ENGROSSED HOUSE
BILL NO. 1251

By: Stites, Ingmire and Nance of the House

and

Morgan of the Senate

An Act relating to the Oklahoma Firefighters Pension and Retirement System; amending 11 O.S. 1991, Sections 49-113, as last amended by Section 1, Chapter 419, O.S.L. 1998 and 49-113.2, as last amended by Section 1, Chapter 167, O.S.L. 1999 (11 O.S. Supp. 2000, Sections 49-113 and 49-113.2), which relate to death benefits; modifying provisions relating to certain firefighters; providing for distribution of benefits; providing for disclaimers with respect to certain death benefit; defining term; prescribing requirements for disclaimer; providing for distribution of death benefits; prescribing procedures related to distribution; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 49-113, as last amended by Section 1, Chapter 419, O.S.L. 1998 (11 O.S. Supp. 2000, Section 49-113), is amended to read as follows:

Section 49-113. A. In the event of the death for any cause of a fire fighter who at the time of the fire fighter's death was drawing a pension, or who at the time of the fire fighter's death (whether death occurred while on duty but not in or in consequence of the performance of duty or while on vacation or off duty) was eligible, upon written request to retire and draw a pension, the beneficiary of such person shall be paid an amount not to exceed one hundred percent (100%) of said pension. Effective March 1, 1997, if a fire fighter to whom a retirement benefit has been awarded or who is eligible therefor dies prior to the date as of which the total amount of retirement benefit paid equals the total amount of the employee contributions paid by or on behalf of the member and the member does not have a surviving beneficiary, the total benefits

paid as of the date of the member's death shall be subtracted from the accumulated employee contribution amount and the balance, if greater than zero (0), shall be paid to the member's estate.

B. In the event of the death of the surviving spouse, the pension shall cease, and should there then be but one living child same shall receive an amount equal to one hundred percent (100%) of said pension, but if there then be more than one living child, one hundred percent (100%) of said pension shall be divided equally between the children until each child reaches the age of eighteen (18) years or until the age of twenty-two (22) years if the child is enrolled full time and regularly attending a public or private school or any institution of higher education.

~~C. Upon the death of an unmarried fire fighter who has children, the children shall be entitled to have paid to a survivor trust fund that has a legally appointed administrator with power to provide benefits to the children an amount not to exceed one hundred percent (100%) of said pension.~~ Provided, that in the event the State Board finds that such a child who has not married and who at the time the child reaches the age of eighteen (18) years is either physically or mentally disabled, the pension thereof shall continue so long as such disability remains; provided, further, that upon the death of the fire fighter and surviving spouse, said physically or mentally disabled child shall be entitled to have paid to the child's legally appointed guardian an amount not to exceed one hundred percent (100%) of said pension. The money so paid to the guardian shall be used solely for the benefit of the disabled child and it shall be reported annually to the State Board. The payment so provided shall be calculated after payments have been made to all eligible children as provided in this section; provided further, that beneficiaries now receiving pensions under the provisions of Sections 49-112 or 49-113 of this title shall, upon application to the State Board, thereafter be entitled to a pension equal to the

amount which they would have received if this act were in effect at the time the right to said pension accrued.

~~D.~~ C. In the event a surviving spouse of a member remarried prior to June 7, 1993, and was a surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for the employer, the surviving spouse shall be eligible to receive the pension benefits provided for in this section. To receive the pension benefits provided for in this section the surviving spouse falling within this section shall submit a written request for such benefits to the Oklahoma Firefighters Pension and Retirement System. The Oklahoma Firefighters Pension and Retirement System shall approve requests by surviving spouses meeting the requirements of this section. Upon approval by the Oklahoma Firefighters Pension and Retirement System, the surviving spouse shall be entitled to the pension benefits provided for in this section beginning from the date of approval forward. Pension benefits provided to surviving spouses falling within this section shall not apply to alter any amount of pension benefits paid or due prior to the Oklahoma Firefighters Pension and Retirement System's approval of the remarried surviving spouse's written request for benefits.

~~E.~~ D. No surviving spouse shall receive benefits from this section, Section 50-117 of this title, or Section 2-306 of Title 47 of the Oklahoma Statutes as the surviving spouse of more than one member of the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, or the Oklahoma Law Enforcement Retirement System. The surviving spouse of more than one member shall elect which member's benefits he or she will receive.

~~F.~~ E. Upon the death of a retired member, the benefit payment for the month in which the retired member died, if not previously paid, shall be made to the beneficiary of the member or to the

member's estate if there is no beneficiary. Such benefit payment shall be made in an amount equal to a full monthly benefit payment regardless of the day of the month in which the retired member died.

F. Upon the death of an unmarried firefighter who has one or more children, said child or children shall receive pension benefits as provided in subsection B of this section as if the surviving spouse had died. If the unmarried firefighter has executed either a testamentary trust or an inter vivos trust that provides for the care and education of the child or children, the System shall pay the trustee of the trust the pension benefits as provided in subsection B of this section.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 49-113.2, as last amended by Section 1, Chapter 167, O.S.L. 1999 (11 O.S. Supp. 2000, Section 49-113.2), is amended to read as follows:

Section 49-113.2 A. Upon the death of an active or retired member, the System shall pay to the surviving spouse of the member if the surviving spouse has been married to the firefighter for thirty (30) continuous months preceding the member's death provided a surviving spouse of a member who died while in, or as a consequence of, the performance of the member's duty for a participating municipality shall not be subject to the marriage limitation for survivor benefits, or if there is no surviving spouse or no surviving spouse meeting the requirements of this section, the System shall pay to the designated recipient or recipients of the member, or if there is no designated recipient or if the designated recipient predeceases the member, to the estate of the member, the sum of Four Thousand Dollars ($4,000.00) for those active or retired members who died prior to July 1, 1999. For those active or retired members who die on or after July 1, 1999, the sum shall be Five Thousand Dollars ($5,000.00).

B. Upon the death of a member who dies leaving no living designated recipient or having designated the member's estate as

recipient, the System may pay any applicable death benefit which may be subject to probate, in an amount of Five Thousand Dollars ($5,000.00), to the heir or heirs of the member without the intervention of a probate court or probate procedures.

C. Before any applicable probate procedure may be waived, the System must be in receipt of the member's proof of death and the following documents from those persons claiming to be the legal heirs of the deceased member:

1. The member's last will and testament if available;

2. An affidavit or affidavits of heirship which must contain:

   a. the names and signatures of all claiming heirs to the deceased member's estate including the claiming heirs' names, relationship to the deceased member, current addresses and current telephone numbers,

   b. a statement or statements by the claiming heirs that no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction,

   c. a statement that the value of the deceased member's entire probate estate, less liens and encumbrances, does not exceed Ten Thousand Dollars ($10,000.00), including the payment of benefits from the System, and

   d. a statement by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System or the amount the heir agrees to be paid to another person, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System;

3. A written agreement or agreements signed by all claiming heirs of the deceased member which provides that the claiming heirs release, discharge and hold harmless the System from any and all

liability, obligations and costs which it may incur as a result of making a payment to any of the deceased member's heirs;

4. A corroborating affidavit from an individual other than a claiming heir, who was familiar with the affairs of the deceased member; and

5. Proof that funeral and burial expenses of the deceased member have been paid or provided for.

D. The System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. Should the System have any questions as to the validity of any document presented by the claiming heirs, or as to any statement or assertion contained therein, the probate requirements provided for in Section 1 et seq. of Title 58 of the Oklahoma Statutes shall not be waived.

E. After paying any death benefits to any claiming heirs as provided pursuant to this section, the System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had paid a personal representative holding valid letters testamentary issued by a court of competent jurisdiction. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.

F. The provisions of this section shall not be subject to qualified domestic orders as provided in subsection B of Section 49-126 of this title.

G. 1. For purposes of this section, if a person makes a qualified disclaimer with respect to the death benefit provided for in subsection A of this section, this section shall apply with respect to such death benefit as if the death benefit had never been transferred to such person.

2. For purposes of this subsection, the term "qualified disclaimer" means an irrevocable and unqualified refusal by a

person, including but not limited to the surviving spouse of the deceased member, to accept an interest in the death benefit provided for in subsection A of this section, but only if:

a. such refusal is in writing,

b. such writing is received by the System not later than the date which is nine (9) months after the date of death of the deceased member,

c. such person has not accepted the death benefit provided for in subsection A of this section, and

d. as a result of such refusal, the death benefit provided for in subsection A of this section passes without any direction on the part of the person making the disclaimer and passes first, to the organization providing funeral and burial services for the deceased member or, if the cost of the funeral and burial services for the deceased member has already been paid, to the person or persons other than the person making the disclaimer as further provided for in this section.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 8th day of March, 2001.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2001.

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Presiding Officer of the Senate