

CHAPTER 77

GOVERNMENT - MUNICIPAL

HOUSE BILL 96-1016

BY REPRESENTATIVES Dean, Allen, Lamm, Reeves, Schwarz, Armstrong, Chlouber, Epps, and Saliman;
also SENATORS Tebedo, R. Powers, and Weddig.

AN ACT

CONCERNING THE ESTABLISHMENT OF SEPARATE STATUTORY PROVISIONS GOVERNING THE AWARD OF ON-DUTY AND OFF-DUTY DISABILITY RETIREMENT UNDER THE STATEWIDE DEATH AND DISABILITY PLAN FOR FIREFIGHTERS AND POLICE OFFICERS.

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

SECTION 1. Part 10 of article 30 of title 31, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

31-30-1007.5. Disability benefits - on-duty. (1) IF THE BOARD DETERMINES THAT A MEMBER, WHO IS OTHERWISE ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT BENEFITS UNDER SECTION 31-30-1007, IS REQUIRED TO TERMINATE THE MEMBER'S REGULAR EMPLOYMENT DUE TO A TOTAL DISABILITY, AS DEFINED IN SECTION 31-30-1002 (7), 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 31-30-1007 (1).

(2) IF THE BOARD DETERMINES THAT A MEMBER, WHO IS OTHERWISE ELIGIBLE TO APPLY FOR DISABILITY RETIREMENT BENEFITS UNDER SECTION 31-30-1007, IS REQUIRED TO TERMINATE THE MEMBER'S REGULAR EMPLOYMENT DUE TO AN OCCUPATIONAL DISABILITY, AS DEFINED IN SECTION 31-30-1002 (6), 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 31-30-1007 (2) (a).

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

(3) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY STANDARDS FOR DETERMINING WHETHER A MEMBER'S DISABILITY IS THE RESULT OF AN INJURY RECEIVED WHILE PERFORMING OFFICIAL DUTIES OR AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT AND THAT ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATION.

(4) (a) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY THE METHOD OF REVIEWING EXISTING DISABILITY RETIREMENT AWARDS TO DETERMINE WHETHER A MEMBER'S TOTAL DISABILITY OR 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 AND THAT ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATION, INCLUDING THE APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(b) THE DETERMINATIONS MADE BY THE BOARD PURSUANT TO THIS SUBSECTION (4) SHALL BE MADE SOLELY ON THE BASIS OF THE MEDICAL EVIDENCE THAT WAS PREVIOUSLY SUBMITTED IN CONNECTION WITH THE MEMBER'S APPLICATION FOR DISABILITY RETIREMENT BENEFITS AND OTHER RELEVANT EVIDENCE THAT IS CONTEMPORANEOUS IN TIME WITH THE TERMINATION OF THE MEMBER'S EMPLOYMENT.

(c) ANY DECISION MADE BY THE BOARD TO CHANGE A MEMBER'S EXISTING DISABILITY RETIREMENT AWARD TO AN ON-DUTY DISABILITY RETIREMENT BENEFIT UNDER THIS SECTION SHALL OPERATE ON A PROSPECTIVE BASIS FROM THE DATE OF THE BOARD'S DECISION.

SECTION 2. The introductory portion to 31-30-1007 (1), 31-30-1007 (1.5), the introductory portion to 31-30-1007 (2) (a), and 31-30-1007 (2) (b) (I), (3) (a), (3) (c), (3.5), (4) (a), (5) (a), (7), (8), and (9), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

31-30-1007. Retirement for disability. (1) Any member hired before, on, or after April 7, 1978, who is not eligible for the normal retirement pension described in section 31-30-1006 or a local defined benefit retirement pension selected pursuant to section 31-30-1003 (3) (b) or 31-30-1003.5 (3) or provided pursuant to part 3, 4, 5, or 6 of this article, whichever is applicable, and who becomes totally disabled, AS DEFINED IN SECTION 31-30-1002 (7), shall be retired from active service for disability and shall be eligible to receive the disability benefit provided by this subsection (1) OR SECTION 31-30-1007.5 (1). The annual disability benefit for total disability for such member shall be forty percent of the annual base salary paid to such member immediately preceding retirement for disability, which shall be increased by:

(1.5) At any time that a total disability, INCLUDING AN ON-DUTY DISABILITY PURSUANT TO SECTION 31-30-1007.5 (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 occupationally disabled, and the benefits provided by subsection (1) of this section OR SECTION 31-30-1007.5 (1) shall be reduced to the level provided in paragraph (a) of subsection (2) of this section.

(2) (a) Any member who is not eligible for the normal retirement pension

described in section 31-30-1006 or a local defined benefit retirement pension selected pursuant to section 31-30-1003 (3) (b) or 31-30-1003.5 (3) or provided pursuant to part 3, 4, 5, or 6 of this article, whichever is applicable, and who becomes occupationally disabled, AS DEFINED IN SECTION 31-30-1002 (6), shall be retired from active service for such time as ~~said~~ THE occupational disability continues and shall be eligible to receive the disability benefit provided by this subsection (2) OR SECTION 31-30-1007.5 (2). The annual disability benefit for occupational disability for such member shall be thirty percent of the annual base salary paid to such member immediately preceding retirement for disability, which shall be increased by:

(b) (I) At any time that an occupational disability, INCLUDING AN ON-DUTY DISABILITY PURSUANT TO SECTION 31-30-1007.5 (2), ceases to exist, based upon periodic reexamination as may be required by the board, a member retired for such disability may be restored to active service, and the benefits provided by this subsection (2) OR SECTION 31-30-1007.5 (2) shall be discontinued. ~~Said~~ THE member shall be restored to active service by ~~his~~ THE MEMBER'S former employer if a vacancy exists in the same position ~~he~~ THE MEMBER held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position ~~which~~ THAT may not be the same or of equal base pay to ~~his~~ THE MEMBER'S former position.

(3) (a) If a member has any earned income other than that provided by a disability benefit award under subsection (1) or subsection (2) of this section OR SECTION 31-30-1007.5, 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 disability benefit shall be reduced by twenty-five percent of the additional earned income. In calculating total income for purposes of this paragraph (a), the amount includable with respect to money purchase plan benefits ~~which~~ THAT a member is eligible to receive shall be the same amount as calculated pursuant to subsections (7), (8), and (9) of this section, as applicable.

(c) Any member receiving a disability benefit pursuant to subsection (1) or subsection (2) of this section OR SECTION 31-30-1007.5 shall file an annual report concerning any additional earned income. If such member knowingly fails to file such report or files a fraudulent report, the disability benefit shall be discontinued.

(3.5) If, subsequent to disability benefits being awarded to a member pursuant to the provisions of this section OR SECTION 31-30-1007.5 but prior to a decision of the board that an occupational disability ceases to exist pursuant to paragraph (b) of subsection (2) of this section, 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 ~~which~~ 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 this section 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.

(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 a report

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. 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.

(II) THE BOARD MAY CONSIDER ANY RELEVANT EVIDENCE, INCLUDING MEDICAL EVIDENCE, IN MAKING ITS DETERMINATION REGARDING THE ORIGIN OF AN APPLICANT'S DISABILITY AND MAY REQUEST THAT THE THREE PHYSICIANS APPOINTED BY THE BOARD TO EXAMINE THE APPLICANT ALSO PROVIDE AN OPINION AS TO WHETHER THE APPLICANT'S INJURY WAS RECEIVED WHILE PERFORMING OFFICIAL DUTIES OR WHETHER THE APPLICANT'S OCCUPATIONAL DISEASE AROSE OUT OF AND IN THE COURSE OF THE APPLICANT'S EMPLOYMENT. IN ALL CASES UNDER THIS SECTION OR SECTION 31-30-1007.5, THE BOARD IS AUTHORIZED TO APPOINT HEARING OFFICERS WHO ARE EXPERIENCED IN DISABILITY MATTERS TO CONDUCT HEARINGS ON ANY ISSUE RELATING TO THE APPLICANT'S DISABILITY. THE HEARING OFFICERS SHALL MAKE FINDINGS AND SUBMIT RECOMMENDATIONS TO THE BOARD FOR FINAL ACTION.

(5) (a) Any member who is awarded a disability pension under this section OR SECTION 31-30-1007.5 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 section 31-30-1006 (4). All provisions of section 31-30-1006 (4) (a), (4) (c), and (4) (d) shall apply to ~~said~~ THE member; except that the benefits used to calculate the reduced benefits shall be the disability benefit provided to the member under this section rather than the retirement benefit provided in section 31-30-1006. A member shall be considered to have elected option 1 if ~~he~~ THE MEMBER is awarded a disability pension pursuant to this section OR SECTION 31-30-1007.5, is survived by a spouse or dependent child, and dies before making the election provided in this paragraph (a). The joint disability benefits provided in this section shall be calculated as the actuarial equivalent of the applicable normal disability pension otherwise payable as provided in this section.

(7) The benefits payable under this section OR SECTION 31-30-1007.5 to any member, who at the time of the award of such benefits is employed by any employer who has withdrawn from the association or has an exempt alternative plan referred to in section 31-30-1003 (2) (a) (III) and is maintaining a locally financed and administered alternative money purchase pension plan or is participating in the statewide money purchase plan, shall be reduced by an amount ~~which~~ THAT is the actuarial equivalent of the benefits such member receives 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 31-30-1013 (1) and (2) as are required for benefits under section 31-30-1006.

(8) The benefits payable under this section OR SECTION 31-30-1007.5 to any department chief, who at the time of the award of such benefits has exempted himself OR HERSELF from the provisions of this part 10 pursuant to section 31-30-1003 (7) and is a member of an alternative pension plan, shall be reduced by an amount ~~which~~ THAT is the actuarial equivalent of the benefits such department chief receives from

any such alternative pension plan, whether the benefits received from the pension plan are paid on a periodic basis or in a lump sum. No such reduction shall exceed the actuarial equivalent of pension plan benefits if such benefits had been funded at the same rate of contributions specified in section 31-30-1013 (1) and (2) as are required for benefits under section 31-30-1006.

(9) The benefits payable under this section OR SECTION 31-30-1007.5 to any member, who at the time of the award of such benefits is a member of a money purchase plan pursuant to section 31-30-1003.3, shall be reduced by an amount ~~which~~ 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 31-30-1013 (1) and (2) as is required for benefits under section 31-30-1006.

SECTION 3. Article 31 of title 31, 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 SECTION to read:

31-31-806.5. Disability benefits - on-duty. (1) 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 A TOTAL DISABILITY, AS DEFINED IN SECTION 31-31-801 (4), 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 (1).

(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) (a).

(3) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY STANDARDS FOR DETERMINING WHETHER A MEMBER'S DISABILITY IS THE RESULT OF AN INJURY RECEIVED WHILE PERFORMING OFFICIAL DUTIES OR AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT AND THAT ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATION.

(4) (a) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY THE METHOD OF REVIEWING EXISTING DISABILITY RETIREMENT AWARDS TO DETERMINE WHETHER A MEMBER'S TOTAL DISABILITY OR 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 AND THAT ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATION, INCLUDING THE

APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(b) THE DETERMINATIONS MADE BY THE BOARD PURSUANT TO THIS SUBSECTION (4) SHALL BE MADE SOLELY ON THE BASIS OF THE MEDICAL EVIDENCE THAT WAS PREVIOUSLY SUBMITTED IN CONNECTION WITH THE MEMBER'S APPLICATION FOR DISABILITY RETIREMENT BENEFITS AND OTHER RELEVANT EVIDENCE THAT IS CONTEMPORANEOUS IN TIME WITH THE TERMINATION OF THE MEMBER'S EMPLOYMENT.

(c) ANY DECISION MADE BY THE BOARD TO CHANGE A MEMBER'S EXISTING DISABILITY RETIREMENT AWARD TO AN ON-DUTY DISABILITY RETIREMENT BENEFIT UNDER THIS SECTION SHALL OPERATE ON A PROSPECTIVE BASIS FROM THE DATE OF THE BOARD'S DECISION.

SECTION 4. The introductory portions to 31-31-803 (1) and (2) and 31-31-803 (4) (a) and (5) (a), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, are amended to read:

31-31-803. Retirement for disability. (1) Any member hired before, on, or after April 7, 1978, who 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, whichever is applicable, and who becomes totally disabled, AS DEFINED IN SECTION 31-31-801 (4), shall be retired from active service for disability and shall be eligible to receive the disability benefit provided by this subsection (1) OR SECTION 31-31-806.5. The annual disability benefit for total disability for such member shall be forty percent of the annual base salary paid to such member immediately preceding retirement for disability, which shall be increased by:

(2) Any member who 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, whichever is applicable, and who becomes occupationally disabled, AS DEFINED IN SECTION 31-31-801 (3), 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. The annual disability benefit for occupational disability for such member shall be thirty percent of the annual base salary paid to such member immediately preceding retirement for disability, which shall be increased by:

(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. 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.

(II) THE BOARD MAY CONSIDER ANY RELEVANT EVIDENCE, INCLUDING MEDICAL

EVIDENCE, IN MAKING ITS DETERMINATION REGARDING THE ORIGIN OF AN APPLICANT'S DISABILITY AND MAY REQUEST THAT THE THREE PHYSICIANS APPOINTED BY THE BOARD TO EXAMINE THE APPLICANT ALSO PROVIDE AN OPINION AS TO WHETHER THE APPLICANT'S INJURY WAS RECEIVED WHILE PERFORMING OFFICIAL DUTIES OR WHETHER THE APPLICANT'S OCCUPATIONAL DISEASE AROSE OUT OF AND IN THE COURSE OF THE APPLICANT'S EMPLOYMENT. IN ALL CASES UNDER THIS SECTION OR SECTION 31-31-806.5, THE BOARD IS AUTHORIZED TO APPOINT HEARING OFFICERS WHO ARE EXPERIENCED IN DISABILITY MATTERS TO CONDUCT HEARINGS ON ANY ISSUE RELATING TO THE APPLICANT'S DISABILITY. THE HEARING OFFICERS SHALL MAKE FINDINGS AND SUBMIT RECOMMENDATIONS TO THE BOARD FOR FINAL ACTION.

(5) (a) Any member who is awarded a 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 section 31-31-403 (5). All provisions of section 31-31-403 (5) (a), (5) (c), and (5) (d) shall apply to the member; except that the benefits used to calculate the reduced benefits shall be the disability benefit provided to the member under this section rather than the retirement benefit provided in section 31-31-403. A member shall be considered to have elected option 1 if the member is awarded a disability pension pursuant to this section OR SECTION 31-31-806.5, is survived by a spouse or dependent child, and dies before making the election provided in this paragraph (a). The joint disability benefits provided in this section shall be calculated as the actuarial equivalent of the applicable normal disability pension otherwise payable as provided in this section.

SECTION 5. 31-31-804 (1) (a), (1) (c), and (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, 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 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 disability benefit shall be reduced by twenty-five percent of the additional earned income. In calculating total income for purposes of this paragraph (a), the amount includable with respect to money purchase plan benefits ~~which~~ THAT a member is eligible to receive shall be the same amount as calculated pursuant to subsection (2) of this section, as applicable.

(c) Any member receiving a disability benefit pursuant to section 31-31-803 OR 31-31-806.5 shall file an annual report concerning any additional earned income. 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 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) and (2) (a), Colorado Revised Statutes, 1986 Repl. Vol., as enacted by Senate Bill 96-11, enacted at the Second Regular Session of the Sixtieth General Assembly, are amended 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 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).

(2) (a) At any time that an occupational disability, INCLUDING AN ON-DUTY DISABILITY PURSUANT TO SECTION 31-31-806.5 (2), ceases to exist, based upon periodic reexamination as may be required by the board, a member retired for such disability may be restored to active service, and the benefits provided by section 31-31-803 OR 31-31-806.5 (2) shall be discontinued. The member shall be restored to active service by the member's former employer if a vacancy exists in the same position the member held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position that may not be the same or of equal base pay to the member's former position.

SECTION 7. 31-31-806, 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:

31-31-806. 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.

SECTION 8. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 9. Effective date. (1) This act shall take effect sixty days after the date on which the Fire and Police Pension Association receives a letter from the Internal Revenue Service containing a favorable ruling to the effect that disability

retirement benefits paid to disabled police officers or firefighters, for service-related disabilities or occupational diseases under this act, are excludable from the gross income of the recipients pursuant to Section 104 (a)(1) of the federal "Internal Revenue Code of 1986", as amended, if such ruling is received by June 1, 1997; except that, if a referendum petition is filed against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, if approved by the people, shall take effect sixty days after receipt by the Fire and Police Pension Association of a favorable ruling if such ruling is received by June 1, 1997.

(2) However, sections 3 to 7 of this act shall take effect only if Senate Bill 96-11 becomes law, and sections 1 and 2 shall not take effect if Senate Bill 96-11 becomes law.

Approved: April 16, 1996

Editor's note: This act was passed without a safety clause. See section 9 for the possible effective dates.