

CHAPTER 66

GOVERNMENT - MUNICIPAL

SENATE BILL 02-026

BY SENATOR(S) Nichol, Andrews, Chlouber, Entz, Epps, Fitz-Gerald, Hagedorn, Hanna, Hernandez, Isgar, Phillips, Tate, Taylor, Teck, Tupa, and Windels;
 also REPRESENTATIVE(S) Cadman, Boyd, Cloer, Coleman, Crane, Dean, Decker, Fritz, Groff, Hefley, Hodge, Hoppe, Jahn, Kester, Mace, Madden, Marshall, Miller, Ragsdale, Romanoff, Stengel, Tochtrop, and Weddig.

AN ACT**CONCERNING DEATH AND DISABILITY BENEFITS FOR MEMBERS OF THE STATEWIDE DEATH AND DISABILITY PLAN FOR POLICE OFFICERS AND FIREFIGHTERS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 31-30.5-209 (4) (c), Colorado Revised Statutes, is amended to read:

31-30.5-209. Idle funds. (4) (c) If a plan fund does not provide any type of cost-of-living benefit to persons receiving benefits from the plan fund, the assets in the plan fund shall be used to provide an annual adjustment to the pension benefits for such persons prior to using the excess balance in the plan fund as provided in paragraph (a) of this subsection (4) and prior to purchasing annuities as provided in paragraph (b) of this subsection (4). The minimum annual adjustment shall be calculated in the same manner as the annual adjustment to total disability benefits provided for members of the statewide death and disability plan pursuant to ~~section 31-31-407 (2) (b) and (3)~~ SECTIONS 31-31-407 (3) AND 31-31-803 (6) (b) (II); except that the effective date of the benefit for purposes of the formula set forth in said section shall be the date on which the board provides the annual adjustment required under this paragraph (c).

SECTION 2. 31-31-407 (1), (2), and (4), Colorado Revised Statutes, are amended to read:

31-31-407. Adjustment of benefits. (1) The benefits payable under the statewide defined benefit plan established by this part 4 ~~and those payable pursuant to the statewide death and disability plan established in part 8 of this article~~ shall be redetermined effective October 1 each year, and such redetermined amount shall be

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

payable for the following twelve months. To be eligible for redetermination, such benefits shall have been paid for at least twelve calendar months prior to the effective date of redetermination. ~~The annual redetermination of benefits provided in this section shall be required only for those employers not exempted by section 31-31-401 (1) which, on January 1, 1980, were providing an annual cost of living adjustment to pension benefits provided pursuant to this article or article 30.5 of this title. The annual redetermination of benefits made pursuant to this section shall be in lieu of any other annual cost of living adjustment. except for employer-determined and locally financed rank escalation benefits allowed in section 31-30.5-307 (1)(b)(H).~~

(2) (a) Subject to the limitations contained in subsection (3) of this section, ~~and except for total disability benefits payable pursuant to sections 31-31-803 (1) and 31-31-806.5,~~ the redetermination of benefits payable under subsection (1) of this section shall be computed as follows: The amount of the benefit on the effective date of the benefit shall be increased by a percentage to be determined by the board but no more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.

(b) ~~The redetermination of total disability benefits payable pursuant to sections 31-31-803 (1) and 31-31-806.5 shall be computed as follows: The redetermined amount of the benefit shall be the amount calculated by application of the formula set forth in subparagraph (H) of paragraph (a) of subsection (3) of this section, but in no event shall the amount of the benefit on the effective date of the benefit be increased by more than three percent for each full year contained in the period commencing with the effective date of the benefit and ending with the effective date of the redetermination.~~

(4) The cost of the adjustment of benefits provided by this section shall be funded in the same manner as other defined benefits established by this part 4. ~~and part 8 of this article.~~

SECTION 3. 31-31-801 (1), Colorado Revised Statutes, is amended, and the said 31-31-801 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-31-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Assigned duties" means those specific tasks or jobs designated by the employer for a particular position within a job classification. The term does not include the duties of a member's rank or grade that the member is not actually required to REGULARLY perform in the position which the member occupies.

(3.2) "PERMANENT OCCUPATIONAL DISABILITY" MEANS AN OCCUPATIONAL DISABILITY CAUSED BY A CONDITION THAT IS PERMANENT OR DEGENERATIVE, AND FOR WHICH THERE IS NO PROGNOSIS FOR IMPROVEMENT OR RECOVERY THROUGH SURGICAL TREATMENT, COUNSELING, MEDICATION, THERAPY, OR OTHER MEANS.

(3.4) "TEMPORARY OCCUPATIONAL DISABILITY" MEANS AN OCCUPATIONAL DISABILITY FOR WHICH THERE IS A PROGNOSIS FOR IMPROVEMENT OR RECOVERY

THROUGH SURGICAL TREATMENT, COUNSELING, MEDICATION, THERAPY, OR OTHER MEANS.

SECTION 4. 31-31-803 (1) (b) (III), the introductory portion to 31-31-803 (2) (a), 31-31-803 (4) (a) (I), (5) (a), (6), and (7), the introductory portion to 31-31-803 (8) (a), and 31-31-803 (8) (a) (III) and (8) (b), Colorado Revised Statutes, are amended, and the said 31-31-803 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-31-803. Retirement for disability. (1) (b) Notwithstanding subsection (5) of this section, a member eligible for the normal annual disability benefit for total disability may elect to receive one of the following disability benefit options in lieu of the normal annual disability benefit provided under paragraph (a) of this subsection (1):

(III) Option 3. A reduced annual disability benefit payable to the member and, upon the member's death, all of such reduced annual disability benefit to be paid to the member's surviving spouse and dependent children, if any, until the death of the surviving spouse, THE DEATH OF ANY ADULT DEPENDENT CHILD FOUND TO BE INCAPACITATED BY THE BOARD, or until the youngest child, REGARDLESS OF ENROLLMENT IN SCHOOL OR MARITAL STATUS, reaches twenty-three years of age, whichever is later.

(2) (a) A member who becomes occupationally disabled, as defined in section 31-31-801 (3), AND IS AWARDED A DISABILITY RETIREMENT PRIOR TO OCTOBER 1, 2002, shall be retired from active service for such time as the occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2) or section 31-31-806.5 if the member:

(2.1) (a) A MEMBER WHO BECOMES PERMANENTLY OCCUPATIONALLY DISABLED, AS DEFINED IN SECTION 31-31-801 (3.2), SHALL BE RETIRED FROM ACTIVE SERVICE FOR SUCH TIME AS THE PERMANENT OCCUPATIONAL DISABILITY CONTINUES AND SHALL BE ELIGIBLE TO RECEIVE THE DISABILITY BENEFIT PROVIDED BY THIS SUBSECTION (2.1) OR SECTION 31-31-806.5 IF THE MEMBER:

(I) IS NOT ELIGIBLE FOR THE NORMAL RETIREMENT PENSION DESCRIBED IN SECTION 31-31-403 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704 (3) OR PROVIDED PURSUANT TO ARTICLE 30.5 OF THIS TITLE; OR

(II) HAS NOT REACHED AGE FIFTY-FIVE WITH TWENTY-FIVE YEARS OF ACCUMULATED SERVICE AS A MEMBER AND IS A PARTICIPANT UNDER THE STATEWIDE MONEY PURCHASE PLAN PURSUANT TO PART 5 OF THIS ARTICLE OR UNDER A LOCAL MONEY PURCHASE PLAN.

(b) THE ANNUAL DISABILITY BENEFIT FOR A PERMANENT OCCUPATIONAL DISABILITY FOR A MEMBER WHO IS RETIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2.1) SHALL BE FIFTY PERCENT OF THE ANNUAL BASE SALARY BEING PAID TO THE MEMBER IMMEDIATELY PRECEDING RETIREMENT FOR DISABILITY.

(2.2) (a) A MEMBER WHO BECOMES TEMPORARILY OCCUPATIONALLY DISABLED,

AS DEFINED IN SECTION 31-31-801 (3.4), SHALL BE RETIRED FROM ACTIVE SERVICE FOR SUCH TIME AS THE TEMPORARY OCCUPATIONAL DISABILITY CONTINUES FOR A PERIOD UP TO FIVE YEARS FROM THE DATE OF ORIGINAL DISABLEMENT AND SHALL BE ELIGIBLE TO RECEIVE THE DISABILITY BENEFIT PROVIDED BY THIS SUBSECTION (2.2) OR SECTION 31-31-806.5 IF THE MEMBER:

(I) IS NOT ELIGIBLE FOR THE NORMAL RETIREMENT PENSION DESCRIBED IN SECTION 31-31-403 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704 (3) OR PROVIDED PURSUANT TO ARTICLE 30.5 OF THIS TITLE; OR

(II) HAS NOT REACHED AGE FIFTY-FIVE WITH TWENTY-FIVE YEARS OF ACCUMULATED SERVICE AS A MEMBER AND IS A PARTICIPANT UNDER THE STATEWIDE MONEY PURCHASE PLAN PURSUANT TO PART 5 OF THIS ARTICLE OR UNDER A LOCAL MONEY PURCHASE PLAN.

(b) THE ANNUAL DISABILITY BENEFIT FOR A TEMPORARY OCCUPATIONAL DISABILITY FOR A MEMBER WHO IS RETIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2.2) SHALL BE FORTY PERCENT OF THE ANNUAL BASE SALARY BEING PAID TO THE MEMBER IMMEDIATELY PRECEDING RETIREMENT FOR DISABILITY.

(c) A MEMBER FOUND TO HAVE A TEMPORARY OCCUPATIONAL DISABILITY SHALL BE SUBJECT TO REEXAMINATION AT SUCH TIMES AND IN SUCH MANNER AS THE BOARD MAY DIRECT. BASED ON THE RECOMMENDATIONS OF THE PHYSICIAN PANEL, THE BOARD MAY REQUIRE TREATMENT, COUNSELING, OR THERAPY NECESSARY TO REHABILITATE THE MEMBER FOR RETURN TO WORK. AT THE TIME OF REEXAMINATION, A MEMBER WITH A TEMPORARY DISABILITY SHALL PROVIDE EVIDENCE OF COMPLIANCE WITH THE REQUIREMENTS ESTABLISHED BY THE BOARD. BENEFITS MAY BE TERMINATED BY THE BOARD IF THE MEMBER FAILS TO MAKE REHABILITATION EFFORTS OR IF SUFFICIENT EVIDENCE OF COMPLIANCE AND CONTINUING DISABILITY IS NOT PROVIDED TO THE BOARD BY THE DISABLED MEMBER.

(d) A MEMBER WHO REMAINS DISABLED MAY APPLY FOR AN UPGRADE TO PERMANENT OCCUPATIONAL DISABILITY OR TO TOTAL DISABILITY NO LATER THAN SIX MONTHS PRIOR TO THE END OF FIVE YEARS FROM THE DATE OF ORIGINAL DISABLEMENT. A MEMBER MAY BE UPGRADED TO A PERMANENT OCCUPATIONAL DISABILITY UPON A FINDING BY THE BOARD THAT THE MEMBER MEETS THE DEFINITION CONTAINED IN SECTION 31-31-801 (3.2) OR TO A TOTAL DISABILITY UPON A FINDING BY THE BOARD THAT THE MEMBER MEETS THE DEFINITION CONTAINED IN SECTION 31-31-801 (4). AFTER THE FIVE-YEAR PERIOD, BENEFITS SHALL CEASE UNLESS THE MEMBER HAS BEEN UPGRADED TO EITHER PERMANENT OCCUPATIONAL DISABILITY OR TOTAL DISABILITY.

(e) A MEMBER WHOSE DISABILITY BENEFITS CEASE AND WHO IS NOT RESTORED TO ACTIVE SERVICE OR A MEMBER WHO ELECTS TO TERMINATE HIS OR HER DISABILITY BENEFITS SHALL BE ENTITLED TO:

(I) ANY VESTED BENEFIT EARNED THROUGH HIS OR HER YEARS OF SERVICE PRIOR TO BECOMING DISABLED, PAYABLE AT NORMAL RETIREMENT AGE; OR

(II) A REFUND OF THE MEMBER'S CONTRIBUTIONS IF NO BENEFIT IS VESTED.

(4) (a) (I) The determination of disability, whether occupational or total or whether on-duty, shall be made by the board, and the board shall consider reports to be made by a panel of three physicians who shall be appointed by the board upon the recommendation of a medical advisor with whom the board shall contract to provide advisory services AND ANY OTHER EVIDENCE THE BOARD DEEMS RELEVANT. The board shall not make a determination of disability unless two of the three physicians examining the applicant agree that a disability exists, but the board shall not be bound by the physicians' determination that a disability exists.

(5) (a) Any member who is awarded a TOTAL disability pension OR A PERMANENT OCCUPATIONAL DISABILITY PENSION under this section or section 31-31-806.5 shall be eligible to receive the applicable normal disability pension provided in this section or to make an election for a reduced pension in the manner provided in this section.

(6) (a) ~~The benefits established pursuant to this section are eligible for annual cost of living adjustments as permitted in section 31-31-407.~~ THE BENEFITS PAYABLE UNDER THE STATEWIDE DEATH AND DISABILITY PLAN ESTABLISHED IN THIS PART 8 SHALL BE REDETERMINED EFFECTIVE OCTOBER 1 EACH YEAR, AND SUCH REDETERMINED AMOUNT SHALL BE PAYABLE FOR THE FOLLOWING TWELVE MONTHS. TO BE ELIGIBLE FOR REDETERMINATION, SUCH BENEFITS SHALL HAVE BEEN PAID FOR AT LEAST TWELVE CALENDAR MONTHS PRIOR TO THE EFFECTIVE DATE OF REDETERMINATION. THE ANNUAL REDETERMINATION OF BENEFITS MADE PURSUANT TO THIS SECTION SHALL BE IN LIEU OF ANY OTHER ANNUAL COST OF LIVING ADJUSTMENT.

(b) (I) FOR THE REDETERMINATION OF OCCUPATIONAL DISABILITY BENEFITS PAYABLE PURSUANT TO SECTIONS 31-31-803 (2), (2.1), AND (2.2) AND 31-31-806.5, THE AMOUNT OF THE BENEFIT ON THE EFFECTIVE DATE OF THE BENEFIT SHALL BE INCREASED BY A PERCENTAGE TO BE DETERMINED BY THE BOARD BUT NOT MORE THAN THREE PERCENT FOR EACH FULL YEAR CONTAINED IN THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE BENEFIT AND ENDING WITH THE EFFECTIVE DATE OF THE REDETERMINATION.

(II) FOR THE REDETERMINATION OF TOTAL DISABILITY BENEFITS PAYABLE PURSUANT TO SECTIONS 31-31-803 (1) AND 31-31-806.5, THE AMOUNT OF THE BENEFIT ON THE EFFECTIVE DATE OF THE BENEFIT SHALL BE INCREASED BY THREE PERCENT FOR EACH FULL YEAR CONTAINED IN THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE BENEFIT AND ENDING WITH THE EFFECTIVE DATE OF THE REDETERMINATION.

(c) THE COST OF THE ADJUSTMENT OF BENEFITS PROVIDED BY THIS SECTION SHALL BE FUNDED IN THE SAME MANNER AS OTHER BENEFITS ESTABLISHED BY THIS PART 8.

(7) The benefits payable under this section or section 31-31-806.5 to any member who is AWARDED AN OCCUPATIONAL DISABILITY PRIOR TO OCTOBER 1, 2002, A TOTAL DISABILITY, OR WHO IS PERMANENTLY OCCUPATIONALLY DISABLED AND WHO IS also ~~receiving~~ ELIGIBLE TO RECEIVE payments from the member's separate retirement account pursuant to section 31-31-406 OR A SIMILAR PROVISION IN A LOCAL PENSION PLAN shall be reduced by an amount that is the actuarial equivalent of the benefits such member ~~receives~~ IS ELIGIBLE TO RECEIVE from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a

lump sum.

(8) (a) A member eligible for ~~an~~ A PERMANENT occupational disability benefit under ~~subsection (2)~~ SUBSECTION (2.1) of this section or ~~an~~ A PERMANENT occupational disability benefit under section 31-31-806.5 may elect to receive one of the following disability benefit options in lieu of such disability benefit:

(III) Option 3. ~~A reduced annual disability benefit payable jointly to the member and the member's designated beneficiary and, upon the death of either, one-half of such reduced disability benefit to be paid to the survivor for life.~~ A REDUCED ANNUAL DISABILITY BENEFIT PAYABLE TO THE MEMBER AND, UPON THE MEMBER'S DEATH, ALL OF SUCH REDUCED ANNUAL DISABILITY BENEFIT TO BE PAID TO THE MEMBER'S SURVIVING SPOUSE AND DEPENDENT CHILDREN, IF ANY, UNTIL THE DEATH OF THE SURVIVING SPOUSE, THE DEATH OF ANY ADULT DEPENDENT CHILD FOUND TO BE INCAPACITATED BY THE BOARD, OR UNTIL THE YOUNGEST CHILD, REGARDLESS OF ENROLLMENT IN SCHOOL OR MARITAL STATUS, REACHES TWENTY-THREE YEARS OF AGE, WHICHEVER IS LATER.

(b) A member shall be deemed to have elected ~~option 1~~ OPTION 3 specified in subparagraph (I) of paragraph (a) of this subsection (8) if the member is awarded ~~an~~ A PERMANENT occupational disability benefit under ~~subsection (2)~~ SUBSECTION (2.1) of this section or an occupational disability benefit under section 31-31-806.5, is survived by a spouse or dependent child, and dies before making an election allowed under paragraph (a) of this subsection (8).

(12) NOTWITHSTANDING ANY LIMITATION PROVIDED UNDER PART 1 OF ARTICLE 80 OF TITLE 13, C.R.S., OR ANY OTHER APPLICABLE LIMITATION, ANY APPLICATION FOR DISABILITY MUST BE FILED BY THE MEMBER NO LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THE LAST DAY ON THE PAYROLL UNDER WHICH DISABILITY COVERAGE UNDER THIS SECTION IS PROVIDED.

(13) WITHIN THE APPLICATION FOR DISABILITY BENEFITS, A MEMBER MAY IRREVOCABLY ELECT NOT TO BE CONSIDERED FOR REINSTATEMENT IN THE EVENT THAT SUCH MEMBER BECOMES ELIGIBLE. ANY SUCH ELECTION SHALL TERMINATE ANY OBLIGATION FOR REINSTATEMENT BY THE EMPLOYER.

(14) WITHIN THE APPLICATION FOR DISABILITY BENEFITS, THE EMPLOYER SHALL:

(a) MAKE A STATEMENT INDICATING THE REASON FOR THE MEMBER'S SEPARATION FROM EMPLOYMENT; AND

(b) STATE ANY ADDITIONAL BASIS FOR DISABILITY UNDER THE DEATH AND DISABILITY PROGRAM WHICH THE EMPLOYER BELIEVES EXISTS AND INCLUDE ANY DOCUMENTATION OF RELEVANT MEDICAL EVIDENCE. IN THE EVENT THE MEMBER'S DISABILITY CEASES TO EXIST AND THE MEMBER BECOMES ELIGIBLE TO BE RESTORED TO ACTIVE SERVICE PURSUANT TO SECTION 31-31-805 (2), THE MEMBER MAY BE CONSIDERED FOR A CONTINUING DISABILITY BY THE BOARD WITH REGARD TO THE ADDITIONAL BASIS PROVIDED BY THE EMPLOYER. THE CONSIDERATION SHALL BE CONDUCTED AS IF THE MEMBER HAD FILED AN ORIGINAL APPLICATION; EXCEPT THAT LIMITATION PERIODS UNDER SECTION 31-31-805 (2) SHALL ACCRUE FROM THE DATE OF THE ORIGINAL DISABLEMENT. IF THE MEMBER FAILS TO BE EXAMINED WITH

REGARD TO THE ADDITIONAL BASIS, THE MEMBER SHALL BE ENTITLED TO NEITHER REINSTATEMENT NOR CONTINUING DISABILITY BENEFITS.

SECTION 5. 31-31-804 (1) (a), (1) (c), and (2), Colorado Revised Statutes, are amended to read:

31-31-804. Reduction of disability benefits. (1) (a) If a member has any earned income other than that provided by a AN OCCUPATIONAL disability benefit award under section 31-31-803 or 31-31-806.5 and, if applicable, a workers' compensation award that provides a total income greater than an amount equal to one hundred percent of the base salary provided to an active member of the same rank at which the member retired, ~~the~~ AN OCCUPATIONAL disability benefit shall be reduced by twenty-five percent of the additional earned income. The reduction shall be made for income earned up to and including the calendar year in which the member attains age fifty-five. In calculating total income for purposes of this paragraph (a), the amount includable with respect to money purchase plan benefits that a member is eligible to receive shall be the same amount as calculated pursuant to subsection (2) of this section.

(c) Any member receiving a AN OCCUPATIONAL disability benefit pursuant to section 31-31-803 or 31-31-806.5 shall file an annual report concerning any additional income earned up to and including the calendar year in which the member attains age fifty-five. If such member knowingly fails to file such report or files a fraudulent report, the disability benefit shall be discontinued.

(2) The benefits payable under section 31-31-803 or 31-31-806.5 to any member WHO IS OCCUPATIONALLY DISABLED PRIOR TO OCTOBER 1, 2002, IS PERMANENTLY OCCUPATIONALLY DISABLED, OR WHO IS TOTALLY DISABLED AND who at the time of the award of such benefits is a member of a money purchase plan pursuant to this article or article 30.5 of this title, including any department chief, who at the time of the award of such benefits has been exempted from the statewide defined benefit plan as permitted by section 31-31-401 (4), shall be reduced by an amount that is the actuarial equivalent of the benefits such member receives from any such money purchase plan, whether the benefits received from the money purchase plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of money purchase plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-31-402 (1) and (2) as is required for benefits under section 31-31-403.

SECTION 6. 31-31-805 (1), (2) (e), and (2) (h), Colorado Revised Statutes, are amended, and the said 31-31-805 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-31-805. Change in disability status - reexamination. (1) At any time that a total disability, including an on-duty disability pursuant to section 31-31-806.5 (1), ceases to exist, based upon periodic reexamination as may be required by the board or based upon other evidence of ability to engage in substantial gainful activity, a member retired for such disability shall be declared PERMANENTLY occupationally disabled, and the benefits provided by section 31-31-803 (1) or 31-31-806.5 (1) shall be reduced to the level provided in ~~section 31-31-803 (2)~~ SECTION 31-31-803 (2.1). THE FIVE-YEAR LIMITATION ON INVESTIGATIONS CONTAINED IN SECTION 31-31-803

(4) (b) SHALL NOT BE APPLICABLE TO THE ENFORCEMENT OF THIS SUBSECTION (1).

(2) (e) If a member refuses to accept the same or a position of equal base pay, the benefits provided by ~~section 31-31-803(2)~~ SECTION 31-31-803 shall be discontinued, but a member shall not lose benefits if there is no such vacancy or if the member refuses to accept a position that is not the same or of equal base pay to the member's former position, or if the employer refuses to restore the member to active service, except as provided pursuant to paragraph (b) of this subsection (2).

(h) If the member refuses a vacancy in the same position the member held prior to retirement or in a position of equal base pay to the member's former position, the benefits provided by ~~section 31-31-803(2)~~ SECTION 31-31-803 shall be discontinued. Except as otherwise provided pursuant to this subsection (2), if the employer refuses to allow a member who exercises such first right of refusal to fill the vacancy, the employer shall thereafter pay the cost of the benefits provided by ~~section 31-31-803(2)~~ SECTION 31-31-803.

(i) WHEN A TEMPORARY OCCUPATIONAL DISABILITY CEASES TO EXIST AND THE MEMBER IS RESTORED TO ACTIVE SERVICE WITH THE MEMBER'S EMPLOYER, A TRANSFER WILL BE MADE FROM THE STATEWIDE DEATH AND DISABILITY PLAN TO THE MEMBER'S NORMAL RETIREMENT PLAN IN THE AMOUNT OF SIXTEEN PERCENT OF THE MONTHLY BASE SALARY THAT THE MEMBER WAS BEING PAID AT THE TIME OF DISABILITY RETIREMENT, MULTIPLIED BY THE NUMBER OF MONTHS THE MEMBER RECEIVED TEMPORARY OCCUPATIONAL DISABILITY BENEFITS. THE MEMBER WILL RECEIVE SERVICE CREDIT FOR SUCH TRANSFER. A RESTORED MEMBER OF A LOCAL PLAN WHICH HAS A CONTRIBUTION RATE IN EXCESS OF SIXTEEN PERCENT SHALL HAVE THE DIFFERENCE BETWEEN THE AMOUNT TRANSFERRED AND THE AMOUNT THAT WOULD HAVE BEEN CONTRIBUTED AT THE EXCESS RATE, MADE UP BY AN ADDITIONAL CONTRIBUTION FROM THE EMPLOYER.

SECTION 7. 31-31-805 (3), Colorado Revised Statutes, is amended, and the said 31-31-805 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-31-805. Change in disability status - reexamination. (2.5) WHEN A MEMBER ON TEMPORARY OCCUPATIONAL DISABILITY SATISFIES THE AGE AND SERVICE REQUIREMENTS FOR A NORMAL RETIREMENT, INCLUDING THE TIME THE MEMBER WAS ON TEMPORARY OCCUPATIONAL DISABILITY, A TRANSFER SHALL BE MADE FROM THE STATEWIDE DEATH AND DISABILITY PLAN TO THE MEMBER'S NORMAL RETIREMENT PLAN IN THE AMOUNT OF SIXTEEN PERCENT OF THE MONTHLY BASE SALARY THAT THE MEMBER WAS BEING PAID AT THE TIME OF DISABILITY RETIREMENT, MULTIPLIED BY THE NUMBER OF MONTHS THE MEMBER RECEIVED TEMPORARY OCCUPATIONAL DISABILITY BENEFITS. A MEMBER OF A LOCAL RETIREMENT PLAN WHICH HAS A CONTRIBUTION RATE IN EXCESS OF SIXTEEN PERCENT SHALL HAVE THE DIFFERENCE BETWEEN THE AMOUNT TRANSFERRED AND THE AMOUNT THAT WOULD HAVE BEEN CONTRIBUTED AT THE EXCESS RATE, MADE UP BY AN ADDITIONAL CONTRIBUTION FROM THE EMPLOYER. THE MEMBER SHALL THEN BE GRANTED A NORMAL RETIREMENT UNDER THE MEMBER'S NORMAL RETIREMENT PLAN AND THE TEMPORARY OCCUPATIONAL DISABILITY BENEFITS UNDER THE STATEWIDE DEATH AND DISABILITY PLAN SHALL TERMINATE.

(3) Within five years from the date of a board finding of occupational disability pursuant to subsection (1) of this section or ~~section 31-31-803 (2)~~ FROM THE DATE OF ORIGINAL DISABLEMENT PURSUANT TO SECTION 31-31-803 (2), (2.1), OR (2.2), a member retired for such disability may be declared totally disabled based upon periodic reexamination as ordered by the board in its discretion. If the member is declared totally disabled, the benefits provided by ~~section 31-31-803 (2)~~ SECTION 31-31-803 (2), (2.1), OR (2.2) shall be increased to the level provided in section 31-31-803 (1).

SECTION 8. 31-31-806, Colorado Revised Statutes, is amended to read:

31-31-806. Disqualification upon reemployment. If, subsequent to disability benefits being awarded to a member pursuant to the provisions of section 31-31-803 or 31-31-806.5, but prior to a decision of the board that an occupational disability ceases to exist pursuant to section 31-31-805 (2), a member is employed or reemployed in this state or any other jurisdiction, pursuant to either an agreement or court order, in a full-time salaried position that normally involves working at least one thousand six hundred hours in any given calendar year and the duties of which are directly involved with the provision of police or fire protection as determined by the board, the benefits provided pursuant to section 31-31-803 shall be discontinued. Any application for retirement for disability made by the member after such appointment or reinstatement shall be treated in all respects as a new application. THE FIVE-YEAR LIMITATION ON INVESTIGATIONS CONTAINED IN SECTION 31-31-803 (4) (b) SHALL NOT BE APPLICABLE TO THE ENFORCEMENT OF THIS SECTION.

SECTION 9. 31-31-806.5 (2), Colorado Revised Statutes, is amended to read:

31-31-806.5. Disability benefits - on-duty. (2) If the board determines that a member, who is otherwise eligible to apply for disability retirement benefits under section 31-31-803, is required to terminate the member's regular employment due to an occupational disability, as defined in section 31-31-801 (3), that is the result of an injury received while performing official duties or an occupational disease arising out of and in the course of the member's employment, the member is eligible for a disability benefit in an amount provided for in ~~section 31-31-803 (2)~~ SECTION 31-31-803.

SECTION 10. The introductory portion to 31-31-807 (1) (a) and 31-31-807 (1) (a) (II) (A), Colorado Revised Statutes, as they will become effective January 1, 2002, are amended, and the said 31-31-807 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-31-807. Death of member - survivor benefits. (1) (a) If a member dies while in active service OR WHILE ON TEMPORARY OCCUPATIONAL DISABILITY UNDER SECTION 31-31-803 (2.2) and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in paragraph (b) of this subsection (1) shall be paid if the member:

(II) (A) Is not eligible for the normal retirement pension described in section 31-31-403 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704; or

(6) (a) THE SURVIVOR BENEFITS PAYABLE UNDER THE STATEWIDE DEATH AND DISABILITY PLAN ESTABLISHED IN THIS PART 8 SHALL BE REDETERMINED EFFECTIVE OCTOBER 1 EACH YEAR, AND SUCH REDETERMINED AMOUNT SHALL BE PAYABLE FOR THE FOLLOWING TWELVE MONTHS. TO BE ELIGIBLE FOR REDETERMINATION, SUCH BENEFITS SHALL HAVE BEEN PAID FOR AT LEAST TWELVE CALENDAR MONTHS PRIOR TO THE EFFECTIVE DATE OF REDETERMINATION. THE ANNUAL REDETERMINATION OF BENEFITS MADE PURSUANT TO THIS SECTION SHALL BE IN LIEU OF ANY OTHER ANNUAL COST OF LIVING ADJUSTMENT.

(b) FOR THE REDETERMINATION OF SURVIVOR BENEFITS PAYABLE PURSUANT TO THIS SECTION, THE AMOUNT OF THE BENEFIT ON THE EFFECTIVE DATE OF THE BENEFIT SHALL BE INCREASED BY A PERCENTAGE TO BE DETERMINED BY THE BOARD BUT NOT MORE THAN THREE PERCENT FOR EACH FULL YEAR CONTAINED IN THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE BENEFIT AND ENDING WITH THE EFFECTIVE DATE OF THE REDETERMINATION.

(c) THE COST OF THE ADJUSTMENT OF BENEFITS PROVIDED BY THIS SECTION SHALL BE FUNDED IN THE SAME MANNER AS OTHER BENEFITS ESTABLISHED BY THIS PART 8.

SECTION 11. The introductory portion to 31-31-807.5 (1) (a), 31-31-807.5 (1) (a) (II) (A), and the introductory portion to 31-31-807.5 (1) (b), Colorado Revised Statutes, as they will become effective January 1, 2002, are amended, and the said 31-31-807.5 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-31-807.5. Death of member - line-of-duty - survivor benefits. (1) (a) If a member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the member's employment, AND IF SUCH MEMBER QUALIFIES FOR LINE-OF-DUTY STATUS UNDER SECTION 101 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, and leaves a surviving spouse or dependent children, or both, one of the survivor benefits described in EITHER paragraph (b) OR (c) of this subsection (1) shall be paid if the member:

(II) (A) Is not eligible for the normal retirement pension described in section 31-31-403 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704; or

(b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (1), one of the following survivor benefits shall be paid if the requirements of paragraph (a) of this subsection (1) are satisfied:

(c) FOR SURVIVORS WHO BECOME ELIGIBLE FOR SURVIVOR BENEFITS ON OR AFTER OCTOBER 15, 2002, ONE OF THE FOLLOWING SURVIVOR BENEFITS SHALL BE PAID IF THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (1) ARE SATISFIED:

(I) THE MONTHLY BENEFIT WHEN THERE IS A SURVIVING SPOUSE, EITHER WITH OR WITHOUT CHILDREN, SHALL BE SEVENTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(II) THE MONTHLY BENEFIT WHEN THERE IS NO SURVIVING SPOUSE BUT A

SURVIVING CHILD OR CHILDREN SHALL BE:

(A) SEVENTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO SUCH MEMBER IMMEDIATELY PRIOR TO DEATH IF THE CHILD OR CHILDREN WERE LIVING IN THE MEMBER'S HOME AT THE TIME OF THE MEMBER'S DEATH; OR

(B) FORTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO SUCH MEMBER IMMEDIATELY PRIOR TO DEATH FOR ONE CHILD AND FIFTEEN PERCENT FOR EACH ADDITIONAL CHILD; EXCEPT THAT THE TOTAL BENEFIT RECEIVED SHALL NOT BE GREATER THAN SEVENTY PERCENT OF THE MONTHLY BASE SALARY IF THE CHILD OR CHILDREN WERE NOT LIVING IN THE MEMBER'S HOME AT THE TIME OF THE MEMBER'S DEATH.

SECTION 12. 31-31-807.5 (5), (6), and (7), Colorado Revised Statutes, as they will become effective January 1, 2002, are amended, and the said 31-31-807.5 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

31-31-807.5. Death of member - line-of-duty - survivor benefits. (1.5) (a) ON OR AFTER OCTOBER 1, 2001, IF A MEMBER DIES WHILE IN ACTIVE SERVICE AS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AS A RESULT OF AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF THE MEMBER'S EMPLOYMENT, AND IF SUCH MEMBER QUALIFIES FOR LINE-OF-DUTY STATUS UNDER SECTION 101 (h) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND LEAVES A SURVIVING SPOUSE OR DEPENDENT CHILDREN, OR BOTH, ONE OF THE SURVIVOR BENEFITS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1.5) SHALL BE PAID IF THE MEMBER:

(I) IS ELIGIBLE FOR A NORMAL RETIREMENT PENSION UNDER AN OLD HIRE PENSION ESTABLISHED PURSUANT TO ARTICLE 30.5 OF THIS TITLE THAT PROVIDES FOR POSTRETIREMENT SURVIVOR BENEFITS TO A SPOUSE AND DEPENDENT CHILDREN IN THE EVENT THE MEMBER DIES IN ACTIVE SERVICE WHILE ELIGIBLE FOR NORMAL RETIREMENT;

(II) IS ELIGIBLE FOR THE NORMAL RETIREMENT PENSION DESCRIBED IN SECTION 31-31-403 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704 (3); OR

(III) HAS REACHED AGE FIFTY-FIVE WITH TWENTY-FIVE YEARS OF ACCUMULATED SERVICE AS A MEMBER AND IS A PARTICIPANT UNDER THE STATEWIDE MONEY PURCHASE PLAN PURSUANT TO PART 5 OF THIS ARTICLE OR UNDER A LOCAL MONEY PURCHASE PLAN.

(b) ONE OF THE FOLLOWING SURVIVOR BENEFITS SHALL BE PAID IF THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (1.5) ARE SATISFIED AND IF THE SURVIVOR BENEFIT CURRENTLY RECEIVED PURSUANT TO SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.5) IS LESS THAN SEVENTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO THE MEMBER IMMEDIATELY PRECEDING DEATH:

(I) THE MONTHLY BENEFIT TO BE PAID IN ADDITION TO THE MONTHLY RETIREMENT BENEFIT OTHERWISE PAYABLE WHEN THERE IS A SURVIVING SPOUSE, EITHER WITH OR WITHOUT CHILDREN, SHALL BE THE DIFFERENCE BETWEEN SEVENTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH AND THE AMOUNT PAYABLE PURSUANT TO BENEFITS RECEIVED UNDER THE PLAN IDENTIFIED IN SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.5).

(II) THE MONTHLY BENEFIT TO BE PAID IN ADDITION TO THE MONTHLY RETIREMENT BENEFIT OTHERWISE PAYABLE WHEN THERE IS NO SURVIVING SPOUSE BUT THERE IS A SURVIVING CHILD OR CHILDREN SHALL BE:

(A) IF THE CHILD OR CHILDREN WERE LIVING IN THE MEMBER'S HOME AT THE TIME OF THE MEMBER'S DEATH, THE DIFFERENCE BETWEEN SEVENTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH AND THE AMOUNT PAYABLE PURSUANT TO BENEFITS RECEIVED UNDER THE PLAN IDENTIFIED IN SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.5); OR

(B) IF THE CHILD OR CHILDREN WERE NOT LIVING IN THE MEMBER'S HOME AT THE TIME OF THE MEMBER'S DEATH, THE SUM OF FORTY PERCENT OF THE MONTHLY BASE SALARY BEING PAID TO SUCH MEMBER IMMEDIATELY PRIOR TO DEATH FOR THE FIRST CHILD PLUS FIFTEEN PERCENT FOR EACH ADDITIONAL CHILD, THE TOTAL OF WHICH SHALL NOT BE GREATER THAN SEVENTY PERCENT OF THE MONTHLY BASE SALARY LESS THE AMOUNT PAYABLE PURSUANT TO BENEFITS RECEIVED UNDER THE PLAN IDENTIFIED IN SUBPARAGRAPH (I), (II), OR (III) OF PARAGRAPH (a) OF THIS SUBSECTION (1.5).

(5) (a) When there is a surviving spouse and one dependent child residing in a separate household from the surviving spouse, the surviving spouse shall receive ~~twenty-five percent~~ TWO-THIRDS of the ~~monthly base salary~~ BENEFIT and the child shall receive the balance of the benefit pursuant to ~~subparagraph (II) of paragraph (b) of subsection (1)~~ SUBSECTION (1) OR (1.5) of this section.

(b) When there is a surviving spouse and two or more dependent children residing in a separate household from the surviving spouse, the surviving spouse shall receive ~~twenty-five~~ FIFTY percent of the ~~monthly base salary~~ BENEFIT and the children shall receive the balance of the benefit pursuant to ~~subparagraph (III) of paragraph (b) of subsection (1)~~ SUBSECTION (1) OR (1.5) of this section.

(c) Upon the termination of the benefit payable to the child or children pursuant to paragraph (a) or (b) of this subsection (5), the surviving spouse shall receive the ENTIRE benefit pursuant to ~~subparagraph (I) of paragraph (b) of subsection (1)~~ SUBSECTION (1) OR (1.5) of this section.

(6) In the event that a survivor benefit is payable for the benefit of more than one dependent child of the member pursuant to ~~subparagraph (III), (IV), or (V) of paragraph (b) of subsection (1)~~ SUBSECTION (1) OR (1.5) of this section and the dependent children reside in separate households from each other, the CHILDREN'S benefit shall be divided equally among the children.

~~(7) Any surviving spouse or dependent child receiving benefits pursuant to subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section prior to January 1, 2002, shall receive any increased benefit established in subparagraph (I) or (VI) of paragraph (b) of subsection (1) of this section on January 1, 2002, as applicable.~~

(8) IF A MEMBER DIES WHILE IN ACTIVE SERVICE AS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AS A RESULT OF AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF THE MEMBER'S EMPLOYMENT AND OTHERWISE QUALIFIES FOR BENEFITS UNDER SUBSECTION (1.5) OF THIS SECTION, BUT FALLS WITHIN ONE OR MORE OF THE EXCEPTIONS SPECIFIED IN SECTION 101 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND LEAVES A SURVIVING SPOUSE OR DEPENDENT CHILDREN, OR BOTH, SAID SURVIVORS SHALL:

(a) RECEIVE BENEFITS AS ALLOWED UNDER SECTION 31-31-807; OR

(b) RECEIVE BENEFITS AS ALLOWED UNDER THE MEMBER'S NORMAL RETIREMENT PLAN.

SECTION 13. 31-31-808 (2), Colorado Revised Statutes, is amended to read:

31-31-808. Reduction of survivor benefits. (2) The benefits payable under sections 31-31-807 and 31-31-807.5 to the surviving spouse and dependent children of any member who are also receiving payments from the member's separate retirement account pursuant to section 31-31-406 OR A LOCAL DEFINED BENEFIT RETIREMENT PENSION SELECTED PURSUANT TO SECTION 31-31-704, shall be reduced by an amount that is the actuarial equivalent of the benefits such surviving spouse and dependent children receive from the separate retirement account, whether the benefits received from the account are paid on a periodic basis or in a lump sum.

SECTION 14. Part 8 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-31-812. Military leave of absence. (1) AUTHORIZED LEAVE OF ABSENCE SHALL INCLUDE LEAVE FOR MILITARY SERVICE AS ALLOWED BY THE BOARD. THE BOARD SHALL ADOPT RULES REGARDING AUTHORIZED LEAVE OF ABSENCE FOR MILITARY SERVICE, INCLUDING, BUT NOT LIMITED TO:

(a) LIMITS ON THE LENGTH OF THE TERM OF THE LEAVE OF ABSENCE;

(b) ASSESSMENT OF COSTS FOR COVERAGE DURING THE LEAVE OF ABSENCE; AND

(c) ANY OTHER MATTER THAT THE BOARD DEEMS NECESSARY FOR COVERAGE UNDER THE STATEWIDE DEATH AND DISABILITY PLAN.

(2) THE BENEFITS PAYABLE TO THE MEMBER, THE SURVIVING SPOUSE OF THE MEMBER, AND THE DEPENDENT CHILDREN OF THE MEMBER PURSUANT TO THIS PART 8 SHALL BE REDUCED BY AN AMOUNT THAT IS THE ACTUARIAL EQUIVALENT OF ANY MILITARY BENEFIT RECEIVED AS A RESULT OF THE DEATH OR DISABILITY OF A MEMBER WHILE ON AUTHORIZED LEAVE FOR MILITARY SERVICE WHETHER THE BENEFITS ARE

PAID ON A PERIODIC BASIS OR IN A LUMP SUM.

SECTION 15. Effective date. This act shall take effect October 1, 2002.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 3, 2002