~~(c) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into

the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members."

**Section 4.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties of employer.** Each employer shall:

(1) pick up the contribution of each employed member at the rate prescribed by 19-20-602 and transmit the contribution each month to the executive director of the retirement board;

(2) transmit to the executive director of the retirement board the employer's contribution prescribed by 19-20-605, at the time that the employee contributions are transmitted;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;

(5) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a ~~part-time teaching, administrative, or faculty position~~ under the reemployment provisions of position that is reportable to the retirement system pursuant to 19-20-731;

(6) whenever applicable, inform an employee of the right to elect to participate in the optional retirement program under Title 19, chapter 21;

(7) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(8) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board;

(9) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement."

**Section 5.** Section 19-20-305, MCA, is amended to read:

**"19-20-305. Alternate payees -- family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member's or retiree's retirement benefit;

(c) "family law order" means a certified copy of a judgment, decree, or order of a court with competent jurisdiction concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(d) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment that is not available to the affected participant under the retirement system or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) ~~(i) The actuarially equivalent service, disability, or survivor retirement benefit payable to the alternate payee must be calculated by taking the total years of service for which the benefit was earned during the marriage divided by the total years of creditable service used in the calculation of the retirement benefit, multiplied by a percentage share of the benefit payable to the alternate payee, multiplied by the total amount payable to the~~



participant. When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a ~~percentage of the amount payable as determined by the formula in subsection (5)(b)(i)~~ lump-sum payment up to the total fixed amount or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned between the participant and the alternate payee receiving an actuarially equivalent amount in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order and approval of the family law order by the retirement system.

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise

transferred by the alternate payee.

(b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.

(13) The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law."

**Section 6.** Section 19-20-405, MCA, is amended to read:

**"19-20-405. Limit on creditable service that may be awarded.** The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, ~~and~~ 19-20-410(1), and 19-20-426 may not exceed 5 years."

**Section 7.** Section 19-20-701, MCA, is amended to read:

**"19-20-701. Benefits.** (1) The retirement, disability, and other benefits of the retirement system must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying that there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.

(2) If a member applies for a retirement benefit but dies before receiving the first monthly benefit allowance, benefits must be paid to the joint annuitant or beneficiary designated on the member's written application for a retirement allowance in the manner provided in 19-20-1001. If the member's written application did not include a designation of a joint annuitant or beneficiary, benefits must be paid to the beneficiary of record in the manner provided in 19-20-1001."

**Section 8.** Section 19-20-702, MCA, is amended to read:

**"19-20-702. Optional allowances -- certain period and life allowances.** (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. ~~If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.~~

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the ~~person~~ joint annuitant that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A--the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's ~~designated beneficiary~~ joint annuitant.

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ joint annuitant.

(c) Option C--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's ~~designated beneficiary~~ joint annuitant.

(d) Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

- (i) 10 years if the member is 75 years of age or younger at the time of retirement; or
- (ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ joint annuitant if:

(i) the original ~~beneficiary~~ joint annuitant has died. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ joint annuitant.

(ii) the member has been divorced from the original ~~beneficiary~~ joint annuitant and the original ~~beneficiary~~ joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different ~~beneficiary~~ joint annuitant or to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:

(a) the original ~~beneficiary~~ joint annuitant has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the ~~designated beneficiary~~ original joint annuitant.

(b) the member has been divorced from the original ~~beneficiary~~ joint annuitant and the original ~~beneficiary~~ joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original ~~beneficiary~~ joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the ~~designated beneficiary~~ joint annuitant."

**Section 9.** Section 19-20-703, MCA, is amended to read:

**"19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.

(2) Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of an inactive member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(3)(a)(i).

(4) The life expectancy of a member or the member's ~~beneficiary~~ joint annuitant may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later."

**Section 10.** Section 19-20-705, MCA, is amended to read:

**"19-20-705. Correction of errors.** (1) (a) If a change or error in the records results in a ~~member or beneficiary~~ benefit recipient or alternate payee receiving from the retirement system more or less than the ~~member or beneficiary~~ benefit recipient or alternate payee would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments so that the actuarial equivalent of the benefit to which the ~~member or beneficiary~~ benefit recipient or alternate payee was correctly entitled will be paid.

(b) The right of the retirement system to actuarially adjust benefits payable to a benefit recipient or

alternate payee may not bar the application of any other remedy or penalty available to the retirement system under this chapter or at law. The retirement system may pursue any or all remedies or options for recovery of amounts owed to it that, in its sole discretion, are necessary for the proper administration of the retirement system.

(c) The retirement system may recover amounts owed to it by withholding:

(i) as a lump sum, the full amount owed to it from a withdrawal or payout of the member's accumulated contributions;

(ii) a percentage not to exceed 50% of each monthly benefit payable until the amount owed is paid in full;

or

(iii) any or all of the \$500 death benefit.

(d) The retirement system's right to recover amounts owed to it has priority over the claim of any benefit recipient or alternate payee.

(2) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve an arrangement to collect the correct amount, including any or all of the following arrangements:

(a) adjustment of subsequent payments to the board from a member or an employer;

(b) collection of installment payments or a lump-sum payment from an employer; or

(c) collection of installment payments, a lump-sum payment, or a rollover payment from a member.

(3) Upon discovery of a forged signature on a retirement benefit application, the benefit must be corrected as provided in subsection (1).

(4) Interest accrues on contributions not reported or amounts overpaid to members at the actuarially assumed rate. Interest accrues from the date the contributions were due or the date the benefits were paid in error. If the board finds that the error was caused by the teachers' retirement system, interest must be waived."

**Section 11.** Section 19-20-715, MCA, is amended to read:

**"19-20-715. ~~Compensation limit~~ Earned compensation -- limitations.** (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this

chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the earned compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's earned compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.

(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716."

**Section 12.** Section 19-20-717, MCA, is amended to read:

**"19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant.** (1) If a beneficiary is not designated or if no designated beneficiary or joint annuitant survives the ~~payment recipient member or retired member~~, the estate of the ~~payment recipient member or retired member~~ is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the ~~payment recipient member or retired member~~. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the personal representative or executor of the survivor's estate.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by

the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

**Section 13.** Section 19-20-721, MCA, is amended to read:

**"19-20-721. Designation of beneficiary.** (1) ~~Each~~ Except as otherwise provided in this chapter, each member ~~or recipient of a benefit~~ shall file with the board a written ~~application nominating~~ election designating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member ~~or benefit recipient~~ may revoke the ~~application and nominate~~ written election and designate a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary."

**Section 14.** Section 19-20-731, MCA, is amended to read:

**"19-20-731. Postretirement employment limitations -- cancellation and recalculation of benefits -- reporting obligation of retired member.** (1) (a) Except as [provided in 19-20-732 or as] otherwise provided in this section, a retired member may be employed part-time by ~~a school district, state agency, or unit of the university system~~ an employer in a position ~~eligible to participate in~~ that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

- (i) one-third of the sum of the member's average final compensation; or
- (ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) ~~For the purposes of this subsection (1), the~~ The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all ~~remuneration~~ amounts paid to ~~or on behalf of the retired member~~ and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

- (i) ~~the amount of~~ health insurance premiums directly paid by the employer on the retired member's behalf



for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in ~~[19-20-732 and] 19-20-733~~, the retirement benefit of a retired member:

(a) employed in a part-time position ~~or~~ but earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be  ~~canceled~~ suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.

(b) employed in a full-time position or employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be  ~~canceled beginning in the month in~~ suspended effective on the date on which the retired member returns to full-time employment.

(4) For purposes of this section, ~~"position eligible to participate in~~ the term "employed in a position that is reportable to the retirement system" includes any work performed or service provided by a retiree retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, or as a temporary service contractor, or as an independent contractor as those terms are defined in 39-8-102.

(5) For the purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions

reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

~~(5)~~(7) The retirement allowance of any retired member who is employed in a position and who elects to participate in the optional retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the optional retirement program. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

**Section 15.** Section 19-20-733, MCA, is amended to read:

**"19-20-733. Resumption of employment by retired member -- suspension of benefits.** (1) [Except as provided in 19-20-732,] if a retired member returns to ~~full-time~~ employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Except as provided in subsection (4), upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (4), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and beneficiary joint annuitant previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement ~~allowance~~ benefit option and with the same beneficiary joint annuitant originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and this subsection (3).

(4) If a retired member who has not attained normal retirement age is reemployed with the same employer within 30 days from the member's effective date of retirement or if that member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be canceled. (Bracketed language terminates June 30, 2015--sec. 5, Ch. 129, L. 2009.)"

**Section 16.** Section 19-20-805, MCA, is amended to read:

**"19-20-805. ~~Earned compensation--part-time service~~ Calculation of average final compensation.**  
(1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to a member in 3 consecutive fiscal years of full-time service that yields the highest average.

~~(4)~~(2) The earned compensation of a member who ~~retired~~ retires under 19-20-802, ~~or~~ 19-20-804, or 19-20-902 and ~~had~~ has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member would have earned in the 3 years used to calculate average final compensation had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

~~(2)~~(3) (a) Subject to subsection ~~(2)(b)~~ (3)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service reported to the teachers' retirement system, the member's average final compensation ~~may~~ must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

(4) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(7)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection (4)(a) but have

been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)."

**Section 17.** Section 19-20-1001, MCA, is amended to read:

**"19-20-1001. Allowances for death of member prior to retirement.** (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the nominated beneficiary may elect to receive a retirement allowance. The retirement allowance must be determined as prescribed in 19-20-804, without reference to 19-20-715(2), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member's accumulated contributions ~~before~~ at the time of the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this

section upon the member's death ~~or if a family law order has been issued~~, then:

- (a) each beneficiary ~~and alternate payee, if applicable~~, is entitled to share in that benefit; and
- (b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary."

**Section 18.** Section 19-20-1002, MCA, is amended to read:

**"19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a retired member ~~after retirement~~, a death benefit of \$500 is payable to the joint annuitant or designated beneficiary.

(2) ~~In the event that~~ If the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance payments made to a benefit recipient do not the retired member and to the joint annuitant or all designated beneficiaries equal the amount of the member's accumulated contributions before at the time of the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the estate of the joint annuitant or to the estate of the longest-surviving beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age."

**Section 19.** Section 19-20-1003, MCA, is amended to read:

**"19-20-1003. Payment of death benefits.** (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a retired member's beneficiary or joint annuitant may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must

begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary."

**Section 20.** Section 19-20-1101, MCA, is amended to read:

**"19-20-1101. Withholding of group insurance premium from retirement allowance.** (1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld may be paid directly to the insurance carrier or employer of record at the time of retirement.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit and paid directly to the employer or the employer's insurance carrier.

(3) Each month, using the retirement system's online employer reporting system, the employer shall verify that all authorized insurance deductions are correct and notify the retired member of any changes."

**Section 21. Repealer.** The following section of the Montana Code Annotated is repealed:

19-20-720. Minimum monthly benefit allowance.

**Section 22. Effective date.** [This act] is effective July 1, 2011.

- END -

I hereby certify that the within bill,  
HB 0086, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.



HOUSE BILL NO. 86  
INTRODUCED BY F. WILMER  
BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

AN ACT REVISING THE TEACHERS' RETIREMENT SYSTEM LAWS; CLARIFYING DEFINITIONS; REVISING STATE RETIREMENT SYSTEM POLICY; AMENDING DUTIES OF AN EMPLOYER; CLARIFYING FAMILY LAW ORDERS; CLARIFYING PAYMENT OF OPTIONAL ALLOWANCES AND SURVIVOR BENEFITS; CLARIFYING BENEFICIARY DESIGNATIONS; CLARIFYING RESPONSIBILITY FOR CORRECTION OF ERRORS; PROVIDING FOR REPORTING OBLIGATIONS OF A RETIRED MEMBER; AMENDING SECTIONS 19-20-101, 19-20-102, 19-20-203, 19-20-208, 19-20-305, 19-20-405, 19-20-701, 19-20-702, 19-20-703, 19-20-705, 19-20-715, 19-20-717, 19-20-721, 19-20-731, 19-20-733, 19-20-805, 19-20-1001, 19-20-1002, 19-20-1003, AND 19-20-1101, MCA; REPEALING SECTION 19-20-720, MCA; AND PROVIDING AN EFFECTIVE DATE.