



AN ACT GENERALLY REVISING LAWS RELATED TO THE TEACHERS' RETIREMENT SYSTEM; REVISING DEFINITIONS; CLARIFYING EMPLOYER REPORTING AND CONTRIBUTIONS; CLARIFYING DORMANT MEMBERSHIP STATUS; CLARIFYING WITHDRAWAL FROM MEMBERSHIP; CLARIFYING RETIREMENT BENEFIT OPTIONS; CLARIFYING ROLLOVER PROVISIONS; CLARIFYING DESIGNATION OF BENEFICIARIES INCLUDING WHEN AND HOW BENEFICIARIES ARE DESIGNATED AND THE EFFECT OF NO DESIGNATION OR AN INEFFECTIVE DESIGNATION; CLARIFYING THE ORDER OF PRIORITY FOR THE PAYMENT OF BENEFICIARIES; CLARIFYING PAYMENTS TO MINOR CHILDREN; AMENDING SECTIONS 19-20-101, 19-20-208, 19-20-303, 19-20-503, 19-20-603, 19-20-607, 19-20-702, 19-20-706, 19-20-801, 19-20-810, 19-20-1001, 19-20-1002, 19-20-1212, AND 19-21-202, MCA; REPEALING SECTIONS 19-20-304, 19-20-717, AND 19-20-721, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY 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" or "account balance" 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, minus any amount deducted for correction of errors and the aggregate amount of all retirement benefit payments and refunds of accumulated contributions paid to or on behalf of the member. ~~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) "Alternate beneficiary" means an estate or an individual not designated as a beneficiary but that

becomes a beneficiary pursuant to [section 14].

~~(3)~~(4) "Average final compensation" means a member's highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

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

(5) "Beneficiary designation" means the process that the retirement system prescribes pursuant to this chapter by which a person authorized by law designates one or more beneficiaries.

(6) "Beneficiary designation record" means either the hard copy form or electronic record prescribed by the retirement system and used by a person authorized by law to designate one or more beneficiaries.

~~(5)~~(7) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(8) "Contingent beneficiary" means a designated beneficiary with the right to receive any benefit or refund of accumulated contributions payable if there is no eligible primary beneficiary.

~~(6)~~(9) "Creditable service" is that service defined by 19-20-401.

~~(7)~~(10) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

(11) "Designated beneficiary" means one or more primary beneficiaries or contingent beneficiaries designated pursuant to [section 15].

~~(8)~~~~(a)~~(12)(a) "Earned compensation" means, except as limited by subsections ~~(8)~~(b) (12)(b) and ~~(8)~~(c) (12)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:

(i) direct employer premium payments on behalf of members for 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 form of maintenance, allowance, or expenses;
 - (iii) the imputed value of health, life, or disability insurance or any other fringe benefits;
 - (iv) any noncash benefit provided by an employer to or on behalf of a member;
 - (v) termination pay unless included pursuant to 19-20-716;
 - (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);
 - (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;
 - (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;
 - (ix) a professional stipend paid pursuant to 20-4-134; or
 - (x) 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.

~~(9)~~(13) "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, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.

~~(10)~~(14) "Extra duty service" means service in an educational services capacity that is not compensated

as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district's curricular and extracurricular programs.

~~(14)~~(15) "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) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board 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.

(16) "Individual" means a human being.

~~(12)~~(17) "Internal Revenue Code" has the meaning provided in 15-30-2101.

~~(13)~~(18) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702(2), (4), or (5) has designated to receive a retirement allowance upon the death of the retired member.

~~(14)~~(19) "Member" means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member. ~~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.~~

~~(15)~~(20) "Normal form" or "normal form benefit" means a monthly retirement benefit payable ~~during~~ only for the lifetime of the retired member.

~~(16)~~(21) "Normal retirement age" means an age no earlier than 60 years of age.

~~(17)~~(22) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(18)~~(23) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(24) "Primary beneficiary" means a designated beneficiary with a first right to receive any benefit or refund of accumulated contributions payable upon the death of the individual authorized by law to make the designation.

~~(19)~~(25) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

~~(20)~~(26) "Retired", "retired member", or "retiree" means a person who is considered in retired member status under the provisions of 19-20-810.

~~(21)~~(27) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

~~(22)~~(28) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(23)~~(29) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(24)~~(30) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(25)~~(31) "Termination" or "terminate" means that the employment relationship between the member and the member's employer has been terminated as required in 19-20-810.

~~(26)~~(a)(32) (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.

(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).

~~(27)~~(33) "Tier one member" means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.

~~(28)~~(34) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

~~(29)~~(35) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

~~(30)~~(36) "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 19-20-208, MCA, is amended to read:

"19-20-208. Duties and liability of employer. (1) Each employer shall:

(a) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602 and 19-20-608 and transmit the contributions each month to the executive director of the retirement board;

(b) transmit to the executive director of the retirement board the employer's contributions prescribed by 19-20-605 and 19-20-609, at the time that the employee contributions are transmitted;

(c) 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;

(d) 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;

(e) 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 position that is reportable to the retirement system pursuant to 19-20-731;

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

(g) 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;

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

(i) 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.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(3) An employer must submit a wage and contribution report to the retirement system every month, including for any month in which the employer does not pay compensation reportable to the retirement system."

Section 3. Section 19-20-303, MCA, is amended to read:

"19-20-303. Inactive membership -- dormant membership status. ~~Any person's~~ (1) A nonvested or vested member's active membership in the retirement system terminates, ~~but and the person is~~ member becomes an inactive member; when the ~~person:~~ member

~~(1) ceases to be employed in a capacity that allows membership and the person has 5 or more years of creditable service in position reportable to the retirement system;~~

~~(2) ceases to be employed in a capacity that allows membership and the person has less than 5 years of creditable service in the retirement system, but the loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or~~

~~(3) has 5 or more years of creditable service and~~

(2) A vested member becomes an inactive member of the teachers' retirement system if the member becomes a an active member of ~~any other~~ another retirement or pension system supported wholly or in part by the money of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in ~~two~~ both retirement systems. However, ~~a person~~ the member may not be excluded from active membership in the teachers' retirement system solely because the person is receiving or is eligible to receive retirement benefits from another retirement system.

(3) A vested inactive member must be transferred to dormant membership status if the member fails to take one of the following actions by April 1 following the calendar year in which the member attains the age of 70 1/2:

(a) elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603;

(b) apply to receive retirement benefits under part 8 or part 9 of this chapter; or

(c) return to active membership.

(4) A nonvested inactive member must be transferred to dormant membership status if the member fails to take one of the following actions within 7 years after becoming an inactive member:

(a) elect to terminate membership by withdrawing from the retirement system and taking a refund of the member's accumulated contributions under 19-20-603; or

(b) return to active membership.

(5) With respect to a member in dormant membership status:

(a) the retirement system shall no longer attempt to locate or contact the member or send communications or annual statements to the member; and

(b) the retirement system shall transfer the amount in the member's annuity savings account to the pension accumulation account and the amount may not be credited with additional interest while the member is in a dormant membership status.

(6) If a vested inactive member in dormant membership status takes an action described in subsection (3), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance to the member's annuity savings account and credit the account balance with the interest that would have been earned if the amount had remained in the annuity savings account.

(7) If a nonvested inactive member takes an action described in subsection (4), the member is no longer in dormant membership status and the retirement system shall restore the member's account balance to the member's annuity savings account and credit the account balance with the interest that would have been earned if the amount had remained in the annuity savings account.

(8) Nothing in this section affects the rights, benefits, obligations, or liabilities provided for under this chapter if a member dies in a dormant membership status."

Section 4. Section 19-20-503, MCA, is amended to read:

"19-20-503. ~~Transfer of dormant or Forfeiture of unclaimed accounts account balances or benefits.~~ (1) ~~The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation account if the annuity savings account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, including the interest the amount would have earned had the amount remained in the annuity savings account, must be transferred back to the member's annuity savings account upon the member's request.~~

~~(2)(1) Retirement benefits~~ A benefit or refund of the member's account balance must be claimed within 5 years ~~of after~~ the date of the member's death.

~~(2) If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits~~ benefit or refund is not claimed within the time provided in subsection (1), the member's account balance is forfeited and reverts to the pension trust fund."

Section 5. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal from membership -- refund of accumulated contributions -- options. (1)

~~(a) An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may apply at any time to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions, from the annuity savings account in the retirement system in accordance with the following provisions:~~

~~—— (1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.~~

~~—— (2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.~~

(b) An active member may apply to withdraw from membership in the retirement system and receive a refund of the member's accumulated contributions no sooner than 30 days before the date of the member's termination from employment in all positions reportable to the retirement system.

(c) The application must be made on a form or in a manner prescribed by the retirement system and is not complete until all required supporting documentation is provided. The application is void if the documentation is not provided within 60 days after the application date.

(2) The retirement system shall refund a withdrawing member's accumulated contributions after the latest of the following dates:

(a) the last day of the month in which the member terminated employment in all positions reportable to

the retirement system;

(b) the last day of the last month for which the employer reported to the retirement system compensation paid to the member; or

(c) the date that the member's application to withdraw is complete.

(3) A member's withdrawal and refund under this section:

(a) is irrevocable after the refund has been processed by the retirement system;

(b) constitutes forfeiture of the member's creditable service and any right to a benefit pursuant to that service;

(c) terminates the member's membership in the retirement system; and

(d) terminates a withdrawn tier one member's status as a tier one member.

(4) An individual who has withdrawn and later returns to employment in a position reportable to the retirement system may purchase the forfeited creditable service as provided in 19-20-427. However, a tier one member who withdraws and returns to employment in a position reportable to the retirement system must return as a tier two member even if the member purchases the forfeited creditable service.

~~(3)(5) The withdrawal application of a member is void if the member is reported to the retirement system for current employment in a position reportable to the retirement system before the refund is processed. Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another eligible retirement plan or a Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.~~

~~(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."~~

Section 6. Section 19-20-607, MCA, is amended to read:

"19-20-607. Supplemental state contribution -- appropriation. (1) (a) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to 2.38% of the total earned compensation of ~~school district and community college~~ active members of the employers listed in 19-20-605(3) participating in the system.

(b) (i) Except as provided in subsection (1)(b)(ii), beginning July 1, 2013, and on each July 1 thereafter, the state shall contribute from the general fund to the pension trust fund \$25 million as a supplemental contribution to the teachers' retirement system.

(ii) If the legislative finance committee determines that the board has failed to provide a sufficient report pursuant to 19-20-216, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (1)(b)(i) subject to legislative approval.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board."

Section 7. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances -- joint and survivor annuity -- certain period and life allowances certain. (1) (a) 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 retirement allowance; which is provided for in 19-20-902 and part 8 of this chapter.

(b) Upon the retirement system's processing of a retired member's first monthly benefit payment, the member's benefit election and designation of a joint annuitant if the member elected a joint and survivor annuity allowance is irrevocable, except as provided in subsections (4) and (5).

(2) (a) ~~An A joint and survivor annuity~~ 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 joint annuitant ~~that the member nominated by written application, duly acknowledged and filed with the retirement board at the time of the member's retirement,~~ in accordance with the option selected

under subsection (2)(b).

(b) A member electing to receive a joint and survivor annuity optional allowance may select one of the following options:

~~(a)~~(i) 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 joint annuitant.

~~(b)~~(ii) 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 continue throughout the lifetime of the member's joint annuitant.

~~(c)~~(iii) 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 continue throughout the lifetime of the member's joint annuitant.

(c) The designation of a joint annuitant must be made in the form and manner prescribed by the retirement system and provide all requested information. The joint annuitant will receive both the continuing retirement allowance and the one-time death benefit provided in 19-20-1002(1)(a). The two benefits may not be allocated separately.

(d) Upon election of ~~an~~ a joint and survivor 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 period certain allowances that must be paid ~~over the certain period of time or~~ for the member's lifetime; ~~whichever is greater~~ and then to the member's beneficiary as provided in 19-20-1002(3) for the remainder of the period certain if the member dies before receiving monthly benefit payments for the period certain:

(i) ~~40 years~~ a 10-year period certain may be elected if the member is 75 years of age or younger at the time of retirement; or

(ii) ~~20 years~~ a 10-year or 20-year period certain may be elected 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 nominating different beneficiaries.~~

(b) Each month for which a benefit is paid is counted as part of the period certain.

(4) (a) ~~Upon~~ Subject to subsection (7), upon written application to the retirement ~~board~~ system, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving ~~an a joint and survivor annuity~~ optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different joint annuitant if:

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

(ii) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must convert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original 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~~ retirement system shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) ~~A~~ Subject to subsection (7), upon written application to the retirement system, a retired member receiving ~~an a joint and survivor annuity~~ optional retirement allowance pursuant to subsection ~~(2)(a), (2)(b), or (2)(c)~~ that is effective on or after October 1, 1993, may ~~file a written application to~~ select a different actuarially equivalent optional allowance and designate a different joint annuitant or to revert the optional retirement allowance to the normal form retirement allowance available at the time of retirement if:

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

(b) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must revert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form 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~~ A retired member shall ~~file the written application required by subsection (4) or (5) with the board~~

within filing an application to make a selection under subsection (4) or (5) shall file the application and all required supporting documentation to be received by the retirement system no later than the date that is 18 months of after the date of the death of or divorce of from the joint annuitant."

Section 8. Section 19-20-706, MCA, is amended to read:

"19-20-706. Exemption from taxation and legal process. Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c);

or

(b) a ~~withdrawal~~ refund paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 9. Eligible rollover distributions. As required by section 401(a)(31) of the Internal Revenue Code, the retirement system shall advise an eligible recipient of any payment from the retirement system that constitutes an eligible rollover distribution of the recipient's rights to roll over the distribution, and shall allow the recipient to elect a direct rollover of the eligible distribution to an eligible plan. The recipient is responsible for correctly designating a receiving plan that is eligible and willing to receive a direct rollover distribution of tax-deferred or after-tax contributions or both from the retirement system and to ensure timely submission of required supporting documentation from the receiving plan. The retirement system will determine, in its sole discretion, whether to make a direct rollover distribution to a receiving plan through an electronic transfer or by paper warrant.

Section 10. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. (1) A tier one member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

- (a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or
- (b) has been credited with full-time or part-time creditable service in 25 or more years.

(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

- (a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or
- (b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.

(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).

(4) To receive a retirement allowance under 19-20-804, the member must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(5) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to ~~withdraw~~ a refund of the member's accumulated contributions under 19-20-603."

Section 11. Section 19-20-810, MCA, is amended to read:

"19-20-810. Termination of employment -- retired member status -- certification of termination date. (1) A member shall terminate employment in all positions reportable to the retirement system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802, disability retirement under 19-20-901, or withdrawal ~~of the member's accumulated contributions~~ under 19-20-603.

(2) Except as provided in subsections (3) and (4), a member has terminated employment in a position reportable to the retirement system when the employment relationship with the employer has been fully and completely severed and all, if any, payments due upon termination of employment, including but not limited to payment of accrued sick and annual leave balances, have been paid to the member.

(3) (a) A member who has not attained normal retirement age has not terminated employment in a position reportable to the retirement system if the member and the employer have a prearranged agreement for postretirement service.

(b) For purposes of this subsection (3), a "prearranged agreement for postretirement service" means an oral or written agreement between a member and an employer made before the member attains retired member status for the member to provide service or perform work, in any capacity, on behalf of the employer in the future.

(4) A member has not terminated employment in a position reportable to the retirement system if the member provides any service or performs any work, in any capacity, on behalf of the employer after the certified date of termination but prior to attaining retired member status.

(5) A member must be in retired member status before the member is eligible to be employed as a working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement system before the member attains retired member status is service provided as an active member, and the member shall terminate from the position to be eligible for retirement benefits.

(6) (a) A member attains retired member status when the member has terminated employment in all positions reportable to the retirement system and has actually received at least one monthly retirement benefit payment.

(b) A retired member who returns to active member status for any reason ceases to be in retired member status until the member again applies for a retirement benefit and actually receives at least one monthly retirement benefit payment.

(7) (a) Unless waived by the board, the member and the employer for each position from which the member is terminating or has terminated shall certify on a form provided by the retirement system the member's date of termination and whether there is a prearranged agreement for postretirement service.

(b) The certification obligation of the member and the employer is ongoing and must be immediately updated if the information previously provided was in error or has changed."

Section 12. Section 19-20-1001, MCA, is amended to read:

"19-20-1001. Allowances for Payments upon death of member prior to retirement. (1) If a member dies before retirement;

(a) except as provided in subsection (2), a lump-sum refund of 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 account

balance must be paid to the member's eligible beneficiary or beneficiaries;

(b) if the deceased member was vested and was an active member in the retirement system within 1 year before the member's death, the eligible beneficiaries receiving a refund under subsection (1)(a) or a retirement allowance under subsection (2) are entitled to receive in equal shares a \$500 lump-sum death benefit; and

(c) subject to [section 18], 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.

~~(2) (a) In lieu of benefits the refund provided for in subsection (1)(a), if the deceased member qualified by reason of service for a retirement benefit, the designated beneficiary was vested, an eligible designated beneficiary who is an individual may elect to receive the beneficiary's interest as a retirement allowance for the beneficiary's lifetime. The retirement allowance ~~for the beneficiary of the member~~ must be determined as prescribed in 19-20-804, without reference to 19-20-715(2)(a), in the same manner as if the member elected the option A joint and survivor annuity optional allowance 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) (i) If more than one eligible beneficiary elects to receive a retirement allowance, each is entitled to an equal share of the benefit.~~

~~(ii) In the event that all eligible beneficiaries who elected a retirement allowance die, the member's account balance, if any, will be paid out to the alternate beneficiary of the last surviving eligible beneficiary who elects a retirement allowance under subsection (2)(a).~~

~~(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 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 retirement system 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 retirement system 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, then:~~

~~———— (a) each beneficiary 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 13. 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;:

(a) a lump-sum death benefit of \$500 is payable to the joint annuitant or designated in equal shares to the deceased retiree's eligible beneficiary or beneficiaries receiving benefits under either subsection (2), (3), or (4) and is in addition to those benefits; and

(b) subject to [section 18], 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.

(2) If the member was receiving a normal form retirement allowance, a lump-sum refund of the member's account balance must be paid to the eligible beneficiary or beneficiaries in equal shares.

(3) If the member was receiving a joint and survivor annuity optional retirement allowance:

(a) monthly benefits must continue to be paid to the joint annuitant; or

(b) if there is no surviving joint annuitant, a lump-sum refund of the member's account balance must be paid to the member's alternate beneficiary or beneficiaries in equal shares.

(4) If the retired member was receiving a 10-year or 20-year period certain retirement allowance, until the period has expired:

(a) if the eligible beneficiary is one or more individuals, the monthly benefits must continue to be paid to the eligible beneficiary or beneficiaries in equal shares. If there is more than one eligible beneficiary, upon the death of one eligible beneficiary, the benefit amount payable to the deceased beneficiary must be redistributed

in equal shares to the surviving eligible beneficiaries. If all eligible beneficiaries die before the period has expired, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the alternate beneficiary of the last surviving eligible beneficiary.

(b) if the eligible beneficiary is the deceased retiree's estate or trust, a lump-sum amount actuarially determined to be the present value of all monthly benefits remaining to be paid over the period must be paid to the eligible beneficiary.

~~(2) Except as provided in subsection (4), 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 the retired member and to the joint annuitant or all designated beneficiaries equal the amount of the member's accumulated contributions 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.~~

~~———— (4) If the retired member elected a 10-year or 20-year period certain and life retirement allowance, the following provisions apply:~~

~~———— (a) If benefits remain payable upon the death of the retired member, the monthly benefit amount will be paid for the remainder of the period certain to the retired member's designated beneficiary or beneficiaries.~~

~~———— (b) If benefits remain payable upon the death of the retired member's last surviving designated beneficiary, a lump-sum distribution of the amount actuarially determined by the retirement system to be the present value of the remainder of the benefits payable for the period certain must be paid to the court-appointed personal representative of the last surviving beneficiary's estate on behalf of the estate. If the last surviving beneficiary's estate is not probated, the payment must be made to the last surviving beneficiary's next of kin as set forth in 19-20-717."~~

Section 14. Alternate beneficiaries. (1) A decedent's alternate beneficiary is the decedent's estate if the estate is probated.

(2) (a) If the decedent's estate is not informally or formally probated, the alternate beneficiaries are the

surviving individuals determined in the following order of priority, the decedent's:

- (i) legal spouse;
- (ii) natural and adopted children, in equal shares;
- (iii) parents, in equal shares;
- (iv) grandchildren, in equal shares;
- (v) siblings, in equal shares; or
- (vi) nieces and nephews, in equal shares.

(b) Payments to an alternate beneficiary under subsection (2)(a) may be made only after the retirement system receives an affidavit from the individual on a form prescribed by the retirement system attesting that to the best of the individual's knowledge:

- (i) there is no living individual who is an eligible alternate beneficiary at a higher level of priority; and
- (ii) the decedent's estate will not be formally or informally probated.

(3) If the retirement system is unable to identify and locate a surviving individual listed in subsection (2)(a), the alternate beneficiary is the individual named in the decedent's will as the personal representative or executor of the decedent's estate if:

- (a) the total amount to be distributed is \$5,000 or less;
- (b) payment will be made by December 31 in the year of the death; and
- (c) the personal representative or executor files an affidavit on a form prescribed by the retirement system attesting that:

(i) no application or petition for the appointment of another executor or personal representative of the decedent's estate is pending or has been granted in any jurisdiction;

(ii) the affiant is not aware of the existence and location of any individual who would be an eligible alternate beneficiary under subsection (1); and

(iii) the affiant will accept the distribution from the retirement system in the affiant's capacity as executor or personal representative under the decedent's will and will use the funds in conformity with the will and applicable law.

(4) A distribution under subsection (3) will be reported for tax purposes as a final distribution to the decedent.

(5) Payment under this section of benefits due shall constitute full discharge of the retirement system's

duties and obligations resulting from the death.

Section 15. When beneficiaries designated -- eligible beneficiaries -- right to renounce. (1) Upon first becoming an active member of the retirement system, the member shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(2) (a) At the time of retirement, the member's beneficiary designations under subsection (1) are void and the member shall designate a joint annuitant or make a new beneficiary designation as provided in this subsection (2).

(b) A member who elects a normal form retirement allowance or a 10-year or 20-year period certain allowance under 19-20-702(3) shall designate one or more primary beneficiaries and may designate one or more contingent beneficiaries.

(c) A member who elects a joint and survivor annuity under 19-20-702(2) shall designate one individual as the member's joint annuitant and is prohibited from designating a beneficiary.

(3) A designated beneficiary must be one of the following expressly identified by the designator in a beneficiary designation record as a primary or contingent beneficiary:

- (a) a named individual;
- (b) the member's estate; or
- (c) a legally existing trust created by the member as trustor or grantor.

(4) (a) If the member's estate or trust is designated as a primary beneficiary, no other primary and no contingent beneficiary may be designated.

(b) If the member's estate or trust is designated as a contingent beneficiary, no other contingent beneficiaries may be designated.

(5) (a) An eligible beneficiary is a designated beneficiary or alternate beneficiary entitled to receive payment of all or a share of a refund of a member's account balance, a monthly retirement allowance, or a lump-sum payment of the actuarially determined present value of the remaining payments under a period certain retirement allowance due to the death of a member or benefit recipient, based on the criteria set forth in this section.

(b) For an individual to be an eligible beneficiary, the individual must:

- (i) survive at the time the distribution is to be made; and

(ii) have a social security number.

(c) For the estate of the decedent to be an eligible beneficiary, the estate must:

(i) be in formal or informal probate at the time the distribution is to be made;

(ii) have a court-appointed personal representative; and

(iii) have a tax identification number.

(d) For a trust created by the decedent to be an eligible beneficiary, the trust at the time the distribution is to be made must:

(i) legally exist;

(ii) be irrevocable;

(iii) have a tax identification number.

(6) The eligible beneficiary or beneficiaries are determined at the time the first distribution is to be made by the retirement system as a result of the death of a decedent in the following order of priority to:

(a) one or more primary designated beneficiaries;

(b) one or more contingent designated beneficiaries; or

(c) one or more alternate beneficiaries.

(7) An individual who is a designated beneficiary may renounce the individual's beneficiary interest. A renunciation must be made of the beneficiary's entire interest. A partial renunciation may not be made. A beneficiary who renounces the beneficiary's interest is deemed to have predeceased the designator.

Section 16. Requirements for beneficiary designation to be effective. (1) To be accepted as an effective beneficiary designation, the beneficiary designation record must:

(a) be made on a paper form or by an electronic process prescribed by the retirement system specifically for the designation of beneficiaries;

(b) if submitted electronically, include the certified digital signature of the member, or, if submitted on a paper form, be signed by the member and notarized;

(c) specifically identify each eligible beneficiary intended to be designated as a beneficiary;

(d) include all required information and supporting documentation for each designated beneficiary;

(e) comply with all other stated requirements and limitations; and

(f) be submitted to the retirement system while the member is still alive.

(3) (a) The retirement system is not responsible for verifying beneficiary information provided by a designator.

(b) The retirement system may accept or decline a beneficiary designation record pending receipt of required supporting documentation. However, if the retirement system accepts a beneficiary designation record pending receipt of supporting documentation, the beneficiary designation is not effective unless the retirement system receives all required supporting documentation within the required timeframe.

(c) If multiple beneficiaries are designated on a beneficiary designation record and the retirement system accepts the beneficiary designation as effective but later determines that one or more of the beneficiaries was not effectively designated or is not an eligible beneficiary at the time payment is to be made, the beneficiary designation will remain in effect with the ineffectively designated or ineligible beneficiaries deemed to have predeceased the member.

Section 17. Changes to beneficiary designations -- limitations on changing spouse beneficiary interest. (1) Once accepted by the retirement system, a beneficiary designation may be changed only by the member submitting to the retirement system a new effective beneficiary designation record. No other action, process, or provision of law may invalidate, revoke, terminate, or otherwise modify the beneficiary designation record. Divorce, annulment, or other circumstances resulting in the termination of a valid or invalid marriage does not void the member's designation of the former spouse or purported spouse as a beneficiary.

(2) (a) Except as provided in subsection (3), a member may change the member's beneficiary designation at any time by filing with the retirement system a new beneficiary designation record.

(b) The new beneficiary designation must meet all requirements specified in [section 16] to be effective.

(c) A new effective beneficiary designation invalidates all prior beneficiary designations.

(3) (a) A member may not reduce or revoke the beneficiary interest of a designated beneficiary identified as the member's spouse if a divorce is pending, except with a signed and notarized waiver of beneficiary interest made by the spouse or pursuant to an order of the court in which the divorce is pending.

(b) If a change resulting in a reduction or revocation of a spouse beneficiary's interest is made by the member, the member shall establish the member's right to reduce or revoke the spouse beneficiary's interest by completing a certification of marital status.

Section 18. Payment to minor child -- opportunity to name custodian. (1) The retirement system may not make a payment directly to an individual who is less than 21 years of age.

(2) The retirement system shall make a payment to which a minor child is entitled by making the payment to an entity or adult designated as a custodian for the minor child pursuant to the Montana Uniform Transfers to Minors Act, or to a person or entity designated by court order as legal guardian or conservator for the minor child.

(3) If a custodian for the child has not been designated, the retirement system shall withhold payment of any amount until the minor child attains 21 years of age, or until a court order of guardianship or conservatorship is issued on behalf of the child.

Section 19. Supremacy of retirement system provisions. The designation and payment of beneficiaries under the retirement system is governed solely by the provisions of this chapter. No other provisions of law apply.

Section 20. Section 19-20-1212, MCA, is amended to read:

"19-20-1212. Recovery methods. (1) The retirement system may use any or all of the following methods to recover amounts owed from a member or benefit recipient:

- (a) accept a lump-sum payment;
- (b) accept installment payments;
- (c) accept a rollover payment from a member;
- (d) actuarially adjust monthly benefit payments;
- (e) withhold up to 50% of each monthly benefit payment;
- (f) withhold up to 100% of a lump-sum distribution; or
- (g) withhold up to 100% of the lump-sum death benefit payable under 19-20-1001~~(3)~~(1)(b) or 19-20-1002(1)(a).

(2) For payment of amounts owed by an employer, the retirement system may use any or all of the following methods:

- (a) adjust the amount of subsequent contributions due from the employer;
- (b) accept installment payments; or
- (c) accept a lump-sum payment."

Section 21. Section 19-21-202, MCA, is amended to read:

"19-21-202. Effect on rights under teachers' retirement system. (1) An election under 19-21-201 to participate in the program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the program is considered, for the purpose of determining eligibility for rights and benefits under that system, to be no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). ~~A member who elects to participate in the program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the system under 19-20-304(4).~~

(3) A person who elects to participate in the program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the program."

Section 22. Repealer. The following sections of the Montana Code Annotated are repealed:

- 19-20-304. Membership termination.
- 19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant.
- 19-20-721. Designation of beneficiary.

Section 23. Codification instruction. (1) [Section 9] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 9].

(2) [Sections 14 through 19] are intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [sections 14 through 19].

Section 24. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 2019.

(2) [Sections 6 and 25] and this section are effective on passage and approval.

Section 25. Retroactive applicability. [Section 6] applies retroactively, within the meaning of 1-2-109, to contributions made on and after July 1, 2007.

- END -

I hereby certify that the within bill,
HB 0204, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2019.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 204

INTRODUCED BY M. RYAN, M. FUNK

AN ACT GENERALLY REVISING LAWS RELATED TO THE TEACHERS' RETIREMENT SYSTEM; REVISING DEFINITIONS; CLARIFYING EMPLOYER REPORTING AND CONTRIBUTIONS; CLARIFYING DORMANT MEMBERSHIP STATUS; CLARIFYING WITHDRAWAL FROM MEMBERSHIP; CLARIFYING RETIREMENT BENEFIT OPTIONS; CLARIFYING ROLLOVER PROVISIONS; CLARIFYING DESIGNATION OF BENEFICIARIES INCLUDING WHEN AND HOW BENEFICIARIES ARE DESIGNATED AND THE EFFECT OF NO DESIGNATION OR AN INEFFECTIVE DESIGNATION; CLARIFYING THE ORDER OF PRIORITY FOR THE PAYMENT OF BENEFICIARIES; CLARIFYING PAYMENTS TO MINOR CHILDREN; AMENDING SECTIONS 19-20-101, 19-20-208, 19-20-303, 19-20-503, 19-20-603, 19-20-607, 19-20-702, 19-20-706, 19-20-801, 19-20-810, 19-20-1001, 19-20-1002, 19-20-1212, AND 19-21-202, MCA; REPEALING SECTIONS 19-20-304, 19-20-717, AND 19-20-721, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.