

Sixty-first  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO.

Introduced by

Representative Grande

1 A BILL for an Act to create and enact a new section to chapter 18-11 of the North Dakota  
2 Century Code, relating to alternate firefighters relief association plan benefits.

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

4 **SECTION 1.** A new section to chapter 18-11 of the North Dakota Century Code is  
5 created and enacted as follows:

6 **Service, disability, and survivor pensions - Formulation of optional plan.** With the  
7 consent of the governing body of the city involved, and in substitution for a pension payment  
8 schedule, disability pension provision, and survivor pension provision provided in sections  
9 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt a  
10 monthly service pension plan, disability pension for members, and pensions for survivors of  
11 deceased members of the association as provided in this section.

12 1. Normal retirement date. Normal retirement date for a service pension is the first  
13 day of the month coincident with or next following the member's attainment of age  
14 fifty-five and the completion of ten years of service.

15 2. Service pensions. A member retiring on or after the member's retirement date is  
16 entitled to receive a monthly benefit beginning following the member's actual  
17 retirement and continuing for the member's lifetime as specified in subsection 7.  
18 The benefit amount is equal to two and fifty hundredths percent of average final  
19 compensation, times years of service, up to a maximum of seventy-five percent.

20 3. Termination benefits. If a member terminates the member's employment as a  
21 firefighter, either voluntarily or by discharge, and is not eligible for any other  
22 benefits, the member is entitled to the following:

23 a. Nonvested termination. If the member has less than ten years of credited  
24 service upon termination, the member is entitled to a refund of the member's

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

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

27          4. Disability pensions.

- 28          a. Eligibility. An active member who becomes disabled, and is not yet eligible to  
29          begin payments under a service pension, is eligible to receive a disability  
30          pension. A service or deferred pensioner who becomes disabled, which  
31          disability arose from or is attributable to service on the fire department, and

1                   who has ceased to be an active member of the association for five years or  
2                   less is eligible to receive a disability pension.

3           b.   The disability benefit is determined as follows:

4                   (1)   Benefit amount. The monthly benefit under the disability pension  
5                   equals a percentage of the monthly salary of a top paid firefighter for  
6                   the year that the first benefit is paid, reduced as described below. The  
7                   percentage equals ten percent times the member's years of credited  
8                   service, up to a maximum of fifty percent. If the member is eligible for a  
9                   service pension, the member's monthly benefit equals the greater of the  
10                  disability pension or the service pension. If the member is eligible for a  
11                  deferred pension, the member will receive the disability pension through  
12                  the member's normal retirement age, and then is entitled to receive the  
13                  greater of the disability pension or the member's service pension  
14                  amount.

15                  (2)   Adjusted for other income. The disability pension amount must be  
16                  reduced by one dollar for every "excess dollar". "Excess dollar" is the  
17                  sum of earned income plus payments by the association, plus other  
18                  insurance payments, less the salary of a top paid firefighter on January  
19                  thirty-first of the year that the excess dollar amount is determined. This  
20                  reduction must be redetermined each year. For purposes of this  
21                  provision, earned income is all income reported or reportable for federal  
22                  income tax purposes, excluding passive income, but including wages,  
23                  salary, commissions, and similar pay from any gainful work, including  
24                  partnership profits when applicable. For purposes of this provision,  
25                  passive income is interest, rent, receipts, inheritance payments, private  
26                  disability insurance, or other payments not related to wages. Other  
27                  insurance payments received by a disabled member of the association  
28                  for disability must be included in the excess dollar calculation without  
29                  any reduction for taxes or other miscellaneous payments. For purposes  
30                  of this provision, insurance includes disability benefits under workers'  
31                  compensation or similar legislation, as well as primary and dependent

1                    disability benefits provided under social security. Any lump sum  
2                    payment attributable to wages or insurance payments received by the  
3                    member will be prorated over the period of time for which the payment  
4                    is intended to provide benefits.

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

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

23                   5. Optional forms of payment.

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

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

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

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

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

19          c. Benefit selection. A member may select one of the optional forms of payment  
20          in subdivision b during the ninety days prior to the member's actual  
21          retirement, or upon attaining normal retirement age, on a form provided by the  
22          board. The selection may be changed at any time before cashing or  
23          depositing the first retirement payment. Consent of the member's spouse is  
24          not required to select or change an optional benefit form. A member may  
25          change the beneficiary designated under the certain and life payment form at  
26          any time prior to the member's death by filing a new selection form with the  
27          board. The beneficiary's consent is not required. If a member dies after  
28          having completed and filed a selection form with the board, but before actually  
29          retiring, the board shall direct that payments be made as if the member had  
30          retired on the member's date of death, and had selected the optional payment  
31          indicated in the member's form. If a member dies after reaching normal

1           retirement age without having completed a selection form, the board shall  
2           direct that payments be made as if the member had retired on the member's  
3           date of death, and had selected the joint and one hundred percent survivor  
4           optional payment form if the member was married on the member's date of  
5           death, or the certain and life form if the member was not married. If the  
6           member's spouse dies after the member has filed forms with the board  
7           selecting a joint and survivor benefit form, but before cashing or depositing  
8           the first retirement payment, and if the member does not file a revised  
9           selection form, the board shall direct that payments be made under  
10          subdivision a, providing for payments to a member who is not married at  
11          retirement.

12          6. Preretirement death benefits.

- 13          a. Surviving spouse benefits. If a vested active or vested deferred member dies  
14          before retirement, a pension in the sum of fifty percent of the amount of the  
15          disability pension, or if greater, fifty percent of the deferred vested pension,  
16          the member would have been entitled to on the date of death must be paid to  
17          the surviving spouse for the period of the spouse's natural life.
- 18          b. Children's benefit. If a vested active or vested deferred member dies before  
19          retirement, a monthly benefit must be paid to the member's surviving children  
20          until age eighteen, or until completion of high school, if the children are  
21          actively enrolled beyond age eighteen. The benefit amount to be shared  
22          among the children is equal to a percentage of the top paid firefighter's  
23          monthly salary on January thirty-first of the year the benefit is paid. The  
24          percentage is determined based on the number of children at the time of each  
25          benefit payment and whether the children's parent is alive. If the children's  
26          surviving parent is alive, the percentage is twenty percent. If no parent  
27          survives, and there is more than one child, the percentage is sixty percent. If  
28          there is no parent and only one child, the percentage is forty percent.  
29          Children who were living while the deceased was on the payroll of the  
30          department, or who were born within nine months after the decedent was  
31          withdrawn from the payroll of the department, are eligible for this benefit.

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

9           7. Commencement of benefits.

10          a. Payment of benefits. Monthly benefit payments must be distributed on the  
11          last day of each month. For service or deferred pensions, the first payment  
12          must be prorated to equal the total monthly benefit earned, times the number  
13          of days in the month following actual retirement, divided by the total number of  
14          days in the month. Benefits payable to the surviving beneficiary of a retired  
15          member who had been receiving payments commence in the month following  
16          the retired member's death. Benefits payable to the surviving spouse or  
17          children of a member who dies before retirement must be similarly prorated  
18          based on the date of death of the active or deferred member. The final  
19          monthly benefit paid in the month a retired member dies, a surviving  
20          beneficiary dies, or a surviving beneficiary ceases to be eligible for benefits  
21          must be paid on the last day of the month of death or termination of eligibility  
22          and must equal a full monthly payment with no reduction or proration.

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

26          (1) A member's benefits may not commence later than April first of the  
27          calendar year following the later of the calendar year in which the  
28          member attains age seventy and one-half and the calendar year in  
29          which the member terminates employment. If a lump sum death benefit  
30          is payable to a deceased member's beneficiary, the benefit must be  
31          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



1	<u>Joint and one hundred percent survivor: 0.960</u>					
2	<u>If the spouse is not the same age as the member, use the following factors:</u>					
3	<u>If the</u>			<u>If the</u>		
4	<u>Spouse Is</u>			<u>Spouse Is</u>		
5	<u>Younger:</u>	<u>Joint and</u>	<u>Joint and</u>	<u>Older:</u>	<u>Joint and</u>	<u>Joint and</u>
6	<u>Age</u>	<u>Survivor</u>	<u>Survivor</u>	<u>Age</u>	<u>Survivor</u>	<u>Survivor</u>
7	<u>Difference</u>	<u>75%</u>	<u>100%</u>	<u>Difference</u>	<u>75%</u>	<u>100%</u>
8	<u>1</u>	<u>0.979</u>	<u>0.959</u>	<u>1</u>	<u>0.980</u>	<u>0.960</u>
9	<u>2</u>	<u>0.978</u>	<u>0.957</u>	<u>2</u>	<u>0.981</u>	<u>0.962</u>
10	<u>3</u>	<u>0.977</u>	<u>0.956</u>	<u>3</u>	<u>0.981</u>	<u>0.964</u>
11	<u>4</u>	<u>0.976</u>	<u>0.954</u>	<u>4</u>	<u>0.982</u>	<u>0.965</u>
12	<u>5</u>	<u>0.976</u>	<u>0.952</u>	<u>5</u>	<u>0.983</u>	<u>0.967</u>
13	<u>6</u>	<u>0.975</u>	<u>0.951</u>	<u>6</u>	<u>0.984</u>	<u>0.969</u>
14	<u>7</u>	<u>0.974</u>	<u>0.949</u>	<u>7</u>	<u>0.985</u>	<u>0.970</u>
15	<u>8</u>	<u>0.973</u>	<u>0.948</u>	<u>8</u>	<u>0.986</u>	<u>0.972</u>
16	<u>9</u>	<u>0.973</u>	<u>0.947</u>	<u>9</u>	<u>0.986</u>	<u>0.973</u>
17	<u>10</u>	<u>0.972</u>	<u>0.945</u>	<u>10</u>	<u>0.987</u>	<u>0.975</u>
18	<u>11</u>	<u>0.971</u>	<u>0.944</u>	<u>11</u>	<u>0.988</u>	<u>0.976</u>
19	<u>12</u>	<u>0.971</u>	<u>0.943</u>	<u>12</u>	<u>0.989</u>	<u>0.978</u>
20	<u>13</u>	<u>0.970</u>	<u>0.942</u>	<u>13</u>	<u>0.989</u>	<u>0.979</u>
21	<u>14</u>	<u>0.969</u>	<u>0.940</u>	<u>14</u>	<u>0.990</u>	<u>0.980</u>
22	<u>15</u>	<u>0.969</u>	<u>0.939</u>	<u>15</u>	<u>0.991</u>	<u>0.982</u>