

THE HOUSE OF REPRESENTATIVES
Wednesday, April 18, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 859

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 859 - By:
BARRINGTON of the Senate and JOYNER of the House.

(Oklahoma Firefighters Pension and Retirement System – survivor benefits –
qualified domestic order -
emergency)

1 SECTION 1. AMENDATORY 11 O.S. 2001, Section 29-202, as amended by
2 Section 2, Chapter 460, O.S.L. 2003 (11 O.S. Supp. 2006, Section 29-202), is amended to
3 read as follows:
4 Section 29-202. As used in Sections 29-201 through 29-205 of this title:
5 1. “Volunteer firefighter” means a person who is enrolled as a member of a fire
6 department and who serves in such capacity without receiving a regular salary. A
7 person who is a salaried public safety employee of a municipality shall not serve as a
8 volunteer firefighter of a volunteer fire department unless the person is off duty and such
9 service is not a condition of employment. A public safety employee is a person employed
10 to serve as a salaried firefighter, police or other law enforcement officer or emergency
11 medical technician;

1 2. “Volunteer fire department” means a fire department which has in its employ
2 not more than two full-time salaried firefighters; and

3 3. “Municipality” means a municipality which has qualified to participate in the
4 Oklahoma Firefighters Pension and Retirement System.

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

7 Section 49-112. A. Whenever any member of the fire department shall lose his or
8 her life by reason of any injury or sickness sustained by him or her while in, or in
9 consequence of, the performance of his or her duty or while on active duty in the National
10 Guard and Reserves called to active duty, leaving a surviving spouse, or child or children
11 under the age of eighteen (18) years, then, upon satisfactory proof of such facts made to
12 it, the State Board shall order and direct that a monthly pension be paid. Such amount
13 shall be determined in accordance with the provisions of subsection A of Section 49-113
14 49-109 of this title. In the event of the death of the surviving spouse, the pension shall
15 cease, and should there then be but one living child such child shall receive an amount
16 equal to one hundred percent (100%) of the pension, but if there then be more than one
17 living child, one hundred percent (100%) of the pension shall be divided equally between
18 the children until each child reaches the age of eighteen (18) years or until the age of
19 twenty-two (22) years if the child is enrolled full-time and regularly attending a public or
20 private school or any institution of higher education. In the event the State Board finds
21 that such a child who is not married at the time of death of the member or the member’s
22 surviving spouse and who at the time the child attains or attained the age of eighteen

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

14 B. Whenever any member of the fire department who has not terminated
15 employment shall lose his or her life for any reason not described in subsection A of this
16 section, after completing ten (10) years of credited service and prior to completing twenty
17 (20) years of credited service, leaving a surviving spouse, or child or children under the
18 age of eighteen (18) years, then upon satisfactory proof of such facts made to it, the State
19 Board shall order and direct that a monthly pension be paid. Such amount shall be fifty
20 percent (50%) of the average monthly salary which was paid to the firefighter during the
21 last sixty (60) months of the firefighter's service. In the event of the death of the
22 surviving spouse, the pension shall cease, and should there then be but one living child

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

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

4 SECTION 3. AMENDATORY 11 O.S. 2001, Section 49-113, as last amended by
5 Section 14, Chapter 46, 2nd Extraordinary Session, O.S.L. 2006 (11 O.S. Supp. 2006,
6 Section 49-113), is amended to read as follows:

7 Section 49-113. A. 1. In the event of the death of a firefighter who at the time of
8 the firefighter's death was drawing a pension, other than a disability pension, or who at
9 the time of the firefighter's death (whether death occurred while on duty, but not in or in
10 consequence of the performance of duty, or while on vacation or off duty) was eligible,
11 upon written request, to retire and draw a pension, other than a disability pension, the
12 beneficiary of such person shall be paid an amount not to exceed one hundred percent
13 (100%) of said pension.

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

18 C. In the event a surviving spouse of a member remarried prior to June 7, 1993, the
19 surviving spouse shall be eligible to receive the pension benefits provided for in this
20 section. To receive the pension benefits provided for in this section the surviving spouse
21 falling within this section shall submit a written request for such benefits to the
22 Oklahoma Firefighters Pension and Retirement System. The Oklahoma Firefighters

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

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

15 E. Upon the death of a retired member, the benefit payment for the month in which
16 the retired member died, if not previously paid, shall be made to the beneficiary of the
17 member or to the member's estate if there is no beneficiary. Such benefit payment shall
18 be made in an amount equal to a full monthly benefit payment regardless of the day of
19 the month in which the retired member died.

20 F. Upon the death of an unmarried firefighter, or a firefighter whose spouse does
21 not meet the qualifications of beneficiary who has one or more children, said child or
22 children shall receive pension benefits as provided in subsection B of this section as if the

1 surviving spouse had died; provided, that upon the death of the firefighter, said child or
2 children shall be entitled to have the System pay to the child's or children's trustee of a
3 trust, whether inter vivos or testamentary, which trust provides for the receipt of the
4 pension benefits to be held and administered for the sole benefit of said child, or if there
5 is no trust, to the child's or children's legally appointed guardian, the pension benefits as
6 provided in subsection B of this section in an amount not to exceed one hundred percent
7 (100%) of said pension. The money so paid to the guardian or trustee shall be used solely
8 for the benefit of the child and it shall be reported annually to the State Board.

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

12 Section 49-126. A. Except as otherwise provided by this section, no portion of said
13 pension shall, either before or after its order of distribution by the State Board to such
14 disabled members of said fire department, or the surviving spouse, alternate payee as
15 defined in subsection B of this section, or guardian of such minor child or children, to the
16 deceased or retired member of such department, be held, seized, taken, subjected to or
17 detained or levied on by virtue of any attachment, execution, injunction, writ
18 interlocutory or other order or decree, or any process or proceeding whatever, issued out
19 of or by any court of this state for the payment or satisfaction, in whole or in part, of any
20 debt, damages, claim, demand or judgment against such member, or his or her surviving
21 spouse, alternate payee, or the guardian of said minor child or children of any deceased
22 member, nor shall said fund or any claim thereto be directly or indirectly assigned and

1 any attempt to assign or transfer the same shall be void; but the funds shall be held,
2 kept, secured and distributed for the purpose of pensioning the persons named in this
3 article, and for no other purpose whatever. Notwithstanding the foregoing, effective
4 August 5, 1997, the State Board may approve any offset of a member's benefit to pay a
5 judgment or settlement against a member for a crime involving the System, for a breach
6 of the member's fiduciary duty to the System, or for funds or monies incorrectly paid to a
7 member or beneficiary by mistake, provided such offset is in accordance with the
8 requirements of Section 401(a)(13) of the Internal Revenue Code of 1986, as amended.

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

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

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

21 4. For purposes of the payment of marital property, to qualify as an alternate
22 payee, a spouse or former spouse must have been married to the related member for a

1 period of not less than thirty (30) continuous months immediately preceding the
2 commencement of the proceedings from which the qualified domestic order issues.

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

5 6. A qualified domestic order shall clearly specify:

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

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

- 17 a. does not require the System to provide any type or form of benefit, or
18 any option not otherwise provided under state law as relates to the
19 System,
20 b. does not require the System to provide increased benefits, and
21 c. does not require the payment of benefits to an alternate payee which
22 are required to be paid to another alternate payee pursuant to another

1 order previously determined to be a qualified domestic order or an
2 order recognized by the System as a valid order prior to the effective
3 date of this act.

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

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

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

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

21 ~~11.~~ 12. The Oklahoma Firefighters Pension and Retirement Board shall promulgate
22 such rules as are necessary to implement the provisions of this subsection.

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

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

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

13 SECTION 5. It being immediately necessary for the preservation of the public
14 peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and be in full force from and
2 after its passage and approval.

3 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
4 FINANCIAL SERVICES, dated 04-17-07 - DO PASS, As Amended.