

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

400Y0151

## HOUSE BILL NO. 1017

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 FOR AN ACT ENTITLED, An Act to revise the definition of compensation for purposes of the  
2 South Dakota Retirement System, to provide a penalty for falsely reporting compensation,  
3 and to update references to the Internal Revenue Code.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 3-12-47.6 be amended to read:

6 3-12-47.6. For the purposes of this chapter, the term, compensation, means gross wages paid  
7 to a member by the employer for ~~personal services~~ credited service rendered during the period  
8 ~~considered as credited service~~ for which the payment was earned. Compensation includes  
9 ~~amounts~~ any amount reported as wages, tips, and other compensation on the member's federal  
10 form W-2 wage and tax statement, except as otherwise excluded in this section; ~~the~~ any amount  
11 of member contributions made by an employer after June 30, 1984, pursuant to § 3-12-71; any  
12 amount contributed by a member to a ~~member's individual retirement plan which~~ that meets the  
13 requirements of section 125, 401, 403, 408, or 457 of the Internal Revenue Code; ~~and any~~  
14 ~~amount contributed to a plan described in section 125 of the Internal Revenue Code;~~ and any  
15 amount contributed to the system pursuant to § 3-12-83.2 in accord with § 414(h)(2) of the



1 Internal Revenue Code.

2 Compensation does not include any allowance, payment, or reimbursement for travel, meals,  
3 lodging, moving, uniforms, or any other expenses expense that is incidental to an employer's  
4 business which is employment and paid or reimbursed by the employer; any lump sum payments  
5 payment for sick leave; any lump sum payments payment for annual leave; payments any  
6 payment for, or in lieu of, insurance coverage of any kind or any other employee benefit paid  
7 by an employer directly to a member or directly to a third party on behalf of an employee or an  
8 employee and dependents a member or a member and any dependent; any allowance or payment  
9 for housing or vehicles; any temporary payment paid as a lump sum or over a period of time that  
10 is not due to additional duties; any amount paid in a one-time lump sum payment or over a  
11 period of time and based on or attributable to retirement or an agreement to retire in the future;  
12 payments or results in an incentive to retire; any payment made upon dismissal or severance;  
13 any worker's compensation payments payment; and payments any payment contingent on a  
14 member terminating employment at a specified time in the future paid or payable in a lump sum  
15 or over a period of time.

16 Any compensation in excess of the limits established in § 401(a)(17) of the Internal Revenue  
17 Code shall be disregarded for purposes of contributions or for benefit calculations under the  
18 system. However, the limit does not apply to compensation earned by a member if the member  
19 was employed by a participating unit before July 1, 1996.

20 Section 2. That § 3-12-47.6 be amended to read:

21 3-12-47.6. For the purposes of this chapter, the term, compensation, means gross wages paid  
22 to a member by the employer for ~~personal services~~ credited service rendered during the period  
23 ~~considered as credited service~~ for which the payment was earned. Compensation includes  
24 ~~amounts~~ any amount reported as wages, tips, and other compensation on the member's federal

1 form W-2 wage and tax statement, except as otherwise excluded in this section; ~~the~~ any amount  
2 of member contributions made by an employer after June 30, 1984, pursuant to § 3-12-71; any  
3 amount contributed by a member to a ~~member's individual retirement plan which~~ that meets the  
4 requirements of section 125, 401, 403, 408, or 457 of the Internal Revenue Code; ~~and any~~  
5 ~~amount contributed to a plan described in section 125 of the Internal Revenue Code;~~ and any  
6 amount contributed to the system pursuant to § 3-12-83.2 in accord with § 414(h)(2) of the  
7 Internal Revenue Code.

8 Compensation does not include any allowance, payment, or reimbursement for travel, meals,  
9 lodging, moving, uniforms, or any other ~~expenses~~ expense that is incidental to an employer's  
10 ~~business which is~~ employment and paid or reimbursed by the employer; ~~any~~ lump sum ~~payments~~  
11 payment for sick leave; ~~any~~ lump sum ~~payments~~ payment for annual leave; ~~payments~~ any  
12 payment for, or in lieu of, insurance coverage of any kind or any other employee benefit paid  
13 by an employer directly to a member or directly to a third party on behalf of ~~an employee or an~~  
14 ~~employee and dependents~~ a member or a member and any dependent; any allowance or payment  
15 for housing or vehicles; any temporary payment paid as a lump sum or over a period of time that  
16 is not due to additional duties; any amount paid in a one-time lump sum payment or over a  
17 period of time and based on or attributable to retirement or an agreement to retire in the future;  
18 ~~payments~~ or results in an incentive to retire; any payment made upon dismissal or severance;  
19 any worker's compensation ~~payments~~ payment; and ~~payments~~ any payment contingent on a  
20 member terminating employment at a specified time in the future paid or payable in a lump sum  
21 or over a period of time.

22 ~~Any compensation in excess of the limits established in § 401(a)(17) of the Internal Revenue~~  
23 ~~Code shall be disregarded for purposes of contributions or for benefit calculations under the~~  
24 ~~system. However, the limit does not apply to compensation earned by a member if the member~~

1 ~~was employed by a participating unit before July 1, 1996.~~

2 Section 3. That chapter 3-12 be amended by adding a NEW SECTION to read:

3 Any compensation in excess of the limits established in § 401(a)(17) of the Internal Revenue  
4 Code shall be disregarded for purposes of contributions and benefit calculations under the  
5 system. Any benefit calculations for members subject to the limits established in § 401(a)(17)  
6 of the Internal Revenue Code but for whom the limitation on compensation did not apply before  
7 January 1, 2018, shall be based on unlimited compensation for credited service before  
8 January 1, 2018, and limited compensation for credited service as of January 1, 2018.

9 Section 4. The provisions of sections 2 and 3 of this Act are effective on January 1, 2018.

10 Section 5. That chapter 3-12 be amended by adding a NEW SECTION to read:

11 Any person or employer who transmits a report of compensation to the system knowing that  
12 some or all of the compensation is excluded by § 3-12-47.6, is guilty of a Class 1 misdemeanor.

13 Section 6. That subdivision (50) of § 3-12-47 be amended to read:

14 (50) "Internal Revenue Code," or "code," the Internal Revenue Code as in effect as of  
15 January 1, ~~2016~~ 2017;

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