Sixty-fourth
Legislative Assembly
of North Dakota

# SENATE BILL NO. 2306

Introduced by

Senators Nelson, Axness, Flakoll

Representatives Beadle, Boehning, Schneider

A BILL for an Act to amend and reenact section 18-11-28 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 18-11-28 of the North Dakota Century Code is amended and reenacted as follows:

**18-11-28. Service, disability, and survivor pensions - Formulation of optional plan.**

With the consent of the governing body of the city involved, and in substitution for a pension payment schedule, disability pension provision, and survivor pension provision provided in sections 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a monthly service pension plan, disability pension for members, and pensions for survivors of deceased members of the association as provided in this section.

1. Normal retirement date. Normal retirement date for a service pension is the first day of the month coincident with or next following the member's attainment of age fifty-five and the completion of ten years of service.
2. Service pensions. A member retiring on or after the member's retirement date is entitled to receive a monthly benefit beginning following the member's actual retirement and continuing for the member's lifetime as specified in subsection 7. The benefit amount is equal to two and fifty hundredths percent of average final compensation, times years of service, up to a maximum of seventy-five percent.
3. Termination benefits. If a member terminates the member's employment as a firefighter, either voluntarily or by discharge, and is not eligible for any other benefits, the member is entitled to the following:
   a. Nonvested termination. If the member has less than ten years of credited service upon termination, the member is entitled to a refund of the member's

accumulated contributions, payable in a single lump sum payment. Any benefits already received by the member from the association must be deducted from this payment. Upon return of the member's accumulated contributions, all of the member's rights and benefits under the plan are forfeited and terminated. Upon any reemployment, a firefighter may not receive credit for years or completed months of service for which the firefighter has withdrawn the firefighter's accumulated contributions from the plan, unless the firefighter repays into the plan the contributions the firefighter has withdrawn, with interest, as determined by the board, within ninety days after the firefighter's reemployment. A member may voluntarily leave the member's accumulated contributions in the plan for a period of five years after leaving the employ of the department pending the possibility of being reemployed as a firefighter, without losing credit for the time that the member was a member of the plan. If a member who is not vested is not reemployed as a firefighter with the department within five years, the member's accumulated contributions must be returned. During this period, the member is not entitled to any benefits under subsection 4 or 5.

b. Vested termination. If the member has ten or more years of service upon termination, the member is entitled to a monthly retirement benefit, determined in the same manner as a service pension, and based upon the member's service and the applicable pay in effect at the time of termination. The monthly benefit amount commences upon application by the member, at the member's ~~age fifty-five~~normal retirement age. Alternatively, upon the member's request, the member's accumulated contributions must be returned to the member. Following payment under such election, neither the member nor the member's beneficiaries or estate is entitled to any future benefit payments from the fund.

4. Disability pensions.

a. Eligibility. An active member who becomes disabled~~, and is not yet eligible to begin payments under a service pension,~~ before the member's normal retirement date is eligible to receive a disability pension. ~~A service or deferred pensioner who becomes disabled, which disability arose from or is attributable to service on~~

~~the fire department, and who has ceased to be an active member of the association for five years or less is eligible to receive a disability pension.~~

b. The disability benefit is determined as follows:

(1) Benefit amount. The monthly benefit under the disability pension equals ~~a percentage of~~ten percent times the member's years of credited service, up to a maximum of fifty percent times the monthly salary of a top paid firefighter for the year that the first benefit is paid, reduced as described ~~below~~in this paragraph. ~~The percentage equals ten percent times the member's years of credited service, up to a maximum of fifty percent. If the member is eligible for a service pension~~When a member eligible to receive a disability pension attains the member's normal retirement date, the member's monthly benefit equals the greater of the disability pension after adjustment for other income or the service pension. ~~If the member is eligible for a deferred pension, the member will receive the disability pension through the member's normal retirement age, and then is entitled to receive the greater of the disability pension or the member's service pension amount~~If the service pension is greater, the disability benefit must cease and the member must be treated in all respects as a service pensioner.

(2) Adjusted for other income before age sixty-five. The disability pension amount must be reduced by one dollar for every "excess dollar". "Excess dollar" is the sum of earned income plus payments by the association, plus other insurance payments, less the salary of a top paid firefighter on January thirty-first of the year that the excess dollar amount is determined. This reduction must be redetermined each year. For purposes of this provision, earned income is all income reported or reportable for federal income tax purposes, excluding passive income, but including wages, salary, commissions, and similar pay from any gainful work, including partnership profits when applicable. For purposes of this provision, passive income is interest, rent, receipts, inheritance payments, private disability insurance, or other payments not related to wages. Other insurance payments received by a disabled member of the association for disability

must be included in the excess dollar calculation without any reduction for taxes or other miscellaneous payments. For purposes of this provision, insurance includes disability benefits provided by the city or under workers' compensation or similar legislation, as well as primary and dependent disability benefits provided under social security. Any lump sum payment attributable to wages or insurance payments received by the member will be prorated over the period of time for which the payment is intended to provide benefits.

(3) Adjustment for other income ceases after age sixty-five. The "excess dollar" becomes zero and the association no longer has the right nor the responsibility to determine the excess dollar calculation for that disabled member of the association.

c. Determination of benefit amount by board. Every disabled member of the association who disagrees with the findings of the association with regard to the benefit calculation may have the calculation determined by an independent third party in an arbitration process, the results of which are final. The association has the right and responsibility to all active members to determine the excess dollar calculation for each disabled member of the association. Any attempt to fraudulently receive benefits under this section by misrepresenting a physical condition or withholding information affecting benefit payments may be cause for dismissal from the association and immediate suspension of all benefit payments, current or future.

d. Application for benefit. All applications for pensions must be made on forms furnished by the association. Applicants shall answer all questions under oath and furnish such evidence as the board requests. Should any doubt arise in regard to the existence of disability, the matter must be referred to three physicians, one to be chosen by the applicant, one to be chosen by the board, and the two physicians so selected shall choose a third physician. In such case, the three physicians thus chosen shall examine the applicant and report to the board.

e. Suspension of disability pension pending proof of income. A disabled member shall provide proof of earned income to the association by April fifteenth each year. The proof provided must be in the form of earned income reported to the internal revenue service. If a disabled member is unable to provide proof of earned income by April fifteenth each year, the excess dollar amount is presumed sufficient to reduce the disability pension to zero dollars until the association receives adequate information to accurately determine the excess dollar amount. The association shall pay a disabled member the disability pension amount that was suspended, up to twelve months, in one lump sum once earned income information is received and the association accurately determines the amount owed to the disabled member.

5. Optional forms of payment.

a. Normal form of benefit. For a member married at retirement, the normal form of payment of the service pension or deferred vested pension is a monthly payment for the member's lifetime, with fifty percent of this amount payable to the member's surviving spouse. For a member who is not married at retirement, the normal form of payment is a monthly payment for the member's lifetime, with no survivor payments, but actuarially adjusted as described in subdivision b as if the member were married to a spouse of the same age.

b. Optional forms of benefits. In place of the normal form of benefit provided in subdivision a, a member may elect to receive an actuarially equivalent benefit, based on the factors provided in subsection 8, in one of the following optional forms of payment:

(1) Life annuity. A monthly benefit payable for the member's lifetime only, with no survivor benefits payable.

(2) Certain and life annuity. A monthly benefit payable for the member's lifetime, but with one hundred twenty payments guaranteed. If the member dies before receiving one hundred twenty payments, monthly payments will be made to the member's designated beneficiary or estate until one hundred twenty payments have been paid.

(3) Joint and survivor annuity. A monthly benefit payable for the member's life, plus payments equal to seventy-five percent or one hundred percent of this benefit amount to the member's spouse following the member's death. Under this option, the surviving spouse is the member's spouse at the time of retirement. If the spouse dies before the member, no benefits will be paid to a survivor following the member's death.

c. Benefit selection. A member may select one of the optional forms of payment in subdivision b during the ninety days prior to the member's actual retirement, or upon attaining normal retirement age, on a form provided by the board. The selection may be changed at any time before cashing or depositing the first retirement payment. Consent of the member's spouse is not required to select or change an optional benefit form. A member may change the beneficiary designated under the certain and life payment form at any time prior to the member's death by filing a new selection form with the board. The beneficiary's consent is not required. If a member dies after having completed and filed a selection form with the board, but before actually retiring, the board shall direct that payments be made as if the member had retired on the member's date of death and had selected the optional payment indicated in the member's form. If a member dies after reaching normal retirement age without having completed a selection form, the board shall direct that payments be made as if the member had retired on the member's date of death, and had selected the joint and one hundred percent survivor optional payment form if the member was married on the member's date of death, or the certain and life form if the member was not married. If the member's spouse dies after the member has filed forms with the board selecting a joint and survivor benefit form, but before cashing or depositing the first retirement payment, and if the member does not file a revised selection form, the board shall direct that payments be made under subdivision a, providing for payments to a member who is not married at retirement.

6. Preretirement death benefits.

a. Surviving spouse benefits. If a vested active or vested deferred member dies before retirement, a pension in the sum of fifty percent of the amount of the

disability pension, or if greater, fifty percent of the deferred vested pension, the member would have been entitled to on the date of death must be paid to the surviving spouse for the period of the spouse's natural life.

b. Children's benefit. If a vested active or vested deferred member dies before retirement, a monthly benefit must be paid to the member's surviving children until age ~~eighteen~~nineteen, or until completion of high school, ~~if the children are actively enrolled beyond age eighteen~~whichever occurs first. The benefit amount to be shared among the children is equal to a percentage of the top paid firefighter's monthly salary on January thirty-first of the year the benefit is paid. The percentage is determined based on the number of children at the time of each benefit payment and whether the children's parent is alive. If the children's surviving parent is alive, the percentage is twenty percent. If no parent survives, and there is more than one child, the percentage is sixty percent. If there is no parent and only one child, the percentage is forty percent. Children who were living while the deceased was on the payroll of the department, or who were born within nine months after the decedent was withdrawn from the payroll of the department, are eligible for this benefit.

c. Minimum benefit. When an active member who is not yet vested dies, the member's beneficiaries designated on forms provided by the pension association or the member's estate, in case this form has not been filed with the association, or in case the designated beneficiaries do not exist or cannot be found within six months of the date of death, shall receive in addition to the funeral benefit, a sum equal to what the member has contributed to the association, less the amount of any benefits received by the active member or the member's beneficiaries or estate.

7. Commencement of benefits.

a. Payment of benefits. Monthly benefit payments must be distributed on the last day of each month. For service or deferred pensions, the first payment must be prorated to equal the total monthly benefit earned, times the number of days in the month following actual retirement, divided by the total number of days in the month. Benefits payable to the surviving beneficiary of a retired member who had

been receiving payments commence in the month following the retired member's death. Benefits payable to the surviving spouse or children of a member who dies before retirement must be similarly prorated based on the date of death of the active or deferred member. The final monthly benefit paid in the month a retired member dies, a surviving beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits must be paid on the last day of the month of death or termination of eligibility and must equal a full monthly payment with no reduction or proration.

b. Mandatory commencement of benefits. Notwithstanding any provision in this section to the contrary, benefits payable under the plan are subject to the following:

(1) A member's benefits may not commence later than April first of the calendar year following the later of the calendar year in which the member attains age seventy and one-half and the calendar year in which the member terminates employment. If a lump sum death benefit is payable to a deceased member's beneficiary, the benefit must be paid no later than sixty days following the member's date of death.

(2) The member's entire interest in the plan must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within five years of the member's death. The five-year payment rules do not apply to any portion of the member's interest which is payable to a surviving spouse payable over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

8. Actuarial equivalence - optional forms of benefit. To determine the amount of the monthly payment under the life-only and certain and life optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors:

Life-only benefit: 1.043

Certain and life benefit: 1.030

To determine the amount of the monthly payment under the alternative joint and survivor optional forms permitted under subsection 5, multiply the normal monthly benefit amount by the following factors based on the difference in age between the member and the member's spouse, using the member's and spouse's ages as of the member's and spouse's most recent birthdays.

If the member is the same age as the spouse, use the following factors:

Joint and seventy-five percent survivor: 0.980

Joint and one hundred percent survivor: 0.960

If the spouse is not the same age as the member, use the following factors:

| If the Spouse Is Younger: Age Difference | Joint and Survivor 75% | Joint and Survivor 100% | If the Spouse Is Older: Age Difference | Joint and Survivor 75% | Joint and Survivor 100% |
|---|---|---|---|---|---|
| 1 | 0.979 | 0.959 | 1 | 0.980 | 0.960 |
| 2 | 0.978 | 0.957 | 2 | 0.981 | 0.962 |
| 3 | 0.977 | 0.956 | 3 | 0.981 | 0.964 |
| 4 | 0.976 | 0.954 | 4 | 0.982 | 0.965 |
| 5 | 0.976 | 0.952 | 5 | 0.983 | 0.967 |
| 6 | 0.975 | 0.951 | 6 | 0.984 | 0.969 |
| 7 | 0.974 | 0.949 | 7 | 0.985 | 0.970 |
| 8 | 0.973 | 0.948 | 8 | 0.986 | 0.972 |
| 9 | 0.973 | 0.947 | 9 | 0.986 | 0.973 |

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|---|---|---|---|---|---|---|
| 1 | 10 | 0.972 | 0.945 | 10 | 0.987 | 0.975 |
| 2 | 11 | 0.971 | 0.944 | 11 | 0.988 | 0.976 |
| 3 | 12 | 0.971 | 0.943 | 12 | 0.989 | 0.978 |
| 4 | 13 | 0.970 | 0.942 | 13 | 0.989 | 0.979 |
| 5 | 14 | 0.969 | 0.940 | 14 | 0.990 | 0.980 |
| 6 | 15 | 0.969 | 0.939 | 15 | 0.991 | 0.982 |