

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 859

By: Barrington of the Senate

and

Joyner of the House

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8  
9 COMMITTEE SUBSTITUTE

10 ( Oklahoma Firefighters Pension and Retirement System

11 - survivor benefits - qualified domestic order -

12 emergency )

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15 SECTION 1. AMENDATORY 11 O.S. 2001, Section 29-202, as  
16 amended by Section 2, Chapter 460, O.S.L. 2003 (11 O.S. Supp. 2006,  
17 Section 29-202), is amended to read as follows:

18 Section 29-202. As used in Sections 29-201 through 29-205 of  
19 this title:

20 1. "Volunteer firefighter" means a person who is enrolled as a  
21 member of a fire department and who serves in such capacity without  
22 receiving a regular salary. A person who is a salaried public  
23 safety employee of a municipality shall not serve as a volunteer  
24 firefighter of a volunteer fire department unless the person is off

1 duty and such service is not a condition of employment. A public  
2 safety employee is a person employed to serve as a salaried  
3 firefighter, police or other law enforcement officer or emergency  
4 medical technician;

5 2. "Volunteer fire department" means a fire department which  
6 has in its employ not more than two full-time salaried firefighters;  
7 and

8 3. "Municipality" means a municipality which has qualified to  
9 participate in the Oklahoma Firefighters Pension and Retirement  
10 System.

11 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-112, is  
12 amended to read as follows:

13 Section 49-112. A. Whenever any member of the fire department  
14 shall lose his or her life by reason of any injury or sickness  
15 sustained by him or her while in, or in consequence of, the  
16 performance of his or her duty or while on active duty in the  
17 National Guard and Reserves called to active duty, leaving a  
18 surviving spouse, or child or children under the age of eighteen  
19 (18) years, then, upon satisfactory proof of such facts made to it,  
20 the State Board shall order and direct that a monthly pension be  
21 paid. Such amount shall be determined in accordance with the  
22 provisions of subsection A of Section ~~49-113~~ 49-109 of this title.  
23 In the event of the death of the surviving spouse, the pension shall  
24 cease, and should there then be but one living child such child

1 shall receive an amount equal to one hundred percent (100%) of the  
2 pension, but if there then be more than one living child, one  
3 hundred percent (100%) of the pension shall be divided equally  
4 between the children until each child reaches the age of eighteen  
5 (18) years or until the age of twenty-two (22) years if the child is  
6 enrolled full-time and regularly attending a public or private  
7 school or any institution of higher education. In the event the  
8 State Board finds that such a child who is not married at the time  
9 of death of the member or the member's surviving spouse and who at  
10 the time the child attains or attained the age of eighteen (18)  
11 years is either physically or mentally disabled, the pension shall  
12 continue so long as such disability remains. Upon the death of the  
13 firefighter and surviving spouse, if any, the physically or mentally  
14 disabled child shall be entitled to have paid to the child's trustee  
15 of a trust, whether inter vivos or testamentary, which trust  
16 provides for the receipt of the pension benefits to be held and  
17 administered for the sole benefit of the physically or mentally  
18 disabled child, or if there is no trust, to the child's legally  
19 appointed guardian, an amount not to exceed one hundred percent  
20 (100%) of the pension. The money paid to the guardian or trustee  
21 shall be used solely for the benefit of the disabled child and it  
22 shall be reported annually to the State Board. The payment provided  
23 shall be calculated after payments have been made to all eligible  
24 children as provided in this subsection. If the member does not

1 leave a beneficiary or disabled child as described in this  
2 subsection, the accumulated contributions made to the System by the  
3 member shall be paid to the estate of the member.

4 B. Whenever any member of the fire department who has not  
5 terminated employment shall lose his or her life for any reason not  
6 described in subsection A of this section, after completing ten (10)  
7 years of credited service and prior to completing twenty (20) years  
8 of credited service, leaving a surviving spouse, or child or  
9 children under the age of eighteen (18) years, then upon  
10 satisfactory proof of such facts made to it, the State Board shall  
11 order and direct that a monthly pension be paid. Such amount shall  
12 be fifty percent (50%) of the average monthly salary which was paid  
13 to the firefighter during the last sixty (60) months of the  
14 firefighter's service. In the event of the death of the surviving  
15 spouse, the pension shall cease, and should there then be but one  
16 living child such child shall receive an amount equal to one hundred  
17 percent (100%) of the pension, but if there then be more than one  
18 living child, one hundred percent (100%) of the pension shall be  
19 divided equally between the children until each child reaches the  
20 age of eighteen (18) years or the age of twenty-two (22) years if  
21 the child is enrolled full-time and regularly attending a public or  
22 private school or any institution of higher education. In the event  
23 the State Board finds that such a child who is not married at the  
24 time of death of the member or the member's surviving spouse and who

1 at the time the child attains or attained the age of eighteen (18)  
2 years is either physically or mentally disabled, the pension shall  
3 continue so long as the disability remains. Upon the death of the  
4 firefighter and surviving spouse, if any, said physically or  
5 mentally disabled child shall be entitled to have paid to the  
6 child's trustee of a trust, whether inter vivos or testamentary,  
7 which trust provides for the receipt of the pension benefits to be  
8 held and administered for the sole benefit of said physically or  
9 mentally disabled child, or if there is no trust, to the child's  
10 legally appointed guardian, an amount not to exceed one hundred  
11 percent (100%) of the pension. The money paid to the guardian or  
12 trustee shall be used solely for the benefit of the disabled child  
13 and it shall be reported annually to the State Board. The payment  
14 provided shall be calculated after payments have been made to all  
15 eligible children as provided in this subsection. If the member  
16 does not leave a beneficiary or disabled child as described in this  
17 subsection, the accumulated contributions made to the System by the  
18 member shall be paid to the estate of the member.

19 C. For purposes of this section, a child shall not be  
20 considered disabled if the child is able to pursue a remunerative  
21 occupation, with the remuneration being reasonably substantial  
22 rather than merely nominal.

23 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-113, as  
24 last amended by Section 14, Chapter 46, 2nd Extraordinary Session,

1 O.S.L. 2006 (11 O.S. Supp. 2006, Section 49-113), is amended to read  
2 as follows:

3 Section 49-113. A. 1. In the event of the death of a  
4 firefighter who at the time of the firefighter's death was drawing a  
5 pension, other than a disability pension, or who at the time of the  
6 firefighter's death (whether death occurred while on duty, but not  
7 in or in consequence of the performance of duty, or while on  
8 vacation or off duty) was eligible, upon written request, to retire  
9 and draw a pension, other than a disability pension, the beneficiary  
10 of such person shall be paid an amount not to exceed one hundred  
11 percent (100%) of said pension.

12 2. In the event of the death of a firefighter who at the time  
13 of the firefighter's death was drawing, or eligible to draw, a  
14 disability pension for a physical or mental disability that occurred  
15 while in, or in consequence of, the performance of the firefighter's  
16 duty, and which prevented the effective performance of the  
17 firefighter's duties, and which caused the State Board to retire the  
18 firefighter from active service, the beneficiary of such person  
19 shall be paid an amount not to exceed one hundred percent (100%) of  
20 the pension paid in accordance with subsection A of Section 49-109  
21 of this title.

22 3. In the event of the death of a firefighter who at the time  
23 of the firefighter's death was drawing, or eligible to draw, a  
24 disability pension for a physical or mental disability from causes

1 not arising in the line of duty and which prevented the effective  
2 performance of the firefighter's duties, the beneficiary of such  
3 person shall be paid an amount not to exceed one hundred percent  
4 (100%) of the pension paid in accordance with subsection C of  
5 Section 49-109 of this title.

6 4. Effective March 1, 1997, if a firefighter to whom a  
7 retirement or disability benefit has been awarded, or who is  
8 eligible therefore, dies prior to the date as of which the total  
9 amount of retirement or disability benefit paid equals the total  
10 amount of the employee contributions paid by or on behalf of the  
11 member and the member does not have a surviving beneficiary, the  
12 total benefits paid as of the date of the member's death shall be  
13 subtracted from the accumulated employee contribution amount and the  
14 balance, if greater than Zero Dollars (\$0.00), shall be paid to the  
15 member's estate.

16 5. Any person eligible to receive a payment pursuant to this  
17 section may make an election to waive all or a portion of monthly  
18 payments.

19 B. In the event of the death of the surviving spouse, the  
20 pension shall cease, and should there then be but one living child  
21 same shall receive an amount equal to one hundred percent (100%) of  
22 said pension, but if there then be more than one living child, one  
23 hundred percent (100%) of said pension shall be divided equally  
24 between the children until each child reaches the age of eighteen

1 (18) years or until the age of twenty-two (22) years if the child is  
2 enrolled full time and regularly attending a public or private  
3 school or any institution of higher education. Provided, that in  
4 the event the State Board finds that such a child who is not married  
5 at the time of death of the member or the member's surviving spouse  
6 and who at the time the child attains or attained the age of  
7 eighteen (18) years is either physically or mentally disabled, the  
8 pension thereof shall continue so long as such disability remains;  
9 provided, that upon the death of the firefighter and surviving  
10 spouse, if any, said physically or mentally disabled child shall be  
11 entitled to have paid to the child's trustee of a trust, whether  
12 inter vivos or testamentary, which trust provides for the receipt of  
13 the pension benefits to be held and administered for the sole  
14 benefit of said physically or mentally disabled child, or if there  
15 is no trust, to the child's legally appointed guardian, an amount  
16 not to exceed one hundred percent (100%) of said pension. The money  
17 so paid to the guardian or trustee shall be used solely for the  
18 benefit of the disabled child and it shall be reported annually to  
19 the State Board. A child shall not be considered disabled if the  
20 child is able to pursue a remunerative occupation, with the  
21 remuneration being reasonably substantial rather than merely  
22 nominal. The payment so provided shall be calculated after payments  
23 have been made to all eligible children as provided in this section;  
24 provided further, that beneficiaries now receiving pensions under

1 the provisions of Sections 49-112 or 49-113 of this title shall,  
2 upon application to the State Board, thereafter be entitled to a  
3 pension equal to the amount which they would have received if this  
4 act were in effect at the time the right to said pension accrued.

5 C. In the event a surviving spouse of a member remarried prior  
6 to June 7, 1993, the surviving spouse shall be eligible to receive  
7 the pension benefits provided for in this section. To receive the  
8 pension benefits provided for in this section the surviving spouse  
9 falling within this section shall submit a written request for such  
10 benefits to the Oklahoma Firefighters Pension and Retirement System.  
11 The Oklahoma Firefighters Pension and Retirement System shall  
12 approve requests by surviving spouses meeting the requirements of  
13 this section. Upon approval by the Oklahoma Firefighters Pension  
14 and Retirement System, the surviving spouse shall be entitled to the  
15 pension benefits provided for in this section beginning from the  
16 date of approval forward. Pension benefits provided to surviving  
17 spouses falling within this section shall not apply to alter any  
18 amount of pension benefits paid or due prior to the Oklahoma  
19 Firefighters Pension and Retirement System's approval of the  
20 remarried surviving spouse's written request for benefits.

21 D. No surviving spouse shall receive benefits from this  
22 section, Section 50-117 of this title, or Section 2-306 of Title 47  
23 of the Oklahoma Statutes as the surviving spouse of more than one  
24 member of the Oklahoma Firefighters Pension and Retirement System,

1 the Oklahoma Police Pension and Retirement System, or the Oklahoma  
2 Law Enforcement Retirement System. The surviving spouse of more  
3 than one member shall elect which member's benefits he or she will  
4 receive.

5 E. Upon the death of a retired member, the benefit payment for  
6 the month in which the retired member died, if not previously paid,  
7 shall be made to the beneficiary of the member or to the member's  
8 estate if there is no beneficiary. Such benefit payment shall be  
9 made in an amount equal to a full monthly benefit payment regardless  
10 of the day of the month in which the retired member died.

11 F. Upon the death of an unmarried firefighter, or a firefighter  
12 whose spouse does not meet the qualifications of beneficiary who has  
13 one or more children, said child or children shall receive pension  
14 benefits as provided in subsection B of this section as if the  
15 surviving spouse had died; provided, that upon the death of the  
16 firefighter, said child or children shall be entitled to have the  
17 System pay to the child's or children's trustee of a trust, whether  
18 inter vivos or testamentary, which trust provides for the receipt of  
19 the pension benefits to be held and administered for the sole  
20 benefit of said child, or if there is no trust, to the child's or  
21 children's legally appointed guardian, the pension benefits as  
22 provided in subsection B of this section in an amount not to exceed  
23 one hundred percent (100%) of said pension. The money so paid to  
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1 the guardian or trustee shall be used solely for the benefit of the  
2 child and it shall be reported annually to the State Board.

3 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-126, as  
4 last amended by Section 7, Chapter 546, O.S.L. 2004 (11 O.S. Supp.  
5 2006, Section 49-126), is amended to read as follows:

6 Section 49-126. A. Except as otherwise provided by this  
7 section, no portion of said pension shall, either before or after  
8 its order of distribution by the State Board to such disabled  
9 members of said fire department, or the surviving spouse, alternate  
10 payee as defined in subsection B of this section, or guardian of  
11 such minor child or children, to the deceased or retired member of  
12 such department, be held, seized, taken, subjected to or detained or  
13 levied on by virtue of any attachment, execution, injunction, writ  
14 interlocutory or other order or decree, or any process or proceeding  
15 whatever, issued out of or by any court of this state for the  
16 payment or satisfaction, in whole or in part, of any debt, damages,  
17 claim, demand or judgment against such member, or his or her  
18 surviving spouse, alternate payee, or the guardian of said minor  
19 child or children of any deceased member, nor shall said fund or any  
20 claim thereto be directly or indirectly assigned and any attempt to  
21 assign or transfer the same shall be void; but the funds shall be  
22 held, kept, secured and distributed for the purpose of pensioning  
23 the persons named in this article, and for no other purpose  
24 whatever. Notwithstanding the foregoing, effective August 5, 1997,

1 the State Board may approve any offset of a member's benefit to pay  
2 a judgment or settlement against a member for a crime involving the  
3 System, for a breach of the member's fiduciary duty to the System,  
4 or for funds or monies incorrectly paid to a member or beneficiary  
5 by mistake, provided such offset is in accordance with the  
6 requirements of Section 401(a)(13) of the Internal Revenue Code of  
7 1986, as amended.

8 B. 1. The provisions of subsection A of this section shall not  
9 apply to a qualified domestic order as provided pursuant to this  
10 subsection.

11 2. The term "qualified domestic order" means an order issued by  
12 a district court of this state pursuant to the domestic relation  
13 laws of this state which relates to the provision of marital  
14 property rights to an alternate payee and which creates or  
15 recognizes the existence of the right of an alternate payee and  
16 assigns to an alternate payee the right to receive a portion of the  
17 benefits payable with respect to a member of the System.

18 3. The term "alternate payee" means any spouse, former spouse,  
19 minor or disabled child or children, or other dependent of the  
20 member who is recognized by a domestic relations order as having a  
21 right to receive benefits payable with respect to a member of the  
22 System.

23 4. For purposes of the payment of marital property, to qualify  
24 as an alternate payee, a spouse or former spouse must have been

1 married to the related member for a period of not less than thirty  
2 (30) continuous months immediately preceding the commencement of the  
3 proceedings from which the qualified domestic order issues.

4 5. A qualified domestic order is valid and binding on the State  
5 Board and the related member only if it meets the requirements of  
6 this subsection.

7 6. A qualified domestic order shall clearly specify:

- 8 a. the name and last-known mailing address (if any) of  
9 the member and the name and mailing address of the  
10 alternate payee covered by the order,
- 11 b. the amount or percentage of the member's benefits to  
12 be paid by the System to the alternate payee,
- 13 c. the number of payments or period to which such order  
14 applies,
- 15 d. the characterization of the benefit as to marital  
16 property rights or child support, and
- 17 e. each plan to which such order applies.

18 7. A qualified domestic order meets the requirements of this  
19 subsection only if such order:

- 20 a. does not require the System to provide any type or  
21 form of benefit, or any option not otherwise provided  
22 under state law as relates to the System,
- 23 b. does not require the System to provide increased  
24 benefits, and

1           c.    does not require the payment of benefits to an  
2                    alternate payee which are required to be paid to  
3                    another alternate payee pursuant to another order  
4                    previously determined to be a qualified domestic order  
5                    or an order recognized by the System as a valid order  
6                    prior to the effective date of this act.

7           8.    A qualified domestic order shall not require payment of  
8                    benefits to an alternate payee prior to the actual retirement date  
9                    of the related member.

10          9.    The alternate payee shall have a right to receive benefits  
11                   payable to a member of the System under the Oklahoma Firefighters  
12                   Deferred Option plan provided for pursuant to Section 49-106.1 of  
13                   this title, but only to the extent such benefits have been credited  
14                   or paid into the member's Oklahoma Firefighters Deferred Option Plan  
15                   account during the term of the marriage.

16          10.   The obligation of the System to pay an alternate payee  
17                    pursuant to a qualified domestic order shall cease upon the earlier  
18                    of the death of the related member or the death of the alternate  
19                    payee. Upon the death of the alternate payee, the assignment to the  
20                    alternate payee of the right to receive a portion of the benefits  
21                    payable with respect to the member shall cease and the payments of  
22                    benefits to the member shall be reinstated.

23          ~~10.~~ 11.   This subsection shall not be subject to the provisions  
24                    of the Employee Retirement Income Security Act of 1974 (ERISA), 29

1 U.S.C.A. Section 1001, et seq., as amended from time to time, or  
2 rules and regulations promulgated thereunder, and court cases  
3 interpreting said act.

4 ~~11.~~ 12. The Oklahoma Firefighters Pension and Retirement Board  
5 shall promulgate such rules as are necessary to implement the  
6 provisions of this subsection.

7 ~~12.~~ 13. An alternate payee who has acquired beneficiary rights  
8 pursuant to a valid qualified domestic order must fully comply with  
9 all provisions of the rules promulgated by the State Board pursuant  
10 to this subsection in order to continue receiving his or her  
11 benefit.

12 C. The provisions of subsection A of this section shall not  
13 apply to a Child Support Enforcement Division order for a support  
14 arrearage pursuant to Section 240.23 of Title 56 of the Oklahoma  
15 Statutes and current child support payments made pursuant to a valid  
16 court order.

17 D. The provisions of subsection A of this section shall not  
18 apply to a federal tax levy made pursuant to Section 6331 of the  
19 Internal Revenue Code of 1986, as amended, and the collection by the  
20 United States on a judgment resulting from an unpaid tax assessment.

21 SECTION 5. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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