**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 9‑1‑1220 AND 9‑11‑240 SO AS TO PROVIDE THAT IF A PARTICIPATING EMPLOYER IN THE SOUTH CAROLINA RETIREMENT SYSTEM OR THE POLICE OFFICERS RETIREMENT SYSTEM, RESPECTIVELY, ENGAGES A CERTAIN MEMBER OF THE SYSTEM TO PERFORM SERVICES, THEN THE PARTICIPANT EMPLOYER SHALL PAY TO THE SYSTEM THE EMPLOYER CONTRIBUTION THAT WOULD BE REQUIRED IF THE MEMBER RECEIVED THE COMPENSATION AS AN ACTIVE CONTRIBUTING MEMBER OF THE SYSTEM; AND TO AMEND SECTIONS 9‑1‑1790 AND 9‑11‑90, RELATING TO RETIREMENT BENEFITS AFTER RETURNING TO COVERED EMPLOYMENT UNDER THE SOUTH CAROLINA RETIREMENT SYSTEM AND THE POLICE OFFICERS RETIREMENT SYSTEM, RESPECTIVELY, SO AS TO REMOVE THE TEN THOUSAND DOLLAR EARNINGS LIMITATION ON AN EMPLOYEE RETURNING TO EMPLOYMENT WHO HAS NOT BEEN ENGAGED TO PERFORM SERVICES FOR A PARTICIPATING EMPLOYER IN THE SYSTEM OR ANY OTHER SYSTEM FOR AT LEAST TWELVE CONSECUTIVE MONTHS SUBSEQUENT TO RETIREMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 9, Chapter 1, Title 9 of the 1976 Code is amended by adding:

“Section 9‑1‑1220. (A)(1) If a participating employer in the system engages an active, inactive, former, or retired member of the system to perform services for the employer, but has not reported the member to the system as an employee, the participating employer shall pay to the system the employer contribution that would be required if the member received the compensation as an active contributing member of the system. Contributions are required under this section if the member is engaged to perform services for the employer for compensation in any capacity, regardless of whether the member is classified as an employee, independent contractor, leased employee, joint employee, or other classification of worker.

(2) The contribution requirements of this section do not apply if the member is engaged to perform services that traditionally have not been provided by employees of the participating employer. In making a determination on whether a service traditionally has been performed by employees of the participating employer, the board shall consider who has the right to exercise control over the member in the performance of the service, how the member is paid for the service, who furnishes equipment to perform the service, and who has the right to terminate the member’s performance of the service. A participating employer shall submit any certifications and information required by the board to determine whether this exception applies.

(B) A retired member engaged to perform services is not considered an active member of the system and does not accrue service credit in the system by reason of the contributions remitted pursuant to this section. An active, inactive, or former member engaged to perform services is not considered an active member of the system and does not accrue service credit in the system by reason of the contributions remitted pursuant to this section, unless the participating employer has reported the member as an active employee to the system and the required member contributions also are made.

(C) Compensation received by a retired member of the system that is subject to the contribution requirements of this section is considered compensation earned from covered employment for the purposes of the earnings limitations set out in Section 9‑1‑1790(A).

(D) The requirements of this section are in addition to, and not in lieu of, any other requirements of this title.

(E) This section does not require a member or employer to make contributions if the member is eligible to opt out of participation in the system in connection with the services provided and the member makes a timely and valid election to decline participation.

(F) The board is authorized to audit participating employers in the system, including any contracts or arrangements with third parties, to verify compliance with the requirements of this section or any other provision of this title. The provisions of this title related to the collection of employer contributions to the system apply to any contributions required by this section.”

SECTION 2. Article 1, Chapter 11, Title 9 of the 1976 Code is amended by adding:

“Section 9‑11‑240. (A)(1) If a participating employer in the system engages an active, inactive, former, or retired member of the system to perform services for the employer, but has not reported the member to the system as an employee, the participating employer shall pay to the system the employer contribution that would be required if the member received the compensation as an active contributing member of the system. Contributions are required under this section if the member is engaged to perform services for the employer for compensation in any capacity, regardless of whether the member is classified as an employee, independent contractor, leased employee, joint employee, or other classification of worker.

(2) The contribution requirements of this section do not apply if the member is engaged to perform services that traditionally have not been provided by employees of the participating employer. In making a determination on whether a service traditionally has been performed by employees of the participating employer, the board shall consider who has the right to exercise control over the member in the performance of the service, how the member is paid for the service, who furnishes equipment to perform the service, and who has the right to terminate the member’s performance of the service. A participating employer shall submit any certifications and information required by the board to determine whether this exception applies.

(B) A retired member engaged to perform services is not considered an active member of the system and does not accrue service credit in the system by reason of the contributions remitted pursuant to this section. An active, inactive, or former member engaged to perform services is not considered an active member of the system and does not accrue service credit in the system by reason of the contributions remitted pursuant to this section, unless the participating employer has reported the member as an active employee to the system and the required member contributions also are made.

(C) Compensation received by a retired member of the system that is subject to the contribution requirements of this section is considered compensation earned from covered employment for the purposes of the earnings limitations set out in Section 9‑11‑90(4)(A).

(D) The requirements of this section are in addition to, and not in lieu of, any other requirements of this title.

(E) This section does not require a member or employer to make contributions if the member is eligible to opt out of participation in the system in connection with the services provided and the member makes a timely and valid election to decline participation.

(F) The board is authorized to audit participating employers in the system, including any contracts or arrangements with third parties, to verify compliance with the requirements of this section or any other provision of this title. The provisions of this title related to the collection of employer contributions to the system apply to any contributions required by this section.”

SECTION 3. Section 9‑1‑1790(A)(2) of the 1976 Code is amended to read:

“(2) The earnings limitation imposed pursuant to this item does not apply if the member meets at least one of the following qualifications:

(a) the member retired before January 2, 2013;

(b) the member has attained the age of sixty‑two years at retirement; ~~or~~

(c) compensation received by the retired member from the covered employer is for service in a public office filled by the appointment of the Governor and with confirmation by the Senate, by appointment or election by the General Assembly, or by election of the qualified electors of the applicable jurisdiction; or

(d) the member has not been engaged to perform services for a participating employer in the system or any other system provided in this title for compensation in any capacity, whether as an employee, independent contractor, leased employee, joint employee, or other classification of worker, for a period of at least twelve consecutive months subsequent to retirement. The exemption provided under this subitem does not apply unless the member first certifies to the system that he satisfies the requirements for the exemption. If a member inaccurately certifies that he satisfies the requirements for the exemption provided in this subitem, the member is responsible for reimbursing the system for any benefits wrongly paid to the member.”

SECTION 4. Section 9‑11‑90(4)(a)(ii) of the 1976 Code is amended to read:

“(ii) The earnings limitation imposed pursuant to this item does not apply if the member meets at least one of the following qualifications:

(A) the member retired before January 2, 2013;

(B) the member has attained the age of fifty‑seven years at retirement; ~~or~~

(C) compensation received by the retired member from the covered employer is for service in a public office filled by the appointment of the Governor and with confirmation by the Senate, by appointment or election by the General Assembly, or by election of the qualified electors of the applicable jurisdiction; or

(D) the member has not been engaged to perform services for a participating employer in the system or any other system provided in this title for compensation in any capacity, whether as an employee, independent contractor, leased employee, joint employee, or other classification of worker, for a period of at least twelve consecutive months subsequent to retirement. The exemption provided under this subitem does not apply unless the member first certifies to the system that he satisfies the requirements for the exemption. If a member inaccurately certifies that he satisfies the requirements for the exemption provided in this subitem, the member is responsible for reimbursing the system for any benefits wrongly paid to the member.”

SECTION 5. This act takes effect upon approval by the Governor.

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