

CHAPTER 59

**GOVERNMENT - MUNICIPAL**

**SENATE BILL 08-009**

BY SENATOR(S) Tochtrop, Gibbs, Groff, Kester, Romer, Taylor, and Williams;  
also REPRESENTATIVE(S) Rice, Benefield, Casso, Borodkin, Buescher, Carroll T., Green, Kerr J., King, Madden, Marostica,  
Marshall, Massey, Primavera, Scanlan, Solano, Soper, Stafford, Stephens, and Todd.

**AN ACT**

**CONCERNING MEASURES TO ENSURE THE PROPER PAYMENT OF FIRE AND POLICE PENSION BENEFITS.**

*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:

**31-31-814. Suspension and termination of benefits for noncompliance.** IF A MEMBER REFUSES TO SUBMIT TO A MEDICAL EXAMINATION REQUIRED BY THE FIRE AND POLICE PENSION ASSOCIATION AND AUTHORIZED BY THIS PART 8, FAILS TO PROVIDE INFORMATION NECESSARY FOR THE ASSOCIATION TO ASSESS ELIGIBILITY OR CONTINUING ELIGIBILITY FOR BENEFITS, OR OBSTRUCTS THE ASSOCIATION FROM RECEIVING SUCH NECESSARY INFORMATION, ALL RIGHTS TO COLLECT OR TO BEGIN OR MAINTAIN ANY PROCEEDING FOR THE COLLECTION OF BENEFITS PURSUANT TO THIS PART 8 SHALL BE SUSPENDED, AND ALL RIGHTS TO BENEFITS THAT ACCRUE AND BECOME PAYABLE DURING THE PERIOD OF SUCH REFUSAL OR OBSTRUCTION SHALL BE BARRED. IF THE MEMBER CONTINUES TO REFUSE TO SUBMIT TO THE EXAMINATION OR TO PROVIDE THE ADDITIONAL INFORMATION AFTER DIRECTION BY THE BOARD OR ITS HEARING OFFICER OR IN ANY WAY OBSTRUCTS THE SAME, THE BOARD SHALL TERMINATE THE BENEFIT.

**SECTION 2.** Article 31 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 12  
ENSURING PROPER PAYMENTS**

**31-31-1201. Review of award of benefits and benefit payments.** (1) AT ANY

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

TIME, THE BOARD MAY REVIEW AN AWARD OF BENEFITS OR A BENEFIT PAYMENT UNDER ANY BENEFIT PLAN IN THE DEFINED BENEFIT SYSTEM, THE STATEWIDE MONEY PURCHASE PLAN, OR THE STATEWIDE DEATH AND DISABILITY PLAN FOR THE PURPOSE OF DETERMINING WHETHER THERE HAS BEEN FRAUD, AN OVERPAYMENT, AN ERROR, OR A MISTAKE.

(2) AT ANY TIME, THE BOARD MAY REVIEW A BENEFIT PAYMENT UNDER ANY BENEFIT PLAN OR COMPENSATION PLAN OTHER THAN THE PLANS IDENTIFIED IN SUBSECTION (1) OF THIS SECTION THAT THE BOARD ADMINISTERS FOR THE PURPOSE OF DETERMINING WHETHER THERE HAS BEEN AN OVERPAYMENT, AN ERROR, OR A MISTAKE.

(3) BASED UPON A PREPONDERANCE OF THE EVIDENCE FROM THE REVIEW AUTHORIZED BY THIS SECTION, THE BOARD:

(a) MAY DETERMINE THAT A BENEFIT PAYMENT BE TERMINATED, DIMINISHED, MAINTAINED, OR INCREASED;

(b) MAY ORDER A MEMBER OR BENEFICIARY TO REPAY ANY OVERPAYMENTS MADE ON OR AFTER FIVE YEARS PRIOR TO THE DATE OF THE FIRST NOTICE OF OVERPAYMENT ISSUED BY THE FIRE AND POLICE PENSION ASSOCIATION; OR

(c) SHALL ORDER THE TERMINATION OF BENEFITS AND THE REPAYMENT OF ANY PAST BENEFITS PAID TO A MEMBER OR BENEFICIARY WHERE THE BOARD FINDS THAT THE BENEFITS WERE GRANTED BASED ON FALSE REPRESENTATIONS OR A WILLFUL FAILURE TO DISCLOSE A MATERIAL FACT.

(4) THE BOARD SHALL ADOPT RULES ESTABLISHING PROCEDURES FOR THE REVIEW OF BENEFITS AND PAYMENTS. THE BOARD MAY DELEGATE THE REVIEW PURSUANT TO THE RULES. ANY RULES ESTABLISHED BY THE BOARD SHALL PROVIDE THAT A MEMBER OR BENEFICIARY SHALL HAVE THE OPPORTUNITY TO APPEAL ANY ADVERSE ACTION TO THE BOARD FOR A FINAL DETERMINATION.

(5) ANY APPEAL OF A FINAL DETERMINATION BY THE BOARD SHALL BE IN ACCORDANCE WITH RULE 106(a)(4) OF THE COLORADO RULES OF CIVIL PROCEDURE.

**31-31-1202. Collection of overpaid benefits.** (1) THE BOARD SHALL INSTITUTE PRACTICES AND PROCEDURES AS IT DEEMS NECESSARY TO COLLECT MONEY DUE A PLAN ADMINISTERED BY THE FIRE AND POLICE PENSION ASSOCIATION AS DETERMINED IN SECTION 31-31-1201, INCLUDING BUT NOT LIMITED TO WITHHOLDING SUBSEQUENT BENEFIT PAYMENTS TO WHICH THE MEMBER OR BENEFICIARY IS OR BECOMES ENTITLED, APPLYING THE AMOUNT WITHHELD AS AN OFFSET AGAINST THE AMOUNT DUE, AND REFERRING AN ACCOUNT TO A COLLECTION AGENCY OR ATTORNEY FOR COLLECTION. IF, AFTER DUE NOTICE, ANY MEMBER OR BENEFICIARY DEFAULTS IN ANY REPAYMENT OF OVERPAID BENEFITS, THE AMOUNT DUE MAY BE COLLECTED BY CIVIL ACTION, WHICH SHALL INCLUDE THE RIGHT OF ATTACHMENT IN THE NAME OF THE ASSOCIATION. THE BOARD MAY ALLOW INSTALLMENT PAYMENTS OF AMOUNTS DUE BASED ON EQUITABLE CONSIDERATIONS.

(2) REASONABLE FEES FOR COLLECTION, INCLUDING ATTORNEY FEES, AS DETERMINED BY THE FIRE AND POLICE PENSION ASSOCIATION, SHALL BE ADDED TO

THE AMOUNT OF DEBT. THE DEBTOR SHALL BE LIABLE FOR REPAYMENT OF THE TOTAL OF THE AMOUNT OUTSTANDING PLUS THE COLLECTION FEE.

(3) A CERTIFIED COPY OF ANY FINAL DETERMINATION OF THE BOARD ORDERING THE REPAYMENT OF OVERPAYMENTS PURSUANT TO THIS ARTICLE MAY BE FILED WITH THE CLERK OF THE DISTRICT COURT OF ANY JUDICIAL DISTRICT IN THIS STATE AT ANY TIME AFTER THE PERIOD PROVIDED FOR APPEAL OR SEEKING REVIEW OF THE ORDER HAS PASSED WITHOUT APPEAL OR REVIEW BEING SOUGHT OR, IF APPEAL OR REVIEW IS SOUGHT, AFTER THE ORDER HAS BEEN FINALLY AFFIRMED AND ALL APPELLATE REMEDIES AND ALL OPPORTUNITIES FOR REVIEW HAVE BEEN EXHAUSTED. THE FIRE AND POLICE PENSION ASSOCIATION SHALL AT THE SAME TIME FILE A CERTIFICATE TO THE EFFECT THAT THE TIME FOR APPEAL OR REVIEW HAS PASSED WITHOUT APPEAL OR REVIEW BEING UNDERTAKEN OR THAT THE ORDER HAS BEEN FINALLY AFFIRMED WITH ALL APPELLATE REMEDIES AND ALL OPPORTUNITIES FOR REVIEW HAVING BEEN EXHAUSTED. THE CLERK OF THE DISTRICT COURT SHALL RECORD THE ORDER AND THE ASSOCIATION'S CERTIFICATE IN THE JUDGMENT BOOK OF SAID COURT AND ENTRY THEREOF MADE IN THE JUDGMENT DOCKET, AND IT SHALL THEREAFTER HAVE ALL THE EFFECT OF A JUDGMENT OF THE DISTRICT COURT, AND EXECUTION MAY ISSUE THEREON OUT OF SAID COURT AS IN OTHER CASES. ANY SUCH ORDER MAY BE FILED BY AND IN THE NAME OF THE ASSOCIATION.

**31-31-1203. False statement - felony.** IF, FOR THE PURPOSE OF OBTAINING ANY ORDER, BENEFIT, AWARD, COMPENSATION, OR PAYMENT UNDER THE PROVISIONS OF ARTICLES 30, 30.5, AND 31 OF THIS TITLE, EITHER FOR SELF-GAIN OR FOR THE BENEFIT OF ANY OTHER PERSON, ANYONE WILLFULLY MAKES A FALSE STATEMENT OR REPRESENTATION MATERIAL TO THE CLAIM, SUCH PERSON COMMITS A CLASS 5 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401, C.R.S., AND SHALL FORFEIT ALL RIGHT TO COMPENSATION UNDER SAID ARTICLES UPON CONVICTION OF SUCH OFFENSE.

**SECTION 3. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of 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, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 24, 2008