

CHAPTER 62

GOVERNMENT - MUNICIPAL

HOUSE BILL 07-1029

BY REPRESENTATIVE(S) McGihon, Riesberg, Borodkin, Buescher, Casso, Hicks, Kerr A., Kerr J., King, Labuda, Levy, Madden, McFadyen, Merrifield, Stafford, Stephens, Todd, Witwer, and Green;
also SENATOR(S) Tochtrop, and Williams.

AN ACT**CONCERNING DISABILITY AND SURVIVOR BENEFITS FOR MEMBERS OF THE FIRE AND POLICE PENSION ASSOCIATION.**

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

SECTION 1. 31-31-803 (1) (a) (I) (A), (2) (a) (I), (2.1) (a) (I), (2.2) (a) (I), and (7), Colorado Revised Statutes, are amended to read:

31-31-803. Retirement for disability. (1) (a) (I) Any member hired before, on, or after April 7, 1978, 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 if the member:

(A) Is not eligible for the normal retirement pension ~~described in section 31-31-403~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 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

(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:

(I) Is not eligible for the normal retirement pension ~~described in section 31-31-403~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT

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

TO SECTION 31-31-204 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

(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~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 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

(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~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 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

(7) (a) 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 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 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.

(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 LOCAL PENSION PLAN SHALL BE REDUCED BY THE AMOUNT OF THE DEFINED BENEFIT.

SECTION 2. 31-31-804 (1) (a), 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 ~~one hundred percent of the base salary provided to an active member of the same rank at which the member retired~~ 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.

SECTION 3. 31-31-807 (1) (a) (II) (A), Colorado Revised Statutes, is amended 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~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 or a local defined benefit retirement pension selected pursuant to ~~section 31-31-704~~ SECTION 31-31-704 (3); or

SECTION 4. 31-31-807.5 (1) (a) (II) (A) and (1.5) (a) (II), Colorado Revised Statutes, are amended 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~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 or a local defined benefit retirement pension selected pursuant to ~~section 31-31-704~~ SECTION 31-31-704 (3); or

(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:

(II) Is eligible for the normal retirement pension ~~described in section 31-31-403~~ FROM A PLAN THAT IS PART OF THE DEFINED BENEFIT SYSTEM PURSUANT TO SECTION 31-31-204 or a local defined benefit retirement pension selected pursuant to section 31-31-704 (3); or

SECTION 5. 31-31-808, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION 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 LOCAL COLORADO FIRE OR POLICE DEFINED BENEFIT PENSION PLAN SHALL BE REDUCED BY THE AMOUNT OF THE DEFINED BENEFIT PAYMENTS TO BE RECEIVED.

SECTION 6. 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 ~~the marriage of a dependent child who is not so mentally or physically incapacitated that the child cannot provide for the child's own care;~~ or the termination of dependency of any dependent child.

SECTION 7. 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 29, 2007