

SENATE BILL NO. 2306

Introduced by

Senators Nelson, Axness, Flakoll

Representatives Beadle, Boehning, Schneider

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

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

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

6 **18-11-28. Service, disability, and survivor pensions - Formulation of optional plan.**

7 With the consent of the governing body of the city involved, and in substitution for a pension
8 payment schedule, disability pension provision, and survivor pension provision provided in
9 sections 18-11-15, 18-11-16, 18-11-17, and 18-11-26, a firefighters relief association may adopt
10 a 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 day of
13 the month coincident with or next following the member's attainment of age fifty-five
14 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. The
18 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 benefits,
22 the member is entitled to the following:

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

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6 months of service for which the firefighter has withdrawn the firefighter's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8 plan the contributions the firefighter has withdrawn, with interest, as determined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

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

26 4. Disability pensions.

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

1 the fire department, and who has ceased to be an active member of the
2 association for five years or 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 equals a
5 percentage ~~of ten percent times the member's years of credited service, up~~
6 to a maximum of fifty percent times the monthly salary of a top paid
7 firefighter for the year that the first benefit is paid, reduced as described
8 ~~below in this paragraph. The percentage equals ten percent times the~~
9 ~~member's years of credited service, up to a maximum of fifty percent. If the~~
10 ~~member is eligible for a service pension~~When a member eligible to receive
11 a disability pension attains the member's normal retirement date, the
12 member's monthly benefit equals the greater of the disability pension after
13 adjustment for other income or the service pension. ~~If the member is eligible~~
14 ~~for a deferred pension, the member will receive the disability pension~~
15 ~~through the member's normal retirement age, and then is entitled to receive~~
16 ~~the greater of the disability pension or the member's service pension~~
17 ~~amount~~If the service pension is greater, the disability benefit must cease
18 and the member must be treated in all respects as a service pensioner.

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

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

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

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

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

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

12 5. Optional forms of payment.

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

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

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

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

1 (3) Joint and survivor annuity. A monthly benefit payable for the member's life,
2 plus payments equal to seventy-five percent or one hundred percent of this
3 benefit amount to the member's spouse following the member's death.

4 Under this option, the surviving spouse is the member's spouse at the time
5 of retirement. If the spouse dies before the member, no benefits will be paid
6 to a survivor following the member's death.

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

29 6. Preretirement death benefits.

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

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

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

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

26 7. Commencement of benefits.

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

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

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

- 12 (1) A member's benefits may not commence later than April first of the calendar
13 year following the later of the calendar year in which the member attains
14 age seventy and one-half and the calendar year in which the member
15 terminates employment. If a lump sum death benefit is payable to a
16 deceased member's beneficiary, the benefit must be paid no later than sixty
17 days following the member's date of death.
- 18 (2) The member's entire interest in the plan must be distributed over the life of
19 the member or the lives of the member and a designated beneficiary, over a
20 period not extending beyond the life expectancy of the member or the life
21 expectancy of the member and designated beneficiary.
- 22 (3) When a member dies after distribution of benefits has begun, the remaining
23 portion of the member's interest must be distributed at least as rapidly as
24 under the method of distribution prior to the member's death.
- 25 (4) When a member dies before distribution of benefits has begun, the entire
26 interest of the member must be distributed within five years of the member's
27 death. The five-year payment rules do not apply to any portion of the
28 member's interest which is payable to a surviving spouse payable over the
29 life or life expectancy of the spouse and which begins no later than the date
30 the member would have reached age seventy and one-half.

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

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

7 Life-only benefit: 1.043

8 Certain and life benefit: 1.030

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

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

15 Joint and seventy-five percent survivor: 0.980

16 Joint and one hundred percent survivor: 0.960

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

18	If the			If the		
19	Spouse Is			Spouse Is		
20	Younger:	Joint and	Joint and	Older:	Joint and	Joint and
21	Age	Survivor	Survivor	Age	Survivor	Survivor
22	Difference	75%	100%	Difference	75%	100%
23	1	0.979	0.959	1	0.980	0.960
24	2	0.978	0.957	2	0.981	0.962
25	3	0.977	0.956	3	0.981	0.964
26	4	0.976	0.954	4	0.982	0.965
27	5	0.976	0.952	5	0.983	0.967
28	6	0.975	0.951	6	0.984	0.969
29	7	0.974	0.949	7	0.985	0.970
30	8	0.973	0.948	8	0.986	0.972
31	9	0.973	0.947	9	0.986	0.973

Sixty-fourth
Legislative Assembly

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