

1 STATE OF OKLAHOMA

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

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 859

By: Barrington of the Senate

and

6 Joyner, Roan, Walker and  
7 Collins of the House

8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to cities and towns; amending 11 O.S.  
11 2001, Sections 29-202, as amended by Section 2,  
12 Chapter 460, O.S.L. 2003, 49-106.2, as last amended  
13 by Section 3, Chapter 546, O.S.L. 2004, 49-112, 49-  
14 113, as last amended by Section 14, Chapter 46, 2nd  
15 Extraordinary Session, O.S.L. 2006 and 49-126, as  
16 last amended by Section 7, Chapter 546, O.S.L. 2004  
17 (11 O.S. Supp. 2006, Sections 29-202, 49-106.1, 49-  
18 113 and 49-126), which relate to firefighters;  
19 modifying definition; defining terms; modifying  
20 eligibility for participation in the Oklahoma  
21 Firefighters Deferred Option Plan; specifying  
22 distribution of pension benefit for members who lose  
23 their life under certain circumstances; specifying  
24 conditions when a child is not considered disabled  
for purposes of receiving a pension benefit;  
specifying when an alternate payee can receive  
certain benefits; and declaring an emergency.

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

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

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

6 1. "Volunteer firefighter" means a person who is enrolled as a  
7 member of a fire department and who serves in such capacity without  
8 receiving a regular salary. A person who is a salaried public  
9 safety employee of a municipality shall not serve as a volunteer  
10 firefighter of a volunteer fire department unless the person is off  
11 duty and such service is not a condition of employment. A public  
12 safety employee is a person employed to serve as a salaried  
13 firefighter, police or other law enforcement officer or emergency  
14 medical technician;

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

18 3. "Municipality" means a municipality which has qualified to  
19 participate in the Oklahoma Firefighters Pension and Retirement  
20 System.

21 SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.1, as  
22 last amended by Section 3, Chapter 546, O.S.L. 2004 (11 O.S. Supp.  
23 2006, Section 49-106.1), is amended to read as follows:

24

1 Section 49-106.1 A. In lieu of terminating employment and  
2 accepting a service retirement pension pursuant to Sections 49-101  
3 and 49-106 of this title, any member of the Oklahoma Firefighters  
4 Pension and Retirement System who has not less than twenty (20)  
5 years of creditable service and who is eligible to receive a service  
6 retirement pension may elect to participate in the Oklahoma  
7 Firefighters Deferred Option Plan and defer the receipts of benefits  
8 in accordance with the provisions of this section.

9 B. For purposes of this section, creditable service shall  
10 include service credit reciprocally recognized pursuant to Sections  
11 49-100.1 through 49-100.8 and Sections 49-101, 49-101.1 and 49-101.2  
12 of this title but for eligibility purposes only.

13 C. The duration of participation in the Oklahoma Firefighters  
14 Deferred Option Plan for active firefighters shall not exceed five  
15 (5) years. Participation in the Oklahoma Firefighters Deferred  
16 Option Plan must begin the first day of a month and end on the last  
17 day of a month. At the conclusion of a member's participation in  
18 the Oklahoma Firefighters Deferred Option Plan, the member shall  
19 terminate employment with all participating municipalities as a  
20 firefighter, and shall start receiving the member's accrued monthly  
21 retirement benefit from the System. Such a member may be reemployed  
22 by a participating municipality but only in a position not covered  
23 under the System, and receive in-service distributions of such  
24 member's accrued monthly retirement benefit from the System.

1 D. When a member begins participation in the Oklahoma  
2 Firefighters Deferred Option Plan, the contribution of the member  
3 shall cease. The employer contributions shall continue to be paid  
4 in accordance with subsection B of Section 49-122 of this title.  
5 Employer contributions for members who elect the Oklahoma  
6 Firefighters Deferred Option Plan shall be credited equally to the  
7 Oklahoma Firefighters Pension and Retirement System and to the  
8 member's Oklahoma Firefighters Deferred Option Plan account. The  
9 monthly retirement benefits that would have been payable had the  
10 member elected to cease employment and receive a service retirement  
11 shall be paid into the member's Oklahoma Firefighters Deferred  
12 Option Plan account.

13 E. 1. A member who participates in this plan shall be eligible  
14 to receive cost of living increases.

15 2. A member who participates in this plan shall earn interest  
16 at a rate of two percentage points below the rate of return of the  
17 investment portfolio of the System, but no less than the actuarial  
18 assumed interest rate as certified by the actuary in the yearly  
19 evaluation report of the actuary. The interest shall be credited to  
20 the individual account balance of the member on an annual basis.

21 F. A member in the plan shall receive, at the option of the  
22 member, a lump sum payment from the account equal to the payments to  
23 the account or an annuity based upon the account of the member or  
24 may elect any other method of payment if approved by the Board of

1 Trustees. If a member becomes so physically or mentally disabled  
2 while in, or in consequence of, the performance of his or her duty  
3 as to prevent the effective performance of his or her duties that  
4 the State Board approves an in line of duty disability pension, the  
5 payment from the account shall be an in line of duty disability  
6 payment.

7 G. If a member dies while maintaining an account balance in the  
8 plan the System shall pay to the designated recipient or recipients  
9 of the member, or if there is no designated recipient or if the  
10 designated recipient predeceases the member, to the spouse of the  
11 member, or if there is no spouse or if the spouse predeceases the  
12 member, to the estate of the member a lump sum payment equal to the  
13 account balance of the member. If such member was receiving, or  
14 eligible to receive, an in line of duty disability pension at the  
15 time of his or her death, payment of the account balance shall be an  
16 in line of duty disability payment. If a designated recipient is  
17 the surviving spouse of the member, the surviving spouse shall  
18 receive his or her portion of the account balance of the member  
19 pursuant to subsection F of this section.

20 H. In lieu of participating in the Oklahoma Firefighters  
21 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
22 this section, a member may elect to participate in the Oklahoma  
23 Firefighters Deferred Option Plan pursuant to this subsection as  
24 follows:



1 Oklahoma Firefighters Deferred Option Plan pursuant to  
2 subsections A, B, C, D, E and F of this section from  
3 the back drop date to the termination date; and

4 2. At the termination date, the monthly pension benefit shall  
5 be determined based on earlier attained credited service and on the  
6 final average salary as of the back drop date. The member's  
7 individual deferred option account shall be credited with an amount  
8 equal to the deferred benefit balance, the member shall terminate  
9 employment with all participating municipalities as a firefighter,  
10 and shall start receiving the member's accrued monthly retirement  
11 benefit from the System. Such a member may be reemployed by a  
12 participating municipality but only in a position not covered under  
13 the System, and receive in-service distributions of such member's  
14 accrued monthly retirement benefit from the System. The provisions  
15 of subsections B, C, E, F and G of this section shall apply to this  
16 subsection. A member shall not participate in the Oklahoma  
17 Firefighters Deferred Option Plan pursuant to this subsection if the  
18 member has elected to participate in the Oklahoma Firefighters  
19 Deferred Option Plan pursuant to subsections A, B, C, D, E and F of  
20 this section.

21 ~~3. Effective July 1, 2003, if a member who has more than twenty~~  
22 ~~(20) years of creditable service and who is eligible to receive a~~  
23 ~~service retirement pension dies on or after July 1, 2003, and prior~~  
24 ~~to terminating employment, his/her surviving spouse shall be~~

1 ~~eligible to elect to receive a benefit determined as if the member~~  
2 ~~had elected to participate in the Oklahoma Firefighters Deferred~~  
3 ~~Option Plan in accordance with this subsection on the day~~  
4 ~~immediately preceding the member's death, provided such election is~~  
5 ~~made within one year from the date of the member's death. The~~  
6 ~~monthly pension such surviving spouse is receiving, or entitled to~~  
7 ~~receive, shall be adjusted in accordance with the provisions of this~~  
8 ~~subsection to account for the member's participation in the Oklahoma~~  
9 ~~Firefighters Deferred Option Plan. The adjusted monthly pension so~~  
10 ~~determined shall be subtracted from the monthly pension the~~  
11 ~~surviving spouse was receiving prior to the election, and the~~  
12 ~~difference for each month, if greater than zero (0), shall be~~  
13 ~~adjusted to include interest based on the actuarial assumed interest~~  
14 ~~rate as certified by the actuary in the yearly evaluation report of~~  
15 ~~the actuary. The sum of all such adjusted monthly amounts shall be~~  
16 ~~used to reduce the surviving spouse's account balance in the~~  
17 ~~Oklahoma Firefighters Deferred Option Plan. For purposes of this~~  
18 ~~election, the surviving spouse must have been married to the~~  
19 ~~firefighter for the thirty (30) continuous months preceding the~~  
20 ~~firefighter's death, provided, the surviving spouse of a member who~~  
21 ~~died while in, or as a consequence of, the performance of the~~  
22 ~~member's duty for a participating municipality shall not be subject~~  
23 ~~to the marriage limitation for this election.~~

24

1 I. Certain surviving spouses and members shall be eligible to  
2 participate in the Oklahoma Firefighters Deferred Option Plan  
3 pursuant to subsection H of this section and this subsection.

4 1. For purposes of this subsection, the following definitions  
5 shall apply:

6 a. "back drop election date" means the date the surviving  
7 spouse or member elects to commence participation in  
8 the Oklahoma Firefighters Deferred Option Plan  
9 pursuant to subsection H of this section and this  
10 subsection,

11 b. "interest" means the actuarial assumed interest rate  
12 as certified by the actuary in the yearly evaluation  
13 report of the actuary,

14 c. "monthly adjustment amount" means the difference  
15 between the monthly pension prior to the back drop  
16 election and the adjusted monthly pension due to the  
17 back drop election,

18 d. "back drop pension adjustment amount" means the sum of  
19 all the monthly adjustment amounts adjusted for  
20 interest from the pension commencement date to the  
21 back drop election date, and

22 e. "deferred benefit balance adjustment amount" means the  
23 interest on the deferred benefit balance from the  
24

1 pension commencement date to the back drop election  
2 date.

3 2. If a member who has more than twenty (20) years of  
4 creditable service and is eligible to receive a service retirement  
5 pension dies on or after the effective date of this act, and prior  
6 to terminating employment, the member's surviving spouse shall be  
7 eligible to elect to receive a benefit determined as if the member  
8 had elected to participate in the Oklahoma Firefighters Deferred  
9 Option Plan in accordance with subsection H of this section on the  
10 day immediately preceding such member's death. The surviving spouse  
11 must make any such election within one (1) year from the date of the  
12 member's death. If such election is made, the monthly pension such  
13 surviving spouse is receiving, or is entitled to receive, shall be  
14 adjusted in accordance with the provisions of subsection H of this  
15 section to account for the member's participation in the Oklahoma  
16 Firefighters Deferred Option Plan. The deferred benefit balance  
17 such surviving spouse is entitled to receive shall be reduced by the  
18 back drop pension adjustment amount and increased by the deferred  
19 benefit balance adjustment amount. The surviving spouse may only  
20 make a back drop election if the deferred benefit balance after the  
21 adjustment described in this paragraph is greater than Zero Dollars  
22 (\$0.00). The surviving spouse may only make this election if the  
23 member has not previously elected to participate in the Oklahoma  
24 Firefighters Deferred Option Plan. For purposes of this election,

1 the surviving spouse must have been married to the firefighter for  
2 the thirty (30) continuous months preceding the firefighter's death;  
3 provided, the surviving spouse of a member who died while in, or as  
4 a consequence of, the performance of the member's duty for a  
5 participating municipality shall not be subject to the marriage  
6 limitation for this election.

7 3. If a member has more than twenty (20) years of creditable  
8 service and is eligible for a retirement for disability monthly  
9 pension pursuant to Section 49-109 of this title on or after the  
10 effective date of this act, such member shall be eligible to elect  
11 to receive a benefit determined as if the member had elected to  
12 participate in the Oklahoma Firefighters Deferred Option Plan, in  
13 accordance with subsection H of this section, on the day immediately  
14 preceding the date of the member's disability retirement, provided  
15 such election is made within two (2) years from the date of the  
16 member's disability retirement. The disability monthly pension such  
17 member is receiving, or entitled to receive, shall be adjusted in  
18 accordance with the provisions of subsection H of this section to  
19 account for the member's participation in the Oklahoma Firefighters  
20 Deferred Option Plan. The deferred benefit balance such member is  
21 entitled to receive shall be reduced by the back drop pension  
22 adjustment amount and increased by the deferred benefit balance  
23 adjustment amount. The member may only make a back drop election if  
24 the deferred benefit balance after the adjustment described in this

1 paragraph is greater than Zero Dollars (\$0.00). The member may only  
2 make this election if the member has not previously elected to  
3 participate in the Oklahoma Firefighters Deferred Option Plan.

4 4. If a member has more than twenty (20) years of creditable  
5 service and filed a grievance for wrongful termination occurring on  
6 or after the effective date of this act, but is not reinstated as an  
7 active member, such member shall be eligible to elect to receive a  
8 benefit determined as if the member had elected to participate in  
9 the Oklahoma Firefighters Deferred Option Plan in accordance with  
10 subsection H of this section on the day immediately preceding the  
11 date of the member's termination. Such election must be made within  
12 two (2) years from the date of the member's termination as an active  
13 member and, if the member's case pertaining to the member's  
14 termination is on appeal to a court of competent jurisdiction,  
15 within such period set by the State Board in its sole discretion.

16 The monthly pension such member is receiving, or entitled to  
17 receive, shall be adjusted in accordance with the provisions of  
18 subsection H of this section to account for the member's  
19 participation in the Oklahoma Firefighters Deferred Option Plan.

20 The deferred benefit balance such member is entitled to receive  
21 shall be reduced by the back drop pension adjustment amount and  
22 increased by the deferred benefit balance adjustment amount. The  
23 member may only make a back drop election if the deferred benefit  
24 balance after the adjustment described in this paragraph is greater

1 than Zero Dollars (\$0.00). The member may only make this election  
2 if the member has not previously elected to participate in the  
3 Oklahoma Firefighters Deferred Option Plan.

4 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-112, is  
5 amended to read as follows:

6 Section 49-112. A. Whenever any member of the fire department  
7 shall lose his or her life by reason of any injury or sickness  
8 sustained by him or her while in, or in consequence of, the  
9 performance of his or her duty or while on active duty in the  
10 National Guard and Reserves called to active duty, leaving a  
11 surviving spouse, or child or children under the age of eighteen  
12 (18) years, then, upon satisfactory proof of such facts made to it,  
13 the State Board shall order and direct that a monthly pension be  
14 paid. Such amount shall be determined in accordance with the  
15 provisions of subsection A of Section ~~49-113~~ 49-109 of this title.  
16 In the event of the death of the surviving spouse, the pension shall  
17 cease, and should there then be but one living child such child  
18 shall receive an amount equal to one hundred percent (100%) of the  
19 pension, but if there then be more than one living child, one  
20 hundred percent (100%) of the pension shall be divided equally  
21 between the children until each child reaches the age of eighteen  
22 (18) years or until the age of twenty-two (22) years if the child is  
23 enrolled full-time and regularly attending a public or private  
24 school or any institution of higher education. In the event the

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

21 B. Whenever any member of the fire department who has not  
22 terminated employment shall lose his or her life for any reason not  
23 described in subsection A of this section, after completing less  
24 than twenty (20) years of credited service, leaving a surviving

1 spouse, or child or children under the age of eighteen (18) years,  
2 then upon satisfactory proof of such facts made to it, the State  
3 Board shall order and direct that a monthly pension be paid. Such  
4 amount shall be fifty percent (50%) of the average monthly salary  
5 which was paid to the firefighter during the last sixty (60) months  
6 of the firefighter's service. In the event of the death of the  
7 surviving spouse, the pension shall cease, and should there then be  
8 but one living child such child shall receive an amount equal to one  
9 hundred percent (100%) of the pension, but if there then be more  
10 than one living child, one hundred percent (100%) of the pension  
11 shall be divided equally between the children until each child  
12 reaches the age of eighteen (18) years or the age of twenty-two (22)  
13 years if the child is enrolled full-time and regularly attending a  
14 public or private school or any institution of higher education. In  
15 the event the State Board finds that such a child who is not married  
16 at the time of death of the member or the member's surviving spouse  
17 and who at the time the child attains or attained the age of  
18 eighteen (18) years is either physically or mentally disabled, the  
19 pension shall continue so long as the disability remains. Upon the  
20 death of the firefighter and surviving spouse, if any, said  
21 physically or mentally disabled child shall be entitled to have paid  
22 to the child's trustee of a trust, whether inter vivos or  
23 testamentary, which trust provides for the receipt of the pension  
24 benefits to be held and administered for the sole benefit of said

1 physically or mentally disabled child, or if there is no trust, to  
2 the child's legally appointed guardian, an amount not to exceed one  
3 hundred percent (100%) of the pension. The money paid to the  
4 guardian or trustee shall be used solely for the benefit of the  
5 disabled child and it shall be reported annually to the State Board.  
6 The payment provided shall be calculated after payments have been  
7 made to all eligible children as provided in this subsection. If  
8 the member does not leave a beneficiary or disabled child as  
9 described in this subsection, the accumulated contributions made to  
10 the System by the member shall be paid to the estate of the member.

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

15 SECTION 4. AMENDATORY 11 O.S. 2001, Section 49-113, as  
16 last amended by Section 14, Chapter 46, 2nd Extraordinary Session,  
17 O.S.L. 2006 (11 O.S. Supp. 2006, Section 49-113), is amended to read  
18 as follows:

19 Section 49-113. A. 1. In the event of the death of a  
20 firefighter who at the time of the firefighter's death was drawing a  
21 pension, other than a disability pension, or who at the time of the  
22 firefighter's death (whether death occurred while on duty, but not  
23 in or in consequence of the performance of duty, or while on  
24 vacation or off duty) was eligible, upon written request, to retire

1 and draw a pension, other than a disability pension, the beneficiary  
2 of such person shall be paid an amount not to exceed one hundred  
3 percent (100%) of said pension.

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

14 3. In the event of the death of a firefighter who at the time  
15 of the firefighter's death was drawing, or eligible to draw, a  
16 disability pension for a physical or mental disability from causes  
17 not arising in the line of duty and which prevented the effective  
18 performance of the firefighter's duties, the beneficiary of such  
19 person shall be paid an amount not to exceed one hundred percent  
20 (100%) of the pension paid in accordance with subsection C of  
21 Section 49-109 of this title.

22 4. Effective March 1, 1997, if a firefighter to whom a  
23 retirement or disability benefit has been awarded, or who is  
24 eligible therefore, dies prior to the date as of which the total

1 amount of retirement or disability benefit paid equals the total  
2 amount of the employee contributions paid by or on behalf of the  
3 member and the member does not have a surviving beneficiary, the  
4 total benefits paid as of the date of the member's death shall be  
5 subtracted from the accumulated employee contribution amount and the  
6 balance, if greater than Zero Dollars (\$0.00), shall be paid to the  
7 member's estate.

8       5. Any person eligible to receive a payment pursuant to this  
9 section may make an election to waive all or a portion of monthly  
10 payments.

11       B. In the event of the death of the surviving spouse, the  
12 pension shall cease, and should there then be but one living child  
13 same shall receive an amount equal to one hundred percent (100%) of  
14 said pension, but if there then be more than one living child, one  
15 hundred percent (100%) of said pension shall be divided equally  
16 between the children until each child reaches the age of eighteen  
17 (18) years or until the age of twenty-two (22) years if the child is  
18 enrolled full time and regularly attending a public or private  
19 school or any institution of higher education. Provided, that in  
20 the event the State Board finds that such a child who is not married  
21 at the time of death of the member or the member's surviving spouse  
22 and who at the time the child attains or attained the age of  
23 eighteen (18) years is either physically or mentally disabled, the  
24 pension thereof shall continue so long as such disability remains;

1 provided, that upon the death of the firefighter and surviving  
2 spouse, if any, said physically or mentally disabled child shall be  
3 entitled to have paid to the child's trustee of a trust, whether  
4 inter vivos or testamentary, which trust provides for the receipt of  
5 the pension benefits to be held and administered for the sole  
6 benefit of said physically or mentally disabled child, or if there  
7 is no trust, to the child's legally appointed guardian, an amount  
8 not to exceed one hundred percent (100%) of said pension. The money  
9 so paid to the guardian or trustee shall be used solely for the  
10 benefit of the disabled child and it shall be reported annually to  
11 the State Board. A child shall not be considered disabled if the  
12 child is able to pursue a remunerative occupation, with the  
13 remuneration being reasonably substantial rather than merely  
14 nominal. The payment so provided shall be calculated after payments  
15 have been made to all eligible children as provided in this section;  
16 provided further, that beneficiaries now receiving pensions under  
17 the provisions of Sections 49-112 or 49-113 of this title shall,  
18 upon application to the State Board, thereafter be entitled to a  
19 pension equal to the amount which they would have received if this  
20 act were in effect at the time the right to said pension accrued.

21 C. In the event a surviving spouse of a member remarried prior  
22 to June 7, 1993, the surviving spouse shall be eligible to receive  
23 the pension benefits provided for in this section. To receive the  
24 pension benefits provided for in this section the surviving spouse

1 falling within this section shall submit a written request for such  
2 benefits to the Oklahoma Firefighters Pension and Retirement System.  
3 The Oklahoma Firefighters Pension and Retirement System shall  
4 approve requests by surviving spouses meeting the requirements of  
5 this section. Upon approval by the Oklahoma Firefighters Pension  
6 and Retirement System, the surviving spouse shall be entitled to the  
7 pension benefits provided for in this section beginning from the  
8 date of approval forward. Pension benefits provided to surviving  
9 spouses falling within this section shall not apply to alter any  
10 amount of pension benefits paid or due prior to the Oklahoma  
11 Firefighters Pension and Retirement System's approval of the  
12 remarried surviving spouse's written request for benefits.

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

21 E. Upon the death of a retired member, the benefit payment for  
22 the month in which the retired member died, if not previously paid,  
23 shall be made to the beneficiary of the member or to the member's  
24 estate if there is no beneficiary. Such benefit payment shall be

1 made in an amount equal to a full monthly benefit payment regardless  
2 of the day of the month in which the retired member died.

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

18 SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-126, as  
19 last amended by Section 7, Chapter 546, O.S.L. 2004 (11 O.S. Supp.  
20 2006, Section 49-126), is amended to read as follows:

21 Section 49-126. A. Except as otherwise provided by this  
22 section, no portion of said pension shall, either before or after  
23 its order of distribution by the State Board to such disabled  
24 members of said fire department, or the surviving spouse, alternate

1 payee as defined in subsection B of this section, or guardian of  
2 such minor child or children, to the deceased or retired member of  
3 such department, be held, seized, taken, subjected to or detained or  
4 levied on by virtue of any attachment, execution, injunction, writ  
5 interlocutory or other order or decree, or any process or proceeding  
6 whatever, issued out of or by any court of this state for the  
7 payment or satisfaction, in whole or in part, of any debt, damages,  
8 claim, demand or judgment against such member, or his or her  
9 surviving spouse, alternate payee, or the guardian of said minor  
10 child or children of any deceased member, nor shall said fund or any  
11 claim thereto be directly or indirectly assigned and any attempt to  
12 assign or transfer the same shall be void; but the funds shall be  
13 held, kept, secured and distributed for the purpose of pensioning  
14 the persons named in this article, and for no other purpose  
15 whatever. Notwithstanding the foregoing, effective August 5, 1997,  
16 the State Board may approve any offset of a member's benefit to pay  
17 a judgment or settlement against a member for a crime involving the  
18 System, for a breach of the member's fiduciary duty to the System,  
19 or for funds or monies incorrectly paid to a member or beneficiary  
20 by mistake, provided such offset is in accordance with the  
21 requirements of Section 401(a)(13) of the Internal Revenue Code of  
22 1986, as amended.

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

4 2. The term "qualified domestic order" means an order issued by  
5 a district court of this state pursuant to the domestic relation  
6 laws of this state which relates to the provision of marital  
7 property rights to an alternate payee and which creates or  
8 recognizes the existence of the right of an alternate payee and  
9 assigns to an alternate payee the right to receive a portion of the  
10 benefits payable with respect to a member of the System.

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

16 4. For purposes of the payment of marital property, to qualify  
17 as an alternate payee, a spouse or former spouse must have been  
18 married to the related member for a period of not less than thirty  
19 (30) continuous months immediately preceding the commencement of the  
20 proceedings from which the qualified domestic order issues.

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

24 6. A qualified domestic order shall clearly specify:

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

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

- a. does not require the System to provide any type or form of benefit, or any option not otherwise provided under state law as relates to the System,
- b. does not require the System to provide increased benefits, and
- c. does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee pursuant to another order previously determined to be a qualified domestic order or an order recognized by the System as a valid order prior to the effective date of this act.

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

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

10 10. The obligation of the System to pay an alternate payee  
11 pursuant to a qualified domestic order shall cease upon the earlier  
12 of the death of the related member or the death of the alternate  
13 payee. Upon the death of the alternate payee, the assignment to the  
14 alternate payee of the right to receive a portion of the benefits  
15 payable with respect to the member shall cease and the payments of  
16 benefits to the member shall be reinstated.

17 ~~10.~~ 11. This subsection shall not be subject to the provisions  
18 of the Employee Retirement Income Security Act of 1974 (ERISA), 29  
19 U.S.C.A. Section 1001, et seq., as amended from time to time, or  
20 rules and regulations promulgated thereunder, and court cases  
21 interpreting said act.

22 ~~11.~~ 12. The Oklahoma Firefighters Pension and Retirement Board  
23 shall promulgate such rules as are necessary to implement the  
24 provisions of this subsection.

1        ~~12.~~ 13. An alternate payee who has acquired beneficiary rights  
2 pursuant to a valid qualified domestic order must fully comply with  
3 all provisions of the rules promulgated by the State Board pursuant  
4 to this subsection in order to continue receiving his or her  
5 benefit.

6        C. The provisions of subsection A of this section shall not  
7 apply to a Child Support Enforcement Division order for a support  
8 arrearage pursuant to Section 240.23 of Title 56 of the Oklahoma  
9 Statutes and current child support payments made pursuant to a valid  
10 court order.

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

15        SECTION 6. It being immediately necessary for the preservation  
16 of the public peace, health and safety, an emergency is hereby  
17 declared to exist, by reason whereof this act shall take effect and  
18 be in full force from and after its passage and approval.

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