

CHAPTER 53

GOVERNMENT - MUNICIPAL

SENATE BILL 09-017

BY SENATOR(S) Tochtrop, Morse, Groff, Shaffer B.;
also REPRESENTATIVE(S) Riesberg, Benefield, Labuda, Peniston, Rice, Apuan, Casso, Gerou, Green, King S., Looper, Ryden,
Schafer S., Solano, Todd, Carroll T.

AN ACT

CONCERNING FIREFIGHTER AND POLICE OFFICER DISABILITY AND SURVIVOR BENEFITS.

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

SECTION 1. 31-31-801 (2), Colorado Revised Statutes, is amended to read:

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

(2) "Dependent child" means an unmarried child under the age of ~~nineteen or, if such child is enrolled as a full-time student at a secondary school or an accredited institution of higher education, under the age of~~ twenty-three and includes, if the board so determines, any child, regardless of age or marital status, who is so mentally or physically incapacitated that the child cannot provide for the child's own care. The term also includes a child who is conceived but unborn at the date of the member's death or the date of disability, whichever applies. Any applicable increase in benefits will occur upon birth.

SECTION 2. 31-31-803 (1) (a) (II), (1) (b) (III), (1) (d), (2) (b) (III), (7) (b), and (8) (a) (III), Colorado Revised Statutes, are amended to read:

31-31-803. Retirement for disability. (1) (a) (II) The normal annual disability benefit for total disability for a member who is retired pursuant to subparagraph (I) of this paragraph (a) shall be seventy percent of the annual base salary paid to the member immediately preceding retirement for disability. ~~The benefit shall be increased by ten percent or twenty percent of the annual base salary depending on the level of benefit elected by a member participating in the supplemental disability benefit program described in section 31-31-803.5.~~

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

(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.

~~(d) Notwithstanding subsection (5) of this section, a member receiving a disability benefit under this subsection (1) as of January 1, 2000, may elect a different disability benefit option under paragraph (b) of this subsection (1) once within ninety days of receiving written notice from the board of the opportunity to elect a different disability benefit option. The board may promulgate rules to implement and administer this paragraph (d).~~

(2)(b) The annual disability benefit for occupational disability for a member who is retired pursuant to paragraph (a) of this subsection (2) shall be thirty percent of the annual base salary paid to the member immediately preceding retirement for disability. The benefit shall be increased by:

~~(III) Ten percent or twenty percent of the annual base salary depending on the level of benefit elected by a member participating in the supplemental disability program described in section 31-31-803.5.~~

(7) (b) The benefits payable under this section or section 31-31-806.5 to any member who is awarded a total disability or who is permanently occupationally disabled and who is also eligible to receive a defined benefit from a STATEWIDE OR local pension plan shall be reduced by the amount of the defined benefit.

(8) (a) A member eligible for a permanent occupational disability benefit under subsection (2.1) of this section or 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 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.

SECTION 3. Repeal. 31-31-803.5, Colorado Revised Statutes, is repealed as follows:

31-31-803.5. Supplemental disability benefit program. ~~(1) The board may establish a supplemental disability benefit program that provides additional~~

disability benefits to members who participate in such program and who are retired for disability pursuant to section 31-31-803 or section 31-31-806.5. Any supplemental disability benefit program established pursuant to this subsection (1) shall meet the following requirements:

(a) ~~The supplemental disability benefit program shall permit a member to elect to participate in such program prior to the member's commencement of employment with an employer or during open enrollment periods established by the board and to discontinue such participation at any time upon notice to the association. An open enrollment period shall not be permitted any more frequently than every two years. Reenrollment in such program shall be permitted only during an open enrollment period.~~

(b) ~~The supplemental disability benefit program shall permit a participating member to elect between two levels of supplemental benefits providing an additional ten percent or twenty percent of the member's annual base salary;~~

(c) ~~The cost of funding the supplemental disability benefit program shall be by contributions made by participating members at a rate to be determined as a percentage of the member's base salary pursuant to the annual actuarial valuation required by section 31-31-811 (2) (b) (H). The contribution rate shall be adjusted every two years in order to reflect changes in the cost of such program determined by the annual actuarial valuation.~~

(d) ~~The full cost of funding the supplemental disability benefit program for a member shall be payable by the participating member. Payments shall be made in the same manner as payments required pursuant to section 31-31-811 (4).~~

(e) ~~The benefits provided pursuant to the supplemental disability benefit program shall be eligible for annual cost-of-living adjustments permitted by section 31-31-407. The cost of funding such adjustments shall be included in determining the contribution required by paragraph (c) of this subsection (1).~~

(f) ~~A member must be enrolled in the supplemental disability benefit program at the time the member applies for disability benefits in order to receive benefits payable under such program;~~

(g) ~~A member enrolled in the supplemental disability benefit program will not be eligible for benefits payable under such program if the member's disability is the proximate consequence or result of a medical condition that existed at the time the member enrolled in such program.~~

(2) ~~If a member who is retired for disability and eligible for benefits under the supplemental disability benefit program elects an optional form of payment pursuant to section 31-31-803 (5) (a), the benefits payable under the program shall be included in determining such optional payment amount.~~

(3) ~~The reductions to disability benefits described in section 31-31-804 shall not apply to benefits payable under the supplemental disability benefit program.~~

(4) ~~The board shall promulgate such rules as may be necessary to implement the~~

provisions of this section:

SECTION 4. 31-31-804 (1), Colorado Revised Statutes, is amended to read:

31-31-804. Reduction of disability benefits - definitions. (1) (a) ~~If a member has any earned income other than that provided by 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 the member's indexed base salary, 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. A member's indexed salary for the first year shall equal the member's base salary at the date of disability multiplied by the consumer price index fraction. For each subsequent year, a member's indexed salary shall equal the indexed salary for the previous year multiplied by the consumer price index fraction. The consumer price index fraction shall be as follows: The numerator shall be the average of the consumer price index for the twelve months in the calendar year immediately preceding the effective date of the indexed base salary, and the denominator shall be the average of the consumer price index for the twelve months in the calendar year prior to the twelve months used in the numerator. For members receiving benefits subject to reductions under this section prior to January 1, 2008, the last previous salary based on rank used to make the calculation under this paragraph (a) shall be used in the first year as the member's base salary. In no event shall the indexed base salary be reduced below the previous year's indexed base salary. As used in this paragraph (a), "consumer price index" means the national consumer price index for urban wage earners and clerical workers prepared by the United States department of labor.~~

(b) ~~Notwithstanding any provision of paragraph (a) of this subsection (1), Any disability benefit provided pursuant to section 31-31-803 shall be reduced by the pro rata amount of any social security benefit received by the member attributable to the member's quarters of social security coverage derived from employment as a member.~~

(c) ~~Any member receiving an occupational disability benefit pursuant to section 31-31-803 or 31-31-806.5 AND A SOCIAL SECURITY BENEFIT ATTRIBUTABLE TO THE MEMBER'S QUARTERS OF SOCIAL SECURITY COVERAGE DERIVED FROM EMPLOYMENT AS A MEMBER shall file an annual report concerning any additional SOCIAL SECURITY 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.~~

SECTION 5. 31-31-805 (2.5), Colorado Revised Statutes, is amended 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 STATEWIDE OR local retirement plan ~~which~~ THAT has a MANDATORY 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.

SECTION 6. 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)~~ A TEMPORARY OCCUPATIONAL DISABILITY, OR A PERMANENT OCCUPATIONAL DISABILITY that, REGARDLESS OF THE TYPE OF OCCUPATIONAL DISABILITY, 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.

SECTION 7. 31-31-808 (3), Colorado Revised Statutes, is amended to read:

31-31-808. Reduction of survivor benefits. (3) 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 a STATEWIDE OR local Colorado fire or police defined benefit pension plan shall be reduced by the amount of the defined benefit payments to be received.

SECTION 8. 31-31-809, Colorado Revised Statutes, is amended to read:

31-31-809. Termination of benefits. Except as otherwise provided in section 31-31-807 (2), any benefit provided in accordance with this part 8 to a surviving spouse ~~or dependent child~~ shall terminate upon the death ~~or remarriage~~ of the surviving spouse. ~~and upon the death of any dependent child or the termination of dependency of any dependent child.~~ ANY BENEFIT PROVIDED IN ACCORDANCE WITH SECTION 31-31-803 (2) TO A SURVIVING SPOUSE OF A MEMBER WHO WAS OCCUPATIONALLY DISABLED SHALL TERMINATE UPON THE REMARRIAGE OF THE SURVIVING SPOUSE. EXCEPT AS OTHERWISE PROVIDED IN SECTION 31-31-807 (2), ANY BENEFIT PROVIDED IN ACCORDANCE WITH THIS PART 8 TO A DEPENDENT CHILD SHALL TERMINATE UPON THE DEATH OF THE DEPENDENT CHILD OR THE TERMINATION OF DEPENDENCY OF THE DEPENDENT CHILD.

SECTION 9. 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: March 25, 2009