

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE B. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 812. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Sec. 812.001. MEMBERSHIP CLASSES. The two classes of membership in the retirement system are the elected class and the employee class.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.001 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 812.002. MEMBERSHIP IN ELECTED CLASS. (a) Membership in the elected class of the retirement system is limited to:

(1) persons who hold state offices that are normally filled by statewide election and that are not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(2) members of the legislature; and

(3) district and criminal district attorneys, to the extent that they receive salaries from the state general revenue fund.

(b) Membership in the elected class is optional.

(c) An eligible person becomes a member of the elected class by filing a notice of intention to become a member with the board of trustees on a form prescribed by the board.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 602, Sec. 4, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.002 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 812.003. MEMBERSHIP IN EMPLOYEE CLASS. (a) Except as provided by Subsection (b), membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the

state except:

(1) independent contractors and their employees performing work for the state; and

(2) persons disqualified from membership under Section [812.201](#).

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two or, except as provided by Section 9.01, Chapter 238 (S.B. 378), Acts of the 73rd Legislature, Regular Session, 1993, is with a university system or institution of higher education, as defined by Section [61.003](#), Education Code, is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership in the employee class begins on the first day a person is employed or holds office.

(e) A person who is reemployed or who again holds office after withdrawing contributions under Subchapter B for previous service credited in the employee class begins membership in the employee class on the first day the person is reemployed or again holds office.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 331 , Sec. 4, eff. September 1, 2015.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 602, Sec. 5, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 1111, Sec. 12, 41, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 347 (S.B. [1176](#)), Sec. 4, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. [1459](#)), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 331 (H.B. [9](#)), Sec. 1, eff.

September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 331 (H.B. 9), Sec. 4, eff. September 1, 2015.

Sec. 812.005. TERMINATION OF MEMBERSHIP.

(a) A person's membership in the retirement system is terminated by:

- (1) death of the person;
- (2) retirement based on service credited in all classes of membership in which the person has service credit; or
- (3) withdrawal of all of the person's accumulated contributions.

(b) A person terminates membership in one class of membership by:

- (1) retirement based on service credited in the class;
- or
- (2) withdrawal of the person's accumulated contributions for service credited in the class.

(c) A person may terminate membership in one class and retain membership in the other.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 332, ch. 75, Sec. 2, eff. Sept. 1, 1983. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.005 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 850, Sec. 1, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 5, eff. September 1, 2005.

Sec. 812.006. OPTIONAL MEMBERSHIP. (a) In this section, "qualified employee" means a person who:

- (1) has at least three years of service credit in the retirement system in the legislative branch that was accrued before June 18, 1993;
- (2) was employed by an institution of higher education, as defined by Section 61.003, Education Code, before

December 31, 1998, and elected to participate in the optional retirement program under Chapter 830; and

(3) is actively participating in the optional retirement program.

(b) A qualified employee may make a one-time, irrevocable election in a manner provided by the retirement system to renew active participation in the system and cease participation in the optional retirement program.

(c) An employee who makes an election under this section is not eligible to establish service credit in the retirement system for service performed while participating in the optional retirement program.

(d) This section is contingent upon the receipt of a favorable Internal Revenue Service ruling addressing all tax issues.

(e) An election authorized by this section must be made within 90 days of the Internal Revenue Service ruling.

Added by Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 6, eff. September 1, 2005.

SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

Sec. 812.101. CRITERIA FOR WITHDRAWAL. (a) A member of the retirement system may withdraw all of the member's accumulated contributions for service credited in the employee class of membership if:

(1) the member does not hold a position included in that class;

(2) the member does not assume or resume, during the 30 days after the date on which the member terminates employment, a position included in that class; and

(3) the member's application for withdrawal is filed before the member assumes or resumes a position included in that class.

(b) A member of the retirement system currently contributing in the elected class of membership may at any time stop contributing and withdraw the person's contributions made for

service credited in that class.

(c) For a law enforcement or custodial officer, the withdrawal of accumulated contributions under Subsection (a) includes all of the officer's contributions made under Section [815.402\(h\)](#) or [820.101\(b\)](#), as applicable.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1541, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. [2559](#)), Sec. 3, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 940 (S.B. [321](#)), Sec. 4, eff. September 1, 2021.

Sec. 812.102. PROCEDURE FOR WITHDRAWAL. A member initiates a withdrawal of contributions by filing an application for a refund with the retirement system or the agency or department with which the member holds or most recently held a position.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.102 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 812.103. EFFECT OF WITHDRAWAL. A withdrawal of contributions cancels a member's service credit and terminates the person's membership in, and all rights to benefits from, each class from which the withdrawal is made.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.103 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 812.104. DEPOSITS REFUNDABLE. (a) Except as provided by Subsection (c), deposits representing interest or membership fees that are required of a member to establish service credit under Section [813.202](#), [813.302](#), [813.402](#), or [813.502](#) are not refundable.

(b) Deposits representing accumulated contributions are refundable to the member on application for a refund made as provided by Section [812.102](#).

(c) At the time a service retirement, disability retirement, or death benefit annuity becomes payable, the retirement system shall refund any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.104 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1541, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

Sec. 812.201. ELIGIBILITY FOR RETIREMENT SYSTEM MEMBERSHIP. (a) Except as provided by Subsection (c), a retiree may not rejoin the retirement system as a member of the class from which the person retired.

(b) A retiree who takes a position not included in a membership class from which the retiree receives retirement benefit payments:

(1) is required to become or remain a member if the position is included in the employee class; or

(2) may elect to become or remain a member if the position is included in the elected class.

(c) A person who is retired from the elected class of membership and who again holds a position included in that class may elect to become a member again by filing notice with the retirement system. Except as provided by Section [812.203\(c\)](#), when benefit payments are resumed, the retirement system shall recompute the annuity selected at the time of the person's original retirement to include the additional service established during membership under this subsection.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2092, ch. 383, Sec. 1, eff. June

17, 1983. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.201 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 850, Sec. 2, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. [2559](#)), Sec. 4, eff. September 1, 2009.

Sec. 812.202. BENEFITS NOT AFFECTED. (a) The payment of benefits to a retiree is not affected by:

(1) the retiree's taking a position included in a class of membership other than a class from which the person retired; or

(2) the retiree's serving the state as an independent contractor.

(b) The payment of benefits to a retiree for service credited in the employee class of membership is not affected by the retiree's taking a position included in the employee class.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.202 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 850, Sec. 3, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 715, Sec. 1, eff. Sept. 1, 2001.

Sec. 812.203. BENEFITS AFFECTED. (a) If a retiree takes the oath for a position included in the elected class of membership, the retirement system shall suspend annuity payments to the person for service that was credited in that class, until the person no longer holds that position.

(b) Time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit selection providing for a specific amount of benefits for a guaranteed number of months after retirement.

(c) If a member who originally retired with service credited at the time of that retirement only in the elected class of membership again retires, the person at the time of subsequent retirement may select an annuity based on service in the elected

class as if the person were retiring for the first time. If the person selects an annuity under Section [814.108\(c\)\(3\)](#) or (c)(4), the retirement system shall reduce the number of months of guaranteed payment by the number of months for which an annuity was paid under the person's original retirement.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, Sec. 11, eff. Nov. 10, 1981; Acts 1983, 68th Leg., p. 2092, ch. 383, Sec. 2, eff. June 17, 1983. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.203 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 850, Sec. 4, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 715, Sec. 3(2), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1111, Sec. 13, eff. Sept. 1, 2003.

Sec. 812.204. NOTICE. (a) Before a retiree begins work in a position included in the employee class of membership, the retiree and the head of the department, commission, board, agency, or institution at which the retiree will resume state service each shall notify the retirement system in writing of the retiree's name, the taking of a position, and the projected dates of service.

(b) Before a retiree from the elected class of membership takes the oath of office for a position included in that class, the retiree shall notify the retirement system in writing of the taking of a position and the projected dates of service.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 22.204 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 812.205. WAITING PERIOD. A member who retires from the employee class on or after May 31, 2009, may not return to work in a position included in the employee class of membership before the 90th day after the date of the retiree's original retirement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. [2559](#)), Sec. 5, eff. September 1, 2009.

Sec. 812.206. RETURN TO WORK SURCHARGE. (a) This section

applies only to a person who, on or after September 1, 2009:

- (1) retires from the employee class; and
- (2) is rehired as a retiree into a position that would otherwise include membership in the employee class.

(b) For each month that a department or agency of this state employs a person described by Subsection (a), the department or agency shall remit to the retirement system an amount equal to the amount of the state contribution that the department or agency would remit for an active member employed in the person's position. The amount remitted shall be deposited as provided by Section [815.309](#).

Added by Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. [2559](#)), Sec. 6, eff. September 1, 2009.