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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 5. PERSONNEL [18000 - 22980] (Division 5 added by Stats. 1945, Ch. 123.)

PART 3. PUBLIC EMPLOYEES' RETIREMENT SYSTEM [20000 - 21716] (Part 3 repealed and added by Stats. 1995, Ch. 379, Sec. 2.)

CHAPTER 13. Retirement Benefits [21250 - 21483] (Chapter 13 added by Stats. 1995, Ch. 379, Sec. 2.)

ARTICLE 1. General Provisions [21250 - 21269] (Article 1 added by Stats. 1995, Ch. 379, Sec. 2.)

21250. A pension, an annuity, special death benefit or retirement allowance granted by this part is payable in equal monthly installments but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21251. Notwithstanding Section 20172, the board may establish a special account and procedure to directly pay estimated benefits on an emergency basis. Payments under the special account shall be deducted from benefits otherwise due and payable under this part.

The board shall furnish each recipient of funds from this account with notice that the payment is an estimated amount and that any adjustments necessary due to inaccuracies in estimating shall be corrected as soon as practicable.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21251.13. (a) Notwithstanding any other provision of law, Sections 21070.5, 21070.6, 21073.1, 21073.7, 21354.1, 21362.2, 21363.1, and 21369.1 and the amendments to Sections 21070, 21071, 21072, 21073, 21073.5, and 21353.5, enacted during the first year of the 1999–2000 Regular Session:

- (1) Shall not become operative unless the board adopts a resolution that does both of the following: (A) employs, for the June 30, 1998, valuation, 95 percent of the market value of assets of the state employer as the actuarial value of the assets; and (B) amortizes the June 30, 1998, excess assets over a period of 20 years, beginning July 1, 1999.
- (2) Shall not apply to a state employee, as defined in subdivision (c) of Section 3513, in a bargaining unit unless and until incorporated in a memorandum of understanding, pursuant to Section 3517.5, applicable to that bargaining unit.
- (3) Shall not apply to excluded employees, as defined in Section 3527, unless the Department of Human Resources has approved the application of those provisions to those employees. Notwithstanding any provision of law to the contrary, any approval by the Department of Human Resources for the application of these provisions to those excluded employees is irrevocable.

(b) Notwithstanding anything in a memorandum of understanding to the contrary, (1) the benefits provided under the provisions of those sections described in subdivision (a), as added or amended during the first year of the 1999–2000 Regular Session, shall not terminate upon the expiration or termination of the memorandum of understanding, and (2) the only conditions to the operation of the provisions of those sections described in subdivision (a), as added or amended during the first year of the 1999–2000 Regular Session, are contained in this section.

(c) Notwithstanding Section 3517.8 or any provision of a memorandum of understanding that has been continued in effect on and after January 15, 2011, pursuant to Section 3517.8 to the contrary, the retirement formulas in Sections 21354.1, 21363.3, 21363.4, 21363.8, and 21369.1 shall only apply to state employees who were first employed and subject to those sections before January 15, 2011. Those sections shall not apply to any state employee member first employed on and after January 15, 2011.

(d) Upon request by the state employer or other entity, or on its own volition, the board may change the amortization period, or take any other action the board deems necessary or appropriate, to mitigate the impact of unforeseen factors that may cause an increase

in the employer contribution by the state. Nothing in this section shall be construed to limit the board's authority under Section 17 of Article 16 of the California Constitution.

(Amended by Stats. 2012, Ch. 665, Sec. 132. (SB 1308) Effective January 1, 2013.)

21251.15. (a) Notwithstanding any other provision of this part, when a member's account has been divided pursuant to Section 21290, and the nonmember has not effected a refund of accumulated contributions pursuant to Section 21292 prior to the member's effective date of retirement, and the nonmember has sufficient credited service to retire for service, the retirement allowance payable to a member who retires on or after January 1, 2004, shall be equal to the difference between (1) the allowance that would have been payable to the member had the division of the account not occurred and (2) the allowance payable to the nonmember on either (A) the effective date of the nonmember's retirement, or (B) if the nonmember has not retired on or before the member's effective date of retirement, the date the nonmember would have attained the age of 50 years, for service subject to Sections 21362.2, 21363.3, 21363.4, and 21363.8, and the date the nonmember would have attained the age of 55 years, or the nonmember's actual age if older than the age of 55 years on the effective date of the member's retirement, for all other service.

(b) If the nonmember retires prior to the effective date of the member's retirement, an actuarial adjustment shall also be made to the member's allowance to account for the benefits received by the nonmember spouse prior to the member's effective date of retirement.

(c) In no event may the member's retirement allowance payable under this section be less than the allowance that would otherwise be payable under this part.

(Amended by Stats. 2004, Ch. 231, Sec. 3. Effective January 1, 2005.)

21252. (a) A member's written application for retirement, if submitted to the board within nine months after the date the member discontinued his or her state service, and, in the case of retirement for disability, if the member was physically or mentally incapacitated to perform his or her duties from the date the member discontinued state service to the time the written application for retirement was submitted to the board, shall be deemed to have been submitted on the last day for which salary was payable. The effective date of a written application for retirement submitted to the board more than nine months after the member's discontinuance of state service shall be the first day of the month in which the member's application is received at an office of the board or by an employee of this system designated by the board.

(b) An application for retirement may only be submitted by or for a member who is living on the date the application is actually received by the system. If the member has been deemed incompetent to act on his or her own behalf continuously from the last day for which salary was payable, the effective date of retirement may not be earlier than one year prior to the month in which an application submitted by the guardian of the member's estate is received by the system.

(c) Notwithstanding any other provision of law, a member who separates from a retirement system that has established reciprocity with this system with the intention of retiring concurrently under both systems and who submits his or her application for retirement for service to the board within nine months after that separation, may have his or her application received and acted upon by this system as if the application were submitted pursuant to this section.

(Amended by Stats. 2009, Ch. 130, Sec. 28. (AB 966) Effective January 1, 2010.)

21254. The right of a person to a pension, retirement allowance, return of contributions, the pension, retirement allowance, any optional benefit, or any other right accrued or accruing to any person under this part are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21255. The right of a person to any benefit or other right under this part and the money in the retirement fund are not subject to execution or any process whatsoever except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and are unassignable, except as specifically provided in this part.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21256. Any allowance may be paid directly to a trust. A trustee of the trust shall have the right to make tax withholding elections and to change the address for annuitant payments and correspondence.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21257. The benefits payable after August 4, 1943 under this system shall not be modified on account of any amounts paid to a retired member or beneficiary under Division 4 (commencing with Section 3200) of the Labor Code.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21258. For the purposes of determining eligibility for disability retirement, calculating disability retirement allowances, and determining and calculating death benefits, any member who, while in a membership category under which special benefits are provided by this part because a disability or death is determined industrial, and thereafter, while in a membership category under which special benefits are not so payable, is determined to be disabled because of the industrial injury or disease previously suffered or incurred or dies as a result thereof, shall be deemed to be, at the time of the disability retirement or death, in the membership category in which he or she was at the time he or she suffered the injury or incurred the disease.

The member will be eligible to receive the industrial disability retirement benefit only if he or she was disabled for performance of his or her duties in the position under the membership category where industrial disability benefits are payable, from the date of discontinuance of the state service in which the industrial injury or disease occurred to the time of application.

The effective date of retirement for purposes of this section shall be determined in accordance with Section 21252.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21259. Subject to compliance with this part, after a member has qualified as to service and disability for retirement for disability, or as to age and service for retirement for service, nothing shall deprive him or her of the right to a retirement allowance as determined under this part.

(Amended by Stats. 2001, Ch. 793, Sec. 20. Effective January 1, 2002.)

21260. In lieu of receiving a monthly allowance that is less than ten dollars (\$10) per month, the beneficiary or survivor entitled to the allowance may elect to receive the actuarial equivalent of the monthly allowance in one payment. Payment of the actuarial equivalent amount pursuant to that election discharges this system from all further liability for the allowance otherwise payable. The beneficiary or survivor may make the election provided by this section within 90 days from the date this system notifies him or her of the right to make the election.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21261. The sole purpose of this section is to notify the current spouse of the selection of benefits or change of beneficiary made by a member. This section is not intended to conflict with community property law.

(a) An application for a refund of the member's accumulated contributions, an election of optional settlement, a designation of beneficiary, or a change in beneficiary designation shall contain the signature of the current spouse of the member, unless the member declares, in writing under penalty of perjury, any of the following:

- (1) The member is not married.
- (2) The current spouse has no identifiable community property interest in the benefit.
- (3) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.
- (4) The current spouse has been advised of the application and has refused to sign the written acknowledgment.
- (5) The current spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.
- (6) The member and the current spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(b) Notwithstanding subdivision (a), the designation of a member's current spouse as the member's sole primary beneficiary on any lump-sum beneficiary designation shall not require the signature of the member's current spouse.

(c) Notwithstanding subdivision (a), when a member makes an election of optional settlement that, upon the member's death, provides the member's current spouse with a monthly lifetime allowance that is the same as the monthly lifetime allowance received by the member, and the member's current spouse is also designated as the member's sole primary beneficiary on any lump-sum beneficiary designation, the election shall not require the signature of the member's current spouse.

(Amended by Stats. 2017, Ch. 241, Sec. 8. (SB 525) Effective January 1, 2018.)

21263. Notwithstanding the provisions of Sections 751 and 1100 of the Family Code, whenever payment or refund is made by this system to a member, former member, beneficiary of a member or estate of a member pursuant to any provision of this part, or to the State Department of Social Services under the provisions of the Welfare and Institutions Code, the payment shall fully discharge this system from all adverse claims thereto unless, before the payment or refund is made, this system has received at its office in Sacramento written notice by or on behalf of some other person that the person claims to be entitled to the payment or refund.

(Amended by Stats. 1996, Ch. 927, Sec. 3. Effective January 1, 1997.)

21264. Retired members of this system, and beneficiaries who are entitled to receive allowances or benefits under this part, may authorize deductions to be made from their retirement allowance payments or from the allowances and benefits, respectively, or from either or both if both are being received, in accordance with regulations or procedures established by the board for the payment of group insurance premiums and other premiums for benefits or protection provided for under Section 1151, including employer-sponsored voluntary insurance programs, for credit union payments or shares, or for the payment, with respect to any retired member of this system, of dues or for any other services pursuant to Article 6 (commencing with Section 1150) of Chapter 1 of Division 4 of Title 4. The board shall determine the additional cost involved in making deductions under this section and the state agency, the public agency, the association, or the unit thereof, or the credit union shall pay the amount of the additional cost to the board for deposit in the retirement fund.

(Amended by Stats. 2009, Ch. 130, Sec. 29. (AB 966) Effective January 1, 2010.)

21265. Retired members of this system, and beneficiaries who are entitled to receive allowances or benefits under this part, may authorize deductions to be made from their retirement allowance payments or from the allowances and benefits, respectively, or from either or both when both are being received in accordance with regulations established by the board for the payment of charitable contributions under any plan approved by the board. In lieu of approving individual plans, the board, at its discretion, may adopt by reference those plans approved by the Department of General Services under Section 13923. The board shall determine the additional cost involved in making deductions under this section, and the agency to receive the contributions shall pay the amount of the additional cost to the board for deposit in the retirement fund.

(Amended by Stats. 2016, Ch. 31, Sec. 150. (SB 836) Effective June 27, 2016.)

21266. Upon receipt of proof, satisfactory to the board, that a warrant drawn in payment of a retirement allowance or in payment of any other account due from the retirement system has been lost, the Controller upon the request of the board shall issue a duplicate warrant in payment of the same amount, without requiring a bond from the payee, and any loss incurred in connection therewith shall be charged against the account from which the payment was derived.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21267. (a) Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established pursuant to Section 21268. The direct deposit shall discharge the state agency's obligation with respect to that payment.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to the receipt of the benefits from a state retirement system shall be refunded to the retirement system.

(Amended by Stats. 2004, Ch. 506, Sec. 2. Effective January 1, 2005.)

21268. The Controller may make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and may establish a program, for the direct deposit by electronic fund transfer of the benefits, after any withholding required by law and authorized deductions, of any person entitled to the receipt of benefits from any state retirement system who authorizes the direct deposit thereof by electronic fund transfer into the person's account at the financial institution of his or her choice.

If the Controller does not make an agreement establishing a program for direct deposit by electronic fund transfer of the retirement benefits, the administrative body of any state retirement system may make such an agreement.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21269. (a) Any person entitled to a benefit from this system may request that payment be made by deposit by electronic fund transfer in the person's bank, savings and loan association, or credit union account.

(b) If deposit pursuant to subdivision (a) is not available, deposit may be made by mail in the person's bank, savings and loan association, or credit union account.

(c) Mailing of the warrant or electronic fund transfer is a full discharge of the board and this system.

(d) The board shall make available, in a manner it determines appropriate, copies of the monthly benefit payment information electronically or by mail.

(1) If the board elects to mail copies of this payment information to all or a portion of persons receiving monthly benefit payments, it shall not send a copy of the benefit payment information to any person who has had payment made by electronic fund transfer or by mail pursuant to subdivision (a) or (b), if the board has received a written request from that person that it not be sent.

(2) The board shall notify persons subject to this section, in the monthly benefit payment notice, of their right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

(3) If the board does not elect to mail copies of this payment information to all or a portion of persons receiving monthly benefit payments, it shall notify a person subject to this section of his or her right to request that a copy of the benefit payment information be mailed. The board shall mail a copy of the benefit payment information if the system has received a written request to do so from that person.

(Amended by Stats. 2013, Ch. 778, Sec. 5. (SB 215) Effective January 1, 2014.)