

CHAPTER 252

GOVERNMENT - MUNICIPAL

HOUSE BILL 96-1370

BY REPRESENTATIVES Grampas, Owen, Romero, Allen, Armstrong, Entz, Friednash, George, Lamm, and Mace;
also SENATORS Lacy, Blickensderfer, Rizzuto, Bishop, Feeley, Hernandez, Johnson, Martinez, Mutzebaugh, Norton, Pascoe,
R. Powers, Tebedo, Wattenberg, and Weddig.

AN ACT**CONCERNING BENEFITS UNDER THE STATEWIDE DEATH AND DISABILITY PLAN FOR FIREFIGHTERS
AND POLICE OFFICERS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. 31-31-802 (1)(c), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended, and the said 31-31-802 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-31-802. Coverage. (1) Except as provided in section 31-31-803, any member hired before, on, or after April 7, 1978, is eligible for the benefits provided by this part 8, with the exception of the following:

(c) Members whose employer had established a money purchase plan on or before December 1, 1978, in accordance with the provisions of part 8 of article 30.5 of this title; except that members of a police or fire department of any such employer may elect, with the approval of sixty-five percent of all active members employed by the department and with the consent of the members' employer, to be covered by the provisions of this part 8, but any member hired on or after the date determined by the board to be the effective date of affiliation for coverage under this part 8 shall be covered under said part and shall have no right of election. Upon election of such coverage, members shall complete a statewide standard health history form pursuant to section 31-31-810 (1) (c) and, for purposes of this part 8, shall be considered as if first employed as of the date the election is effective. The board shall establish procedures for obtaining the required member and employer approval for coverage under this part 8. Once a member has elected the coverage of this part 8, the

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

member's election shall be irrevocable. NO EMPLOYER THAT ELECTS COVERAGE ON OR AFTER JULY 1, 1996, UNDER THIS PART 8 PURSUANT TO THIS PARAGRAPH (c) SHALL BE PERMITTED TO WITHDRAW FROM SUCH COVERAGE PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(2) (a) ANY EMPLOYER MAY WITHDRAW THE ACTIVE MEMBERS OF ITS POLICE OR FIRE DEPARTMENT FROM COVERAGE UNDER THE DISABILITY AND SURVIVOR BENEFIT PROVISIONS OF THIS PART 8 IN ORDER TO ESTABLISH ITS OWN EXEMPT DISABILITY AND SURVIVOR BENEFIT PROGRAM. SUCH WITHDRAWAL MUST BE APPROVED BY AT LEAST SIXTY-FIVE PERCENT OF ALL ACTIVE MEMBERS EMPLOYED BY THE DEPARTMENT, BUT IF THE MEMBERS DO NOT SO APPROVE, THE EMPLOYER MAY REQUEST APPROVAL OF THE WITHDRAWAL BY THE BOARD. THE BOARD SHALL APPROVE THE REQUEST ONLY IF THE PROPOSED ALTERNATIVE PROGRAM WILL PROVIDE DISABILITY AND SURVIVOR BENEFITS WHICH ARE AT LEAST THE ACTUARIAL EQUIVALENT OF BENEFITS PROVIDED UNDER THIS PART 8, AS DETERMINED BY AN ACTUARY APPOINTED BY THE BOARD. IN MAKING ITS DETERMINATION, THE ACTUARY SHALL FOLLOW THE ASSOCIATION'S STANDARDS FOR ACTUARIAL EQUIVALENCY AND SHALL INCLUDE A REVIEW OF THE INCOME TAX CONSEQUENCES OF THE BENEFITS OFFERED. THE COST OF AN ACTUARIAL REVIEW SHALL BE PAID BY THE EMPLOYER AND THE EMPLOYER WILL PROVIDE THE INFORMATION REQUESTED BY THE ACTUARY. IN THE EVENT THE EMPLOYER PROPOSES THE USE OF A PRIVATE INSURANCE COMPANY TO PROVIDE THE ALTERNATIVE PROGRAM, THE COMPANY SHALL HAVE A MINIMUM RATING FROM A RECOGNIZED RATING AGENCY AS PRESCRIBED BY RULES OF THE BOARD.

(b) AN EMPLOYER REQUESTING TO WITHDRAW AS PROVIDED IN THIS SUBSECTION (2) MUST FILE A RESOLUTION OF INTENT TO WITHDRAW WITH THE BOARD NO LATER THAN DECEMBER 31, 1999. NO WITHDRAWAL WILL BE PERMITTED TO TAKE EFFECT AFTER DECEMBER 31, 2001.

(c) AN EMPLOYER THAT WITHDRAWS PURSUANT TO THIS SUBSECTION (2) SHALL ESTABLISH AND MAINTAIN A LOCALLY FINANCED ALTERNATIVE DISABILITY AND SURVIVOR BENEFIT PLAN. EXCEPT FOR THE ONE TIME PAYMENT SPECIFIED IN PARAGRAPH (e) OF THIS SUBSECTION (2), THE STATE SHALL NOT HAVE ANY FINANCIAL OR OTHER RESPONSIBILITY FOR A PLAN THAT HAS BEEN WITHDRAWN PURSUANT TO THIS SUBSECTION (2).

(d) THE BOARD SHALL PROMULGATE RULES RELATING TO THE STANDARDS FOR DISCLOSURE OF ALL RAMIFICATIONS OF AND PROCEDURES FOR OBTAINING THE MEMBER APPROVAL OF WITHDRAWAL PROVIDED FOR IN PARAGRAPH (a) OF THIS SUBSECTION (2).

(e) WITHIN SIXTY DAYS OF THE EFFECTIVE DATE OF A WITHDRAWAL UNDER THIS SUBSECTION (2), THE ASSOCIATION SHALL PAY TO THE WITHDRAWN EMPLOYER ITS ACTUARIALY DETERMINED PROPORTIONATE SHARE OF THE STATE CONTRIBUTION MADE BY THE STATE TREASURER ON JANUARY 31, 1997, FOR FUNDING OF DEATH AND DISABILITY BENEFITS PURSUANT TO SECTION 31-31-811 (3). THE BOARD SHALL PROMULGATE RULES FOR DETERMINING THE CALCULATION OF A WITHDRAWN EMPLOYER'S ACTUARIALY DETERMINED PROPORTIONATE SHARE OF THE STATE CONTRIBUTION. SUCH RULES SHALL CONSIDER THE NUMBER OF MEMBERS HIRED PRIOR TO JANUARY 1, 1997, WHO ARE BEING WITHDRAWN, THE NUMBER OF MEMBERS HIRED PRIOR TO JANUARY 1, 1997, WHO CONTINUE TO BE COVERED FOR DEATH AND

DISABILITY BENEFITS UNDER THIS PART 8, INCLUDING THOSE MEMBERS AND SURVIVORS ALREADY RECEIVING BENEFITS, AND THE COST OF COVERING THE WITHDRAWN EMPLOYER'S MEMBERS FOR THE PERIOD PRIOR TO THE WITHDRAWAL. ANY MONEY PAID TO A WITHDRAWN EMPLOYER PURSUANT TO THIS PARAGRAPH (e) SHALL BE APPLIED TO THE FUNDING OF THAT EMPLOYER'S EXEMPT DISABILITY AND SURVIVOR BENEFIT PROGRAM CREATED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2).

(f) ONCE AN EMPLOYER HAS WITHDRAWN UNDER THIS SUBSECTION (2), REENTRY INTO THE DISABILITY AND SURVIVOR BENEFIT PLAN PROVIDED BY THIS PART 8 SHALL BE PERMITTED ONLY ONCE, IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE BOARD.

SECTION 2. 31-31-803, Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

31-31-803. Retirement for disability. (7) THE BENEFITS PAYABLE UNDER THIS SECTION OR SECTION 31-31-806.5 TO ANY MEMBER WHO IS ALSO RECEIVING PAYMENTS FROM THE MEMBER'S SEPARATE RETIREMENT ACCOUNT PURSUANT TO SECTION 31-31-406 SHALL BE REDUCED BY AN AMOUNT THAT IS THE ACTUARIAL EQUIVALENT OF THE BENEFITS SUCH MEMBER RECEIVES FROM THE SEPARATE RETIREMENT ACCOUNT, WHETHER THE BENEFITS RECEIVED FROM THE ACCOUNT ARE PAID ON A PERIODIC BASIS OR IN A LUMP SUM.

SECTION 3. 31-31-808, Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended to read:

31-31-808. Reduction of survivor benefits. (1) The benefits payable under section 31-31-807 to the surviving spouse and dependent children of any member, who at the time of the member's death was a member of a money purchase plan established under this article or article 30.5 of this title, including any department chief, who at the time of the chief's death had 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 surviving spouse and dependent children receive from the 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 are required for benefits under section 31-31-403.

(2) THE BENEFITS PAYABLE UNDER THIS SECTION 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 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 4. 31-31-407 (2), Colorado Revised Statutes, 1986 Repl. Vol., as

enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended to read:

31-31-407. Adjustment of benefits. (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 (II) 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.

SECTION 5. 31-31-811 (2), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended to read:

31-31-811. State and local funding of death and disability. (2) (a) The board shall submit an annual actuarial valuation report regarding the benefit liabilities accrued under this part 8 to the state auditor, the legislative audit committee, and the joint budget committee of the general assembly, together with any recommendations concerning such liabilities as accrued.

(b) (I) IN ADDITION TO THE ACTUARIAL VALUATION REPORT REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (2), THE BOARD SHALL SUBMIT AN ANNUAL ACTUARIAL VALUATION REPORT REGARDING THE DISABILITY AND SURVIVOR BENEFIT PLAN ESTABLISHED BY THIS PART 8 TO THE STATE AUDITOR, THE LEGISLATIVE AUDIT COMMITTEE, AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. No later than January 1 of each year, commencing January 1, 1993, AND CONTINUING THROUGH JANUARY 1, 1996, the board shall certify the amount of the state contribution to be made pursuant to subsection (3) of this section based on ~~such~~ THE LATEST actuarial valuation report regarding the disability and survivor benefit plan. IN ORDER TO EFFECTUATE ANY TRANSFER OF FUNDS REQUIRED BY SECTION 31-31-802 (2) (e), THE ACTUARIAL VALUATION REPORT REGARDING THE DISABILITY AND SURVIVOR BENEFIT PLAN SHALL INCLUDE, AT LEAST THROUGH THE YEAR 2005, MEMBERS WHO HAVE WITHDRAWN FROM THE PLAN PURSUANT TO SECTION 31-31-802 (2).

(II) FOLLOWING THE SUBMITTAL OF THE ANNUAL ACTUARIAL VALUATION REPORT DATED JANUARY 1, 1995, THE BOARD SHALL THEREAFTER SUBMIT BIENNIAL ACTUARIAL VALUATION REPORTS FOR THE PURPOSES DESCRIBED IN SECTION 31-31-811 (4).

SECTION 6. 31-31-811 (3), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, is amended, and the said 31-31-811 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

31-31-811. State and local funding of death and disability. (3) On the first day of each month of each fiscal year commencing July 1, 1993, the state treasurer shall transfer one-twelfth of the amount certified by the board for that fiscal year for state funding of death and disability benefits pursuant to subsection (2) of this section, which amount shall in no case exceed seven million five hundred thousand dollars for such fiscal year, to the fund created by section 31-31-301 (1)(a) for allocation to the death and disability account in the fund; except that no such transfer shall be made after December 31, 1996. ~~During the 1997 regular session of the general assembly or the regular session immediately following the termination of the annual contribution provided by subsection (5) of this section, whichever is earlier, the general assembly shall review the amount of the state contribution to insure proper actuarial funding of the death and disability account.~~ ON JANUARY 31, 1997, THE STATE TREASURER SHALL TRANSFER THIRTY-NINE MILLION DOLLARS FOR STATE FUNDING OF DEATH AND DISABILITY BENEFITS PURSUANT TO SECTION 31-31-811 (3) FOR MEMBERS HIRED BEFORE JANUARY 1, 1997, TO THE FUND CREATED BY SECTION 31-31-301 (1) (a) FOR ALLOCATION TO THE DEATH AND DISABILITY ACCOUNT IN THE FUND. NO TRANSFER OF ANY AMOUNTS SHALL BE MADE AFTER JANUARY 31, 1997, FOR STATE FUNDING OF DEATH AND DISABILITY BENEFITS. Moneys in the fund created by section 31-31-301 (1) (a) shall not revert to the general fund but shall be continuously available for the purposes provided in this part 8. ~~Except as provided in this subsection (3), no state moneys shall be used for the payment of death and disability benefits, and such benefits shall be funded entirely through local revenue sources.~~

(4) FOR EACH MEMBER HIRED ON OR AFTER JANUARY 1, 1997, WHO IS ELIGIBLE FOR THE DEATH AND DISABILITY COVERAGE PROVIDED BY THIS PART 8, A CONTRIBUTION SHALL BE MADE TO THE DEATH AND DISABILITY ACCOUNT IN THE FUND FOR THE YEARS 1997 AND 1998 IN AN AMOUNT NOT GREATER THAN TWO AND FOUR TENTHS PERCENT OF THE MEMBER'S SALARY. THEREAFTER, THE BOARD, BASED ON A BIENNIAL ACTUARIAL VALUATION, MAY ADJUST THE CONTRIBUTION RATE EVERY TWO YEARS, BUT IN NO EVENT MAY THE ADJUSTMENT FOR ANY TWO-YEAR PERIOD EXCEED ONE-TENTH OF ONE PERCENT OF THE MEMBER'S SALARY. ANY EMPLOYER AND ANY LOCAL PENSION BOARD OR AUTHORITY SHALL PROVIDE SUCH INFORMATION AS MAY BE REQUIRED BY THE BOARD IN ORDER TO COMPLETE THE BIENNIAL ACTUARIAL VALUATIONS. THE ACTUARY APPOINTED BY THE BOARD MAY UTILIZE EITHER THE ENTRY AGE-NORMAL COST METHOD OR THE AGGREGATE COST METHOD FOR PURPOSES OF THE STUDY REQUIRED BY THIS SUBSECTION (4). ANY UNFUNDED ACCRUED LIABILITY SHALL BE FUNDED OVER A PERIOD NOT TO EXCEED THIRTY YEARS. THE ACTUARIAL STUDY SHALL NOT INCLUDE ANY CONSIDERATION OF A COST OF LIVING ADJUSTMENT TO BENEFITS AWARDED TO MEMBERS WHO ARE OCCUPATIONALLY DISABLED. PAYMENTS SHALL BE MADE BY THE EMPLOYER AND ARE DUE NO LATER THAN TEN DAYS FOLLOWING THE DATE OF PAYMENT OF SALARY TO THE MEMBER, UNLESS THE SALARY IS PAID MORE THAN ONCE MONTHLY, IN WHICH EVENT SUCH PAYMENTS ARE DUE NO LATER THAN THE TENTH DAY OF THE MONTH FOLLOWING THE MONTH THE SALARY IS PAID TO THE MEMBER. AN INTEREST CHARGE OF ONE-HALF OF ONE PERCENT PER MONTH SHALL BE LEVIED AGAINST ANY UNPAID AMOUNT AND

SHALL BE THE RESPONSIBILITY OF THE EMPLOYER. ANY DECISION REGARDING WHETHER THE CONTRIBUTION REQUIRED BY THIS SUBSECTION (4) SHALL BE ASSESSED AGAINST THE EMPLOYER OR THE MEMBER, OR SHALL IN SOME MANNER BE ASSESSED JOINTLY AGAINST THE EMPLOYER AND THE MEMBER, WILL BE MADE AT THE LOCAL LEVEL UTILIZING THE USUAL PROCESS FOR DETERMINING EMPLOYEE BENEFITS. IF IT IS NOT ALREADY PART OF THE USUAL PROCESS FOR DETERMINING EMPLOYEE BENEFITS, THE EMPLOYER SHALL CONFER WITH THE EMPLOYEES OR THEIR REPRESENTATIVE PRIOR TO MAKING A DETERMINATION ON HOW THE CONTRIBUTION WILL BE ASSESSED.

SECTION 7. 31-31-406 (2), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of Sixtieth General Assembly, is amended to read:

31-31-406. Separate retirement accounts - administration. (2) (a) Any member having a separate retirement account who is retired for disability ~~or who dies prior to termination shall forfeit~~ RECEIVE the entire balance in the member's separate retirement account ~~to the actuarial account.~~ IN ACCORDANCE WITH THE MEMBER'S SELECTION OF ONE OF THE PAYMENT OPTIONS PERMITTED BY SUBSECTION (3) OF THIS SECTION. IF THE MEMBER SUBSEQUENTLY RETURNS TO WORK PURSUANT TO SECTION 31-31-805 (2) AND HAD BEEN RECEIVING PERIODIC PAYMENTS FROM THE MEMBER'S SEPARATE RETIREMENT ACCOUNT, SUCH PAYMENTS SHALL CEASE AND ANY REMAINING BALANCE SHALL REMAIN IN THE MEMBER'S SEPARATE RETIREMENT ACCOUNT, SUBJECT TO SUBSEQUENT DISTRIBUTION IN ACCORDANCE WITH THIS SECTION.

(b) IF ANY MEMBER HAVING A SEPARATE RETIREMENT ACCOUNT DIES PRIOR TO TERMINATION, THE ENTIRE BALANCE IN THE MEMBER'S SEPARATE RETIREMENT ACCOUNT SHALL BE PAYABLE TO THE MEMBER'S SURVIVING SPOUSE OR DEPENDENT CHILDREN IN ACCORDANCE WITH THEIR SELECTION OF ONE OF THE PAYMENT OPTIONS PERMITTED BY SUBSECTION (3) OF THIS SECTION.

SECTION 8. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of the treasury, for allocation to the fire and police pension association, for the fire and police members' benefit fund, death and disability account, for the fiscal year beginning July 1, 1996, the sum of thirty-nine million dollars (\$39,000,000), or so much thereof as may be necessary, for the implementation of this act.

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: June 1, 1996