

ENROLLED SENATE
BILL NO. 674

By: Nichols, Barrington, Rabon
and Garrison of the Senate

and

Armes, Harrison and
Renegar of the House

An Act relating to retirement; amending 11 O.S. 2001, Sections 49-106, as last amended by Section 1, Chapter 203, O.S.L. 2005, 49-106.3, as amended by Section 5, Chapter 128, O.S.L. 2003 and 49-109, as last amended by Section 13, Chapter 46, 2nd Extraordinary Session, O.S.L. 2006 (11 O.S. Supp. 2006, Sections 49-106, 49-106.3 and 49-109), which relate to the Oklahoma Firefighters Pension and Retirement System; allowing for payment of certain health insurance premiums by deduction from certain monthly payments; providing procedures relating to the transfer of certain lump-sum distributions to certain accounts or annuities; directing the Oklahoma Firefighters Pension and Retirement Board to promulgate certain rules; providing for direct payment of certain health insurance premiums; defining terms; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 11 O.S. 2001, Section 49-106, as last amended by Section 1, Chapter 203, O.S.L. 2005 (11 O.S. Supp. 2006, Section 49-106), is amended to read as follows:

Section 49-106. A. Any firefighter who reaches the firefighter's normal retirement date shall be entitled, upon written request, to retire from such service and be paid from the System a monthly pension equal to the member's accrued retirement benefit; provided, that the pension shall cease during any period of time the member may thereafter serve for compensation in any municipal fire department in the state. If such a member is reemployed by a participating municipality in a position which is not covered by the System, retirement shall also include receipt by such member of in-service distributions from the System.

B. With respect to distributions under the System made for calendar years beginning on or after January 1, 2005, the System shall apply the minimum distribution incidental benefit requirements, incidental benefit requirements, and minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the final regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were issued in April 2002 and June 2004, notwithstanding any provision of the System to the contrary. With respect to distributions under the System made for calendar years beginning on or after January 1, 2001 through December 31, 2004, the System shall apply the minimum distribution requirements and incidental benefit requirements of Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, in accordance with the regulations under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, which were proposed in January 2001, notwithstanding any provision of the System to the contrary. Effective July 1, 1989, notwithstanding any other provision contained herein to the contrary, in no event shall commencement of distribution of the accrued retirement benefit of a member be delayed beyond April 1 of the calendar year following the later of:

1. The calendar year in which the member reaches seventy and one-half (70 1/2) years of age; or
2. The actual retirement date of the member.

C. Any member or beneficiary eligible to receive a monthly benefit from the System may make an election to waive all or a portion of monthly benefits.

D. If the requirements of Section 4 of this act are satisfied, a member who, by reason of attainment of normal retirement date or age, is separated from service as a public safety officer with the member's participating municipality, may elect to have payment made directly to the provider for qualified health insurance premiums by deduction from his or her monthly pension payment, after December 31, 2006, in accordance with Section 402(1) of the Internal Revenue Code of 1986, as amended.

SECTION 2. AMENDATORY 11 O.S. 2001, Section 49-106.3, as amended by Section 5, Chapter 128, O.S.L. 2003 (11 O.S. Supp. 2006, Section 49-106.3), is amended to read as follows:

Section 49-106.3 A. For distributions made on or after January 1, 1993, and notwithstanding any provision of the System to the contrary that would otherwise limit a Distributee's election hereunder, a Distributee may elect, at the time and in the manner prescribed by the State Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

B. For purposes of this section, the following definitions shall apply:

1. "Eligible Rollover Distribution" means any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended; and the portion of any distribution that is not includable in gross income. ~~Provided; provided~~, however, that, effective January 1, 2002, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax member contributions which are not includable in gross income. However, such portion may be paid only ~~to~~:

(a) from January 1, 2002, through December 31, 2006, to:

- (1) an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended, or ~~to~~
- (2) a qualified trust which is a part of a defined contribution plan described in Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, that and which agrees to separately account for amounts so transferred, including ~~separate~~ separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable, and

(b) on or after January 1, 2007, to:

- (1) an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended, or
- (2) a qualified trust described in Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, or an annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as amended, and such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable;

2. "Eligible Retirement Plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code of 1986, as amended, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, as amended, an annuity plan described in Section 403(a) of the Internal Revenue Code of 1986, as amended, or a qualified trust described in Section 401(a) of the Internal Revenue Code of 1986, as amended, that accepts the Distributee's Eligible Rollover Distribution. Effective January 1, 2002, an Eligible Retirement Plan shall also mean an

annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as amended, and an eligible plan under Section 457(b) of the Internal Revenue Code of 1986, as amended, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the System. Effective January 1, 2002, the definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee pursuant to a qualified domestic order as defined in subsection B of Section 49-126 of this title. An Eligible Retirement Plan does not include a Roth IRA under Section ~~408(a)~~ 408A of the Internal Revenue Code of 1986, as amended;

3. "Distributee" means a member whether or not said member is an active firefighter. In addition, effective June 7, 1993, the member's surviving spouse and the member's spouse or former spouse who is an alternate payee under a qualified domestic order, as provided in subsection B of Section 49-126 of this title, are Distributees with regard to the interest of the spouse or former spouse; and

4. "Direct Rollover" means a payment by the System to the Eligible Retirement Plan specified by the Distributee.

C. At least thirty (30) days before and, effective January 1, 2007, not less more than ninety (90) one hundred eighty (180) days before the date of distribution, the Distributee must be provided with a notice of rights which satisfies Section 402(f) of the Internal Revenue Code of 1986, as amended, as to rollover options and tax effects. Such distribution may commence less than thirty (30) days after the notice is given, provided that:

1. The State Board clearly informs the Distributee that the Distributee has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution; and

2. The Distributee, after receiving the notice, affirmatively elects a distribution.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49-106.4 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. An individual who has been designated, pursuant to Section 401(a)(9)(E) of the Internal Revenue Code of 1986, as amended, as the beneficiary of a deceased member and who is not the surviving spouse of the member, may elect, in accordance with Section 402(c)(11) of the Internal Revenue Code of 1986, as amended, and at the time and in the manner prescribed by the Oklahoma Firefighters Pension and Retirement Board, to have a direct trustee-to-trustee transfer of any portion of such beneficiary's lump-sum distribution from the Oklahoma Firefighters Pension and Retirement System after December 31, 2006, made to an individual retirement account or individual retirement annuity (other than an endowment contract) described in Section 408(a) or (b) of the Internal Revenue Code of 1986, as amended (IRA). If such transfer is made then:

1. The transfer is treated as an eligible rollover distribution for purposes of Section 402(c)(11) of the Internal Revenue Code of 1986, as amended;

2. The transferee IRA is treated as an inherited individual retirement account or an inherited individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Internal Revenue Code of 1986, as amended); and

3. The required minimum distribution rules of Section 401(a)(9)(B) (other than clause iv thereof) of the Internal Revenue Code of 1986, as amended, apply to the transferee IRA.

B. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.

C. The Oklahoma Firefighters Pension and Retirement Board shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 49-106.5 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. A member who is an eligible retired public safety officer and who wishes to have direct payments made toward the member's qualified health insurance premiums from the member's monthly disability benefit or monthly pension payment must make a written election in accordance with Section 402(1) of the Internal Revenue Code of 1986, as amended, on the form provided by the Oklahoma Firefighters Pension and Retirement System, as follows:

1. The election must be made after the member separates from service as a public safety officer with the member's participating municipality;

2. The election shall only apply to distributions from the System after December 31, 2006, and to amounts not yet distributed to the eligible retired public safety officer;

3. Direct payments for an eligible retired public safety officer's qualified health insurance premiums can only be made from the member's monthly disability benefit or monthly pension payment from the System and cannot be made from the Deferred Option Plan; and

4. The aggregate amount of the exclusion from an eligible retired public safety officer's gross income is Three Thousand Dollars (\$3,000.00) per calendar year.

B. As used in this section:

1. "Public safety officer" means a member serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, firefighter, chaplain, or as a member of a rescue squad or ambulance crew;

2. "Eligible retired public safety officer" means a member who, by reason of disability or attainment of normal retirement date or age, is separated from service as a public safety officer with the member's participating municipality; and

3. "Qualified health insurance premiums" means premiums for coverage for the eligible retired public safety officer, the eligible retired public safety officer's spouse, and dependents by

an accident or health insurance plan or a qualified long-term care insurance contract. The health plan does not have to be sponsored by the eligible retired public safety officer's former participating municipality.

C. The Oklahoma Firefighters Pension and Retirement Board shall promulgate such rules as are necessary to implement the provisions of this section.

SECTION 5. AMENDATORY 11 O.S. 2001, Section 49-109, as last amended by Section 13, Chapter 46, 2nd Extraordinary Session, O.S.L. 2006 (11 O.S. Supp. 2006, Section 49-109), is amended to read as follows:

Section 49-109. A. Whenever any firefighter serving in any capacity in a regularly constituted fire department of a municipality shall become so physically or mentally disabled while in, or in consequence of, the performance of the firefighter's duty as to prevent the effective performance of the firefighter's duties, the State Board may, upon the firefighter's written request, or without such request if the State Board deems it for the good of the department, retire the firefighter from active service, and if so retired, shall direct that the firefighter be paid from the System a monthly pension equal to the greater of:

1. Fifty percent (50%) of the average monthly salary which was paid to the firefighter during the last thirty (30) months of the firefighter's service; or

2. Two and one-half percent (2 1/2%) of the firefighter's final average salary multiplied by the member's years of credited service, not to exceed thirty (30) years, provided such firefighter has completed twenty (20) or more years of credited service.

B. If the disability ceases within two (2) years from the date of the firefighter's disability retirement and before the firefighter's normal retirement date, the formerly disabled person shall be restored to active service at the salary attached to the rank the firefighter held at the time of the firefighter's disability retirement provided the firefighter is capable of performing the duties of a firefighter. Whenever such disability shall cease, such disability pension provided pursuant to paragraph

1 of subsection A of this section shall cease. If a firefighter participates in the Oklahoma Firefighters Deferred Option Plan pursuant to Section 49-106.1 of this title, the firefighter's disability pension provided pursuant to this subsection shall be reduced to account for the firefighter's participation in the Oklahoma Firefighters Deferred Option Plan.

C. Whenever any firefighter, who has served in any capacity in a regularly constituted fire department of a municipality of the state, and who has served less than the firefighter's normal retirement date, shall become so physically or mentally disabled from causes not arising in the line of duty as to prevent the effective performance of the firefighter's duties, the firefighter shall be entitled to a pension during the continuance of said disability based upon the firefighter's service period which shall be fifty percent (50%) of the average monthly salary which was paid to the firefighter during the last sixty (60) months of the firefighter's service.

D. No firefighter shall accrue additional service time while receiving a disability pension; provided further, that nothing herein contained shall affect the eligibility of any firefighter to apply for and receive a retirement pension after the firefighter's normal retirement date; provided further, that no firefighter shall receive retirement benefits from the System during the time the firefighter is receiving disability benefits from the System. Any member or beneficiary eligible to receive a monthly benefit pursuant to this section may make an election to waive all or a portion of monthly benefits.

E. If the requirements of Section 4 of this act are satisfied, a member who, by reason of disability, is separated from service as a public safety officer with the member's participating municipality, may elect to have payment made directly to the provider for qualified health insurance premiums by deduction from his or her monthly disability benefit, after December 31, 2006, in accordance with Section 402(1) of the Internal Revenue Code of 1986, as amended.

SECTION 6. This act shall become effective July 1, 2007.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 21st day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2007.

Presiding Officer of the House
of Representatives