

CHAPTER 18

GOVERNMENT - MUNICIPAL

HOUSE BILL 98-1024

BY REPRESENTATIVES Dean, K. Alexander, G. Berry, George, S. Johnson, June, Miller, Nichol, Saliman, Tucker, Allen, Bacon, Lawrence, Mace, Paschall, Reeser, Sullivant, and Taylor;
also SENATORS Tebedo, B. Alexander, Feeley, Powers, and Reeves.

AN ACT

CONCERNING THE TAXABILITY OF SURVIVOR BENEFITS PAYABLE TO THE SURVIVORS OF A MEMBER OF THE STATEWIDE DEATH AND DISABILITY PLAN.

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

SECTION 1. Part 8 of article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-31-807.5. Death of member - line of duty - survivor benefits. (1) IF A MEMBER WHO IS NOT ELIGIBLE FOR THE NORMAL RETIREMENT PENSION DESCRIBED IN SECTION 31-31-403 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 LEAVES A SURVIVING SPOUSE OR DEPENDENT CHILDREN, OR BOTH, ONE OF THE FOLLOWING SURVIVOR BENEFITS SHALL BE PAID, UNLESS THE MEMBER 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:

(a) WHEN THERE IS A SURVIVING SPOUSE AND NO DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE TWENTY-FIVE PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH PLUS ONE-HALF OF ONE PERCENT OF SUCH SALARY FOR EACH YEAR OF THE MEMBER'S ACTIVE SERVICE IN EXCESS OF TWENTY-FIVE YEARS, BUT SUCH BENEFIT SHALL NOT EXCEED THIRTY-FIVE PERCENT OF SUCH SALARY.

(b) WHEN THERE IS A SURVIVING SPOUSE AND ONE DEPENDENT CHILD, 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.

MONTHLY BENEFIT SHALL BE FORTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(c) WHEN THERE IS A SURVIVING SPOUSE AND TWO OR MORE DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FIFTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(d) WHEN THERE IS NO SURVIVING SPOUSE AND THREE OR MORE DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FIFTY PERCENT OF THE MONTHLY BASE SALARY PAID TO EACH MEMBER IMMEDIATELY PRECEDING DEATH.

(e) WHEN THERE IS NO SURVIVING SPOUSE AND TWO DEPENDENT CHILDREN, THE MONTHLY BENEFIT SHALL BE FORTY PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(f) WHEN THERE IS NO SURVIVING SPOUSE AND ONE DEPENDENT CHILD, THE MONTHLY BENEFIT SHALL BE TWENTY-FIVE PERCENT OF THE MONTHLY BASE SALARY PAID TO SUCH MEMBER IMMEDIATELY PRECEDING DEATH.

(2) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY STANDARDS AND ESTABLISH PROCEDURES FOR DETERMINING WHETHER A MEMBER'S DEATH IS THE DIRECT AND PROXIMATE RESULT OF A PERSONAL INJURY SUSTAINED WHILE PERFORMING OFFICIAL DUTIES OR AN OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF A MEMBER'S EMPLOYMENT AND, IN THE CASE OF A LINE OF DUTY DEATH, WHETHER ANY OF THE EXCEPTIONS SPECIFIED IN SECTION 101 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, ARE APPLICABLE. THE PROCEDURES ESTABLISHED BY THE BOARD MAY INCLUDE THE APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(3) (a) THE BOARD SHALL PROMULGATE RULES THAT SPECIFY THE METHOD OF REVIEWING EXISTING SURVIVOR BENEFIT AWARDS TO:

(I) DETERMINE WHETHER A MEMBER'S DEATH WAS 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;

(II) DETERMINE, IN THE CASE OF LINE-OF-DUTY DEATHS OCCURRING AFTER DECEMBER 31, 1996, WHETHER ANY OF THE EXCEPTIONS SPECIFIED IN SECTION 101 (h) (2) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, ARE APPLICABLE;

(III) ESTABLISH PROCEDURES FOR MAKING SUCH DETERMINATIONS, INCLUDING THE APPOINTMENT OF HEARING OFFICERS TO CONDUCT HEARINGS.

(b) THE DETERMINATIONS MADE BY THE BOARD PURSUANT TO THIS SUBSECTION (3) SHALL BE MADE ON THE BASIS OF THE MEDICAL EVIDENCE THAT WAS PREVIOUSLY SUBMITTED IN CONNECTION WITH THE APPLICATION FOR SURVIVOR BENEFITS AND OTHER RELEVANT NONTTESTIMONIAL EVIDENCE.

(c) ANY DECISION MADE BY THE BOARD TO CHANGE AN EXISTING SURVIVOR

BENEFIT AWARD TO AN ON-DUTY SURVIVOR BENEFIT UNDER THIS SUBSECTION (3) SHALL OPERATE ON A PROSPECTIVE BASIS FROM THE DATE OF THE BOARD'S DECISION.

SECTION 2. 31-31-501 (6) (b) (IV), Colorado Revised Statutes, is amended to read:

31-31-501. Withdrawal into statewide money purchase plan. (6) (b) (IV) If members who have made such an election die or become disabled prior to termination of employment, neither they nor their survivors shall be eligible for benefits under the statewide defined benefit plan, but rather they shall be limited to those benefits provided in sections 31-31-803, ~~and~~ 31-31-807, AND 31-31-807.5.

SECTION 3. 31-31-601 (1) (b) (II), Colorado Revised Statutes, is amended to read:

31-31-601. Withdrawn local alternative pension plans - creation - administration. (1) (b) An employer that withdraws from the statewide defined benefit plan prior to January 2, 1988, as provided in this subsection (1) shall establish and maintain a locally administered and financed alternative pension plan subject to the following:

(II) The members of such plan hired before, on, or after April 7, 1978, shall be covered by the provisions of sections 31-31-803, ~~and~~ 31-31-807, AND 31-31-807.5 in lieu of any other defined disability and preretirement death benefits.

SECTION 4. 31-31-808, Colorado Revised Statutes, is amended to read:

31-31-808. Reduction of survivor benefits. (1) The benefits payable under ~~section~~ SECTIONS 31-31-807 AND 31-31-807.5 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~~ 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 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 5. Effective date. 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 benefits paid to the survivors of deceased police officers or firefighters as a result of on-duty personal injuries or service-related 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 December 31, 1999.

SECTION 6. 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 23, 1998