

**CHAPTER NO. 631**

**SENATE BILL NO. 2407**

**By Atchley**

**Substituted for: House Bill No. 2744**

**By Fitzhugh, Shaw**

AN ACT to amend Tennessee Code Annotated, Sections 8-34-101(14)(B), 8-34-101(46)(B), 8-34-602(d), 8-35-401(a), 8-35-403, 8-35-404(d), 8-36-801, 8-36-802, 8-36-818; and Title 7 and Title 8, Chapter 35, Part 2, relative to the Tennessee consolidated retirement system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-34-101(14)(B), is amended by deleting the first sentence thereof and by substituting instead the following:

"Earnable compensation" includes, but is not limited to, any bonus or incentive payment provided that:

(i) Such payment is authorized by legislation passed by the general assembly and that such legislation provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire; or

(ii) Such payment is authorized by resolution legally adopted and approved by the chief legislative body of an employer participating in the retirement system pursuant to Title 8, Chapter 35, Part 2 or § 8-35-118 and that such resolution provides that the payment shall be included as earnable compensation for retirement purposes and is not made for the purpose of increasing a member's retirement benefit or inducing a member to retire. All employees generally, or all employees in a broad class or broad group of employees must be given the opportunity to qualify for the bonus or incentive payment under similar terms and conditions. If the bonus or incentive payment plan only applies to a class or group of employees, a distinct and reasonable basis must exist for offering the plan to the particular class or group of employees.

SECTION 2. Tennessee Code Annotated, Section 8-34-101(46)(B), is amended by deleting from the third sentence thereof the punctuation and words "; provided, that any such teacher, other than a nurse, physical therapist and an ROTC instructor, must continue such teacher's teacher certification in force".

SECTION 3. Tennessee Code Annotated, Section 8-34-602(d), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

(d) Any member in Group 1 may establish retirement credit for previous service rendered as an agriculture county agent or home demonstration agent or assistant thereto under the following conditions:

(1) The member is not and never has been vested in any other retirement system, including the United States Civil Service Retirement Act as amended October 20, 1969, based in whole or in part on such previous service;

(2) The previous service must be certified on proper documents as required by the retirement division; and

(3) The member shall make a lump sum payment equal to ten percent (10%) of the member's earnable compensation during such period of service, plus interest at the rate provided by § 8-37-214.

SECTION 4. Tennessee Code Annotated, Section 8-35-202(c), is amended by deleting the words and figures "within four (4) months of the date of notice".

SECTION 5. Tennessee Code Annotated, Section 8-35-203(a)(2)(C), is amended by adding the following new sentences at the end thereof:

Such payment may be made through amounts transferred from any pre-existing pension plan maintained on behalf of the employee by the employer.

SECTION 6. Tennessee Code Annotated, Section 8-35-401(a), is amended by deleting the same in its entirety and by substituting instead the following:

(a) The board of trustees, at the request of the board of trustees of the University of Tennessee and of the board of regents, may establish for employees of public institutions of higher education an optional retirement program under this part.

SECTION 7. Tennessee Code Annotated, Section 8-35-403, is amended by adding the following new subsection at the end thereof:

(e) Any eligible employee who fails to make the election as prescribed in this section shall be a member of the retirement system until such employee makes the election as described in subsection (d) above.

SECTION 8. Tennessee Code Annotated, Section 8-35-404(d)(1), is amended by deleting the first sentence thereof in its entirety and by substituting instead the following:

(d)(1) If a participant has separated from service and has an aggregate total of less than five thousand dollars (\$5,000) credited to such participant's retirement accounts, the contributions shall be distributed to the participant, upon the participant's written request therefor, if permitted by the relevant optional retirement company. The distribution shall be made in any manner permitted by the companies holding the accounts.

SECTION 9. Tennessee Code Annotated, Section 8-35-404(d)(2), is amended by deleting the same in its entirety and by substituting instead the following:

(2)(A) If a participant has separated from service and suffers from a total and permanent disability, the participant may file a written request with the participant's employer for a limited lump sum distribution from the participant's accounts each year if permitted by the relevant optional retirement company.

(B) To be eligible for the distribution described in this subdivision (2), the request must be accompanied with evidence showing that the participant is receiving Social Security disability benefits from the Social Security Administration on account of a total and permanent disability suffered by the participant, unless such participant has met the age requirement for receipt of old age and survivors benefits under Title II of the Federal Social Security Act. If the participant has met such age requirement, the request must be accompanied with a letter from two (2) physicians that conclusively state that the participant is totally and permanently disabled and that such disability is expected to last for a continuous period of not less than twelve (12) months.

(C) For the calendar year 2004, the aggregate total of each annual distribution from all of the participant's accounts shall not exceed eighteen thousand dollars (\$18,000). This aggregate total shall be increased by one thousand dollars (\$1,000) each calendar year thereafter until the aggregate total annual distribution equals twenty-five thousand dollars (\$25,000). Each annual distribution shall be made in any manner permitted by the companies holding the accounts but only upon receipt by the employer of the applicable documentation described in subdivision (2)(B) that confirms the participant's continued eligibility for the distribution.

SECTION 10. Tennessee Code Annotated, Section 8-36-801(b), is amended by deleting the same in its entirety and by substituting instead the following:

(b) A retiree restored to employment shall not be required to reenroll as an active member of the retirement system, to make further contributions to the retirement system or to void the retirement payment plan elected by the member. Employees covered by the noncontributory provisions of the system in accordance with § 8-34-206 shall reenroll and accrue service. Such non-contributory employees shall be treated as voiding any optional benefit previously elected under § 8-36-601 for purposes of in-service death benefits. Subject to the provisions of § 8-36-802(e), any such optional benefit previously elected shall be restored upon subsequent retirement.

SECTION 11. Tennessee Code Annotated, Section 8-36-802(e), is amended by deleting the same in its entirety and by substituting instead the following:

(e)(i) If the retiree does not complete three (3) years of creditable service after restoration to service, the part of the retiree's retirement allowance upon subsequent retirement payable with respect to creditable service rendered before the period of the retiree's previous retirement, or included in the computation of the retiree's previous retirement allowance, shall be equal to the retiree's previous retirement allowance with all of the provisions of the retirement payment plan elected by the retiree, with respect to such part of the retiree's retirement allowance.

(ii) If the retiree completes three (3) years or more of creditable service after restoration to service, the retirement payment plan elected by the retiree shall be void. Upon subsequent retirement, the retiree shall again elect the payment plan under which the retiree's retirement benefits shall be paid. The benefits shall be recomputed under such plan based on the total service and salary credit accrued by the retiree both before and after the retiree's previous retirement. Notwithstanding this subsection or any other law to the contrary, the retirement benefits of any retiree who previously elected the Social Security leveling retirement payment plan pursuant to § 8-36-101 shall not be recomputed pursuant to this subdivision (e)(ii) unless the retiree pays to the retirement system the difference in benefits received under the Social Security leveling plan during the retiree's previous retirement and the regular retirement payment plan. Any such retiree who fails to make such payment shall have such retiree's benefits computed pursuant to subdivision (e)(i).

SECTION 12. Tennessee Code Annotated, Section 8-36-818, is amended by deleting the same in its entirety and by substituting instead the following:

8-36-818. Any retired member of the Tennessee consolidated retirement system or of any superseded system administered by the State of Tennessee may accept employment in a position covered under § 8-35-226(a) without loss or suspension of retirement benefits; provided, that:

(1) Such retirement benefits are based on service and salary rendered in a position other than a position covered under § 8-35-226(a); and

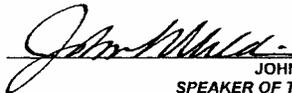
(2) The retired member shall not be eligible to accrue additional retirement benefits as a result of such employment.

SECTION 13. Tennessee Code Annotated, Section 8-36-821, is amended by adding the following new subsection at the end thereof:

(c) The provisions of this section shall cease to be effective on June 30, 2010.

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 22, 2004

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 10<sup>th</sup> day of May 2004

  
PHIL BREDESEN, GOVERNOR