

HOUSE BILL NO. 129
INTRODUCED BY D. GALLIK
BY REQUEST OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS OF CERTAIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; CLARIFYING BENEFITS; CLARIFYING GUARANTEED ANNUAL BENEFIT ADJUSTMENTS IN REGARD TO A DISABILITY RETIREMENT BENEFIT AND IN REGARD TO NONRETROACTIVE PAYMENT; CLARIFYING SERVICE CREDIT PURCHASE FOR CERTAIN EMPLOYEES IN HIGHER EDUCATION; CLARIFYING THE ELIGIBILITY OF INDIVIDUALS APPOINTED TO CERTAIN ELECTED OFFICES TO PARTICIPATE IN THE RETIREMENT SYSTEMS; CLARIFYING THAT SERVICE CREDIT FOR RETIREMENT MAY ACCRUE FOR VARIOUS EMPLOYER ARRANGEMENTS AND CONTRACTS; PROSPECTIVELY ASSIGNING MOTOR VEHICLE INSPECTORS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM RATHER THAN TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REVISING DEFINITIONS IN REGARD TO RETIREMENT SYSTEMS; ELIMINATING THE AD HOC COST-OF-LIVING INCREASE FOR SOME RETIREES OR MEMBERS' BENEFICIARIES OF THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-2-602, 19-2-715, 19-2-907, 19-2-908, 19-2-909, 19-3-401, 19-3-412, 19-3-510, 19-3-1105, 19-3-1106, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-2111, 19-3-2112, 19-3-2113, 19-6-707, 19-7-101, 19-7-312, 19-7-1101, 19-8-301, 19-8-302, 19-9-1202, 19-9-1205, 19-9-1206, 19-17-102, 19-17-108, 19-17-401, 19-17-402, AND 19-17-502, MCA; AND REPEALING SECTION 19-8-1110, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written

application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to ~~\$5,000~~ \$1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible, unless a written application is filed pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law or to a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account not eligible for direct rollover distribution must be paid directly to the recipient."

Section 2. Section 19-2-715, MCA, is amended to read:

"19-2-715. Purchase of Montana public service. (1) (a) A member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system ~~to the extent that~~ if the member either has:

(i) received or is eligible to receive a refund of accumulated contributions; or

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection ~~(1)(b)~~ (1)(c).

~~(b)(c)~~ Upon receiving the member's payment under subsection ~~(1)(a)~~ (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of service credit for full-time service performed for the state or a political subdivision of

the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes full-time public service, subject to 19-2-403."

Section 3. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees -- family law orders -- rulemaking. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a

percentage of the amount payable or a fixed amount of no more than the amount payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be ~~apportioned~~ paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be ~~apportioned~~ paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be ~~apportioned~~ paid as a percentage only if existing benefit payments are ~~apportioned~~ paid as a percentage. The adjustments must be ~~apportioned~~ paid as a percentage in the same ratio as existing benefit payments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments ~~apportioned~~ paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering

a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders."

Section 4. Section 19-2-908, MCA, is amended to read:

"19-2-908. Time of commencement of benefit -- rulemaking. (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following filing of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) ~~(a) The~~ Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) The guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 may not be paid retroactively. The guaranteed annual benefit adjustment begins on January 1 of the year after the member has received an amount equal to or greater than 12 months of disability benefit payments.

(4) Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 5. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation -- rulemaking. (1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, the following definitions apply:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be ~~apportioned and~~ paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the

member's age and service credit at the time of disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount ~~apportioned~~ paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments ~~apportioned~~ paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders."

Section 6. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership -- inactive vested members -- inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees ~~shall~~ must become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting their employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.

(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit

subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits."

Section 7. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) Except as provided in subsection (2), the following employees and elected officials in covered positions shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) elected officials of the state or local governments, including individuals appointed to fill the unexpired term of elected officials, who:

(i) are paid on a salary or wage basis rather than on a per diem or other reimbursement basis; or

(ii) were members receiving retirement benefits under the defined benefit plan or a distribution under the defined contribution plan at the time of their election;

(b) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the

legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes.

(2) ~~(a) Except as provided in subsection (2)(b), employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.~~

~~(b)(a)~~ A legislator may also become a member as of the date prior to December 30, 2000, that the legislator filed an irrevocable written application with the board to become a member and paid the employee share of contributions determined by the board to be required to purchase the legislator's prior service credit. However, the legislator shall purchase at least 5 years of service credit or, if the legislator has less than 5 years of membership service, service credit equal to all of the legislator's membership service. The legislative branch is responsible for paying the amount determined by the board to be the employer's share of contributions required to purchase a legislator's service credit under this subsection ~~(2)(b)~~ (2)(a).

~~(c)(b)~~ A member who ~~after April 17, 2003,~~ is elected to a local government position in which the member works less than 960 hours in a calendar year may, within 180 days of being elected, decline optional membership with respect to the member's elected position.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee or elected official in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 180 days of the commencement of the employee's or elected official's employment.

(d) The employer shall retain a copy of the employee's or elected official's written application.

(4) If the employee or elected official fails to file the written application required under subsection (1) with the board within the time allowed in subsection (3), the employee or elected official waives membership.

(5) An employee or elected official who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee or elected official who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) Except as provided in subsection ~~(2)(e)~~ (2)(b), membership in the retirement system is not optional for an employee or elected official who is already a member. Upon employment in a position for which membership is optional:

- (a) a member who was an active member before the employment remains an active member;
- (b) a member who was an inactive member before the employment becomes an active member; and
- (c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(8) (a) An employee or elected official who declines membership for a position for which membership is optional may not later become a member while still employed in that position.

(b) If, after a break in service of 30 days or more, an employee who was employed in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership.

(c) If the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(9) An employee accepting a position that requires membership ~~shall~~ must become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 8. Section 19-3-510, MCA, is amended to read:

"19-3-510. Employment in United States government. (1) A member who is assigned to an agency of the United States government under ~~Title IV~~, the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq., may purchase the federal employment as service credit in the retirement system under subsection (2) if:

- (a) the member has accrued 5 years or more of membership service in the retirement system; and
- (b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

- (a) continue the member's payments into the pension trust fund; or
- (b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination

of highest average compensation, ~~provided that~~ if the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 9. Section 19-3-1105, MCA, is amended to read:

"19-3-1105. Benefit upon second retirement. (1) Except as otherwise expressly provided by law, a member with at least 2 years of service credit accrued after reemployment must receive the benefit of provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment."

Section 10. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment -- reduction of service retirement benefit upon exceeding limits -- exceptions. (1) A retired member under 65 years of age who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system and the returning employee's employer shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active

membership at any time during this period of covered employment.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3):

(a) a retired member who is 70 1/2 years of age or older; or

(b) an elected official in a covered position who declines optional membership as provided in 19-3-412.

(6) For the purposes of this section, "employment covered by the retirement system" includes work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102.

Section 11. Section 19-3-1202, MCA, is amended to read:

"19-3-1202. Amount of lump-sum death payment. (1) The amount of death payment to be made to ~~those eligible for death payments~~ the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

(a) the member's accumulated contributions;

(b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and

(c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) A beneficiary of an inactive member is not eligible to receive the payment described in subsection (1)(b)."

Section 12. Section 19-3-1203, MCA, is amended to read:

"19-3-1203. Election of optional death annuity. The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the ~~lump-sum~~ death payment provided for in 19-3-1201 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits."

Section 13. Section 19-3-1204, MCA, is amended to read:

"19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a ~~lump-sum~~ death payment may instead elect a survivorship benefit by filing a written application with the

board, if all of the following conditions are met:

(a) ~~The~~ the deceased member on behalf of whom the death benefit is payable had completed 5 years of membership service;

(b) ~~The~~ the designated beneficiary is a natural person; and

(c) ~~The~~ the designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the ~~lump-sum~~ death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a ~~lump-sum~~ death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 14. Section 19-3-2111, MCA, is amended to read:

"19-3-2111. Plan membership -- written election required -- failure to elect -- effect of election. (1)

Except as otherwise provided in this part:

(a) (i) a member who is an active member of the defined benefit plan on the date that the defined contribution plan becomes effective may, within 12 months after that date, elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(ii) a member who was an inactive member of the defined benefit plan on the date that the defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, ~~within 12 months after the member's rehire date~~ the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, ~~within 12 months of the member's hire date~~ the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract."

Section 15. Section 19-3-2112, MCA, is amended to read:

"19-3-2112. Plan choices for members employed by university system -- amount available to transfer -- effect on rights. (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) Except as otherwise provided in this part, an election to transfer membership to the optional retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within ~~12 months after that date~~ the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within ~~12 months after the member's hire or rehire date~~ the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within ~~12 months of the member's hire date~~ the 12-month period provided for in subsection (2)(b), elect to become a member of the optional retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after

an employee has terminated membership in the optional retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the optional retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under chapters 3 and 21 of this title, but must be a member of the defined benefit plan, the defined contribution plan, or the optional retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the optional retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the optional retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the optional retirement program unless the order is modified to apply under the optional retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the optional retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the

defined contribution plan under 19-3-2114.

(4) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system."

Section 16. Section 19-3-2113, MCA, is amended to read:

"19-3-2113. Reinstatement of plan membership -- purchase of prior service credit in defined benefit plan. (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months ~~shall become~~ is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the optional retirement program."

Section 17. Section 19-6-707, MCA, is amended to read:

"19-6-707. Minimum monthly benefit. (1) Subject to the limitations contained in subsection (2), the following retired members, or their survivors, who are not covered by 19-6-710 or 19-6-711 are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

- (b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and
- (c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated."

Section 18. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) (a) "Compensation" means remuneration paid from funds controlled by an employer for the member's services or for time during which the member is excused from work because the member has taken compensatory leave, sick leave, annual leave, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include maintenance, allowances, and expenses.

(2) "Detention officer" means any detention officer, as defined in 44-4-302, who is hired by a sheriff, employed in a detention center, and acting as a detention officer for the sheriff and who has received or is expected to receive training to meet the employment standards set by the board of crime control pursuant to 44-4-301 for detention officers.

(3) "Highest average compensation" means a member's highest average monthly compensation during any 36 consecutive months of membership service or, in the event a member has not served at least 36 months, the total compensation earned divided by the number of months of service. Lump-sum payments for severance pay, including payment for compensatory leave, sick leave, and annual leave, paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(4) "Investigator" means a person who is employed by the department of justice as a criminal investigator

or as a gambling investigator ~~for the department of justice.~~

(5) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff with the requisite professional certification and licensing."

Section 19. Section 19-7-312, MCA, is amended to read:

"19-7-312. Transfer of membership -- purchase of previous service. A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's previous service credit in the public employees' retirement system or in another system provided for in chapter 5, 6, 8, 9, or 13 of this title into the sheriffs' retirement system by paying the actuarial cost required under the provisions of 19-2-715."

Section 20. Section 19-7-1101, MCA, is amended to read:

"19-7-1101. Reemployment of retired member. (1) A retired member who returns to service for ~~60 or more working days~~ 480 hours or more in a calendar year ~~shall~~ must become an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than ~~60 working days~~ 480 hours in a calendar year may not become an active member. The retirement benefit of a retired member employed in service must be reduced by \$1 for each \$3 earned in excess of \$5,000 in a calendar year."

Section 21. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership -- inactive vested members -- inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, must become and shall remain active members for as long as they are employed as peace officers:

- (a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;
- (b) motor carrier officers employed by the department of transportation;
- (c) campus security officers employed by the university system;
- (d) wardens and deputy wardens employed by the department of corrections;
- (e) corrections officers employed by the department of corrections;
- (f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed by the department of livestock; and

~~(h) motor vehicle inspectors employed by the department of justice; and~~

~~(i)(h)~~ drill instructors employed by the department of corrections.

(2) (a) An inactive member with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a retirement benefit under the provisions of this chapter.

(b) If an inactive vested member chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement system.

(b) An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 22. Section 19-8-302, MCA, is amended to read:

"19-8-302. Public employees' retirement system -- transfer of membership. (1) Except as provided in ~~subsections (2) and (4)~~ subsection (3), an eligible peace officer ~~shall~~ must become a member of the game wardens' and peace officers' retirement system on the first day of service.

~~(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election that must be received by the board no later than December 31, 2001.~~

~~(3)(2)~~ A person who is a member of the game wardens' and peace officers' retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement within the same state agency may retain membership in the game wardens' and peace officers' retirement system by filing a written election with the board no later than 30 days after transfer to the new position.

~~(4)(3)~~ A person who is a member of the public employees' retirement system who transfers to a position covered by the game wardens' and peace officers' retirement system may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election with the board no later than 30 days after transfer to the new position."

Section 23. Section 19-9-1202, MCA, is amended to read:

"19-9-1202. Definitions. Unless the context requires otherwise, as used in this part, the following definitions apply:

(1) "DROP" means the deferred retirement option plan established pursuant to this part.

(2) "DROP ~~accrual~~ account" means the ~~monthly benefit~~ member's accumulated monthly DROP accruals, including any postretirement adjustments, ~~that would have been payable had the participant terminated service and retired, multiplied by each month of the DROP period that the participant completes,~~ plus interest.

(3) "DROP benefit" means the lump-sum benefit calculated and distributed as provided in this part.

(4) "DROP period" means the period of time that a member irrevocably elects to participate in the DROP pursuant to 19-9-1204.

(5) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated service and retired.

(6) "Participant" means a member of the retirement system who has elected to participate in the DROP pursuant to this part."

Section 24. Section 19-9-1205, MCA, is amended to read:

"19-9-1205. Retirement system contributions -- benefit payments to individual DROP accounts -- investment returns. (1) During a member's participation in the DROP, state contributions under 19-9-702, employer contributions under 19-9-703, and member contributions under 19-9-710 must continue to be made to the retirement system.

(2) For each DROP participant, the board shall calculate a monthly DROP accrual and the contribution to the participant's DROP account."

Section 25. Section 19-9-1206, MCA, is amended to read:

"19-9-1206. Survivorship benefits. (1) If a participant dies prior to the receipt of the DROP benefit pursuant to 19-9-1208, the participant's surviving spouse or dependent child is entitled to receive a lump-sum payment equal to the participant's DROP benefit and the member's accumulated contributions minus any benefits paid from the member's DROP account, including monthly DROP accruals.

(2) If there is no surviving spouse or dependent child, the designated beneficiary is entitled to receive a lump-sum payment equal to the participant's DROP benefit.

(3) The benefit paid pursuant to this section must include interest reflecting the retirement system's

annual investment earnings from the date the member's DROP period commenced."

Section 26. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

~~(7)~~(8) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

~~(8)~~(9) "Fire company" means a fire company organized under 7-33-2311 in an unincorporated area, town, or village ~~in accordance with 7-33-2311.~~ and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33.

~~(9)~~(10) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

~~(10)~~(11) "Member" means a volunteer firefighter who has service credited under this chapter.

~~(11)~~(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

~~(12)~~(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

~~(13)~~(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

~~(14)~~(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes

of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

~~(15)~~(16) "Surviving spouse" means the spouse married to a member when the member dies.

~~(16)~~(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

~~(17)~~(19) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 27. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter -- records. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies ~~in different fire districts~~ must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of ~~instruction~~ training in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or ~~supervisor~~ designated official of the fire company;

(b) the volunteer firefighter's participation in the training program is documented in the fire ~~department~~ company's records filed and maintained by the chief or ~~supervisor~~ designated official; and

(c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more.

(4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company."

Section 28. Section 19-17-401, MCA, is amended to read:

"19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire ~~department~~ company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit."

Section 29. Section 19-17-402, MCA, is amended to read:

"19-17-402. Certificate of eligibility. The chief or ~~presiding officer~~ designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath before a notary, stating whether the fire company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date

of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of ~~instruction~~ training during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits."

Section 30. Section 19-17-502, MCA, is amended to read:

"19-17-502. Procedure for claiming medical expenses. (1) A member who claims medical expenses under 19-17-504 shall submit a claim on a form provided by the board. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 1 year from the date of incurring the injury or illness.

(2) The claim must contain:

- (a) the name and address of the member;
- (b) the date, place, and manner of incurring the injury or illness;
- (c) the name and address of the attending physician, surgeon, or nurse, if any;
- (d) the dates of hospitalization, if hospitalized;
- (e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;
- (f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses;
- (g) an affidavit from the chief or ~~secretary~~ designated official of the fire company stating that the fire company was ~~duly~~ organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active member of the company, and that the injury or illness was incurred in the line of duty as described in 19-17-105."

NEW SECTION. **Section 31. Repealer.** Section 19-8-1110, MCA, is repealed.

- END -

