

## LEGISLATIVE BILL 724

Approved by the Governor June 10, 1993

Introduced by Day, 19

AN ACT relating to retirement; to amend sections 16-1021, 16-1023, 16-1024, 16-1025, 16-1028, 16-1031, 16-1033, 16-1038, 16-1042, and 81-2033, Reissue Revised Statutes of Nebraska, 1943, and sections 16-1027, 16-1029, 16-1030, 16-1034, 16-1036, 81-2025, and 81-2026, Revised Statutes Supplement, 1992; to change provisions relating to the firefighters' retirement systems for cities of the first class and the Nebraska State Patrol Retirement System; to define and redefine terms; to change contributions and benefit provisions; to change funding provisions; to change provisions relating to payment of benefits; to provide for early retirement as prescribed; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 16-1021, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1021. For the purposes of sections 16-1020 to 16-1038 ~~16-1042~~, unless the context otherwise requires:

(1) Actuarial equivalent shall mean equality in value of the aggregate amount of benefit expected to be received under different forms or at different times determined as of a given date as adopted by the city or the retirement committee for use by the retirement system. Such actuarial equivalencies shall be specified in the funding medium established for the retirement system, except that if benefits under the retirement system are obtained through the purchase of an annuity contract, the actuarial equivalency of any such form of benefit shall be the amount of pension benefit which can be purchased or otherwise provided by such contract. All actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis;

(2) Annuity contract shall mean the contract or contracts issued by one or more life insurance companies or designated trusts and purchased by the retirement system in order to provide any of the benefits described in such sections. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis;

(3) Beneficiary shall mean the person or persons designated by a firefighter, pursuant to a written instrument filed with the retirement committee before the firefighter's death, to receive death benefits which may be payable under the retirement system;

(4) Funding agent shall mean any bank, trust company, life

insurance company, thrift institution, credit union, or investment management firm selected by the retirement committee, subject to the approval of the city, to hold or invest the funds of the retirement system;

~~(5)~~ Regular interest shall mean the ~~net~~ rate of interest earned each calendar year commencing January 1, 1984, ~~as determined by the retirement committee in conformity with actual and expected earnings on its investments~~ equal to the rate of net earnings realized for the calendar year from investments of the retirement fund. Net earnings shall mean the amount by which income or gain realized from investments of the retirement fund exceeds the amount of any realized losses from such investments during the calendar year. The retirement committee shall annually report the amount of regular interest earned for such year;

~~(2)~~ ~~(6)~~ Regular pay shall mean the salary of a firefighter at the date such firefighter elects to retire or terminate employment with the city;

~~(3)~~ Salary shall mean the base rate of pay, excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 16-1024;

~~(4)~~ ~~(7)~~ Retirement committee shall mean the retirement committee created pursuant to section 16-1034;

~~(5)~~ ~~(8)~~ Retirement system shall mean a retirement system established pursuant to sections 16-1020 to 16-1042;

~~(9)~~ Retirement value shall mean the accumulated value of the firefighter's employee account and employer account. The retirement value at any time shall consist of the sum of the contributions made or transferred to such accounts by the firefighter and by the city on the firefighter's behalf and the regular interest credited to the accounts through such date, reduced by any realized losses which were not taken into account in determining regular interest in any year, and as further adjusted each year to reflect the accounts' pro rata share of the appreciation or depreciation of the assets of the retirement system as determined by the retirement committee at their fair market values, including any account under subsection (2) of section 16-1036. Such valuation shall be undertaken at least annually as of December 31 of each year and at such other times as may be directed by the retirement committee. The value of each account shall be reduced each year by the appropriate share of the investment costs as provided in section 16-1036.01. The retirement value shall be further reduced by the amount of all distributions made to or on the behalf of the firefighter from the retirement system;

~~(6)~~ Group annuity contract shall mean the contract or contracts issued by one or more life insurance companies or designated trust to the retirement committee in order to provide the benefits described in sections 16-1020 to 16-1038. Annuity conversion rates contained in any such contract shall be specified on a sex-neutral basis; and

~~(7)~~ ~~(10)~~ Salary shall mean the base rate of pay,

excluding overtime, callback pay, clothing allowances, and other such benefits as reported on the participant's federal income tax withholding statement including the firefighters' contributions picked up by the city as provided in subsection (2) of section 16-1024 and any salary reduction contributions which are excludable from income for federal income tax purposes pursuant to section 125 or 457 of the Internal Revenue Code of 1986, as amended; and

(1) Straight life annuity shall mean an ordinary annuity payable for the life of the primary annuitant only, and terminating at his or her death without refund or death benefit of any kind.

Sec. 2. That section 16-1023, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1023. (1) Commencing on January 1, 1984, each city of the first class having a paid fire department shall keep and maintain a Firefighters Retirement System Fund for the purpose of investing payroll deductions and city contributions to the retirement system. The fund shall be maintained separate and apart from all city money and funds. The fund shall be administered exclusively for the purposes of the retirement system and for the benefit of participating firefighters and their beneficiaries and so as to establish the fund as a trust under the law of this state for all purposes of section 401(a) of the Internal Revenue Code of 1986, as amended. ~~established pursuant to sections 16-1020 to 16-1038.~~

Upon the passage of sections 16-1020 to 16-1038 all of the contributions made by a firefighter under section 35-203.01 and interest accrued at five percent per annum on such contributions prior to January 1, 1984, shall be transferred to the firefighter's employee account. Regular interest shall begin to accrue on the contributions transferred into the fund. Such funds shall be invested in the manner prescribed in section 16-1036.

(2) The city shall establish a medium for funding the retirement system which, with the approval of the retirement committee, may be a pension trust fund, custodial account, group annuity contract, or combination thereof, for the purpose of investing money for the retirement system in the manner prescribed by section 16-1036 and to provide the retirement, death, and disability benefits for firefighters granted by sections 16-1020 to 16-1042. The trustee or custodian of any trust fund shall be a designated funding agent which is qualified to act as a fiduciary or custodian in this state, the city treasurer, an appropriate city officer authorized to administer funds of the city, or a combination thereof.

Sec. 3. That section 16-1024, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1024. (1) Each firefighter participating in the retirement system ~~established pursuant to sections 16-1020 to 16-1038~~ shall contribute to the retirement system a sum equal to six and one-half percent of his or her salary. Such payment shall be made by regular payroll deductions from his or her periodic salary and shall be credited to his or her employee account on a monthly basis. Each such account shall also be credited with regular interest.

(2) Each city of the first class with firefighters participating

in a retirement system ~~established pursuant to sections 16-1020 to 16-1038~~ shall pick up the firefighters' contributions required by subsection (1) of this section for all compensation paid on or after January 1, 1984, and the contributions so picked up shall be treated as employer contributions in determining federal income tax treatment under the United States Internal Revenue Code of 1986, as amended, except that the city shall continue to withhold federal income taxes based upon such contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the United States Internal Revenue Code of 1986, as amended, such contributions shall not be included as gross income of the employee until such time as they are distributed ~~or made available from the retirement system~~. The city shall pay the employee contributions from the same source of funds which is used in paying earnings compensation to the employee. The city shall pick up the employee contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. In no event shall a firefighter be given an option to choose to receive the amount of the required contribution in lieu of having such contribution paid directly to the retirement system.

(3) Each firefighter participating in the retirement system shall be entitled to make voluntary cash contributions to the retirement system in an amount not to exceed the contribution limitations established by the Internal Revenue Code of 1986, as amended. Voluntary contributions shall be credited to the employee account and shall thereafter be credited with regular interest. A voluntary contribution shall become a part of the Firefighters Retirement System Fund and shall be held, administered, invested, and distributed in the same manner as any other employee contribution to the retirement system.

Sec. 4. That section 16-1025, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1025. (1) Each Beginning January 1, 1984, each city of the first class with firefighters participating in a retirement system established pursuant to sections 16-1020 to 16-1038 shall contribute to the retirement system a sum equal to thirteen percent of each such participating firefighter's periodic salary. Such payment shall be credited to his or her employer account on a monthly basis. Each such account shall also be credited with regular interest. The city shall also contribute to the employer account of any firefighter employed by the city on January 1, 1984, an amount equal to the employee's contributions, without interest, that were made to the city prior to January 1, 1984, with such contribution to be made at the time the firefighter retires or terminates employment with the city. The city may contribute such amount before the firefighter's retirement or termination of employment or credit interest on such contribution.

(2) Each such city shall contribute any additional amounts necessary to fund retirement or other retirement plan benefits not provided by employee contributions or city contributions to the employer account

required by subsection (1) of this section. Such additional contributions shall be accumulated in an unallocated employer account of the Firefighters Retirement System Fund and used to provide the ~~excess~~ benefits, if any, specified in sections 16-1027 and 16-1029 to 16-1031 which are not otherwise funded by the firefighter's retirement value. Funds needed to provide for a firefighter's benefits shall be transferred from the unallocated employer account when and as such funds are needed. All funds committed by the city to the funding of a firefighter pension system on January 1, 1984, that are not transferred to the firefighters employee accounts shall be transferred to the unallocated employer account.

Sec. 5. That section 16-1027, Revised Statutes Supplement, 1992, be amended to read as follows:

16-1027. (1) At any time before the retirement date, the retiring firefighter may elect to receive his or her pension benefit at retirement either in the form of a straight life annuity or any optional form of annuity benefit ~~specified in the group annuity contract established by the retirement committee and provided under a purchased annuity contract.~~ Such optional annuity benefit shall be specified in the funding medium for the retirement system and shall include a straight life annuity with a guarantee of at least sixty monthly payments or an annuity payable for the life of the retiring firefighter and, after the death of the retiree, monthly payments, as elected by the retiring firefighter, of one hundred percent, seventy-five percent, or fifty percent of the amount of annuity payable to the retiring firefighter during his or her life, to the beneficiary selected by the retiring firefighter at the time of the original application for an annuity. For any firefighter whose retirement date is on or after January 1, 1997, the optional benefit forms for the retirement system shall include a single lump-sum payment of the firefighter's retirement value. For firefighters whose retirement date is prior to January 1, 1997, a single lump-sum payment shall be available only if the city has adopted such distribution option in the funding medium established for the retirement system. The retiring firefighter may further elect to defer the date of the first payment or lump-sum distribution to the first day of any specified month prior to age seventy. ~~In any case, the amount of the pension benefit shall be the amount purchased or otherwise provided by the retirement value as of the date of the first payment.~~ In the event the retiring firefighter elects to receive his or her pension benefit in the form of an annuity, the amount of such annuity benefit shall be the amount provided by the annuity contract purchased or otherwise provided by the firefighter's retirement value as of the date of the first payment. Any such annuity contract purchased by the retirement system may be distributed to the retiring firefighter. Upon the payment of a lump sum or the distribution of a paid-up annuity contract, all obligations of the retirement system to pay retirement benefits to the firefighter and his or her beneficiaries shall terminate, without exception.

(2) For all firefighters employed on January 1, 1984, the amount of the pension benefit at the retirement date shall not be less than

the following amounts:

(a) If retirement from the city occurs following age fifty-five with twenty-one years of service with the city, fifty percent of regular pay;

(b) For terminations of employment from the city on or after the effective date of this act, if such termination of employment as a firefighter occurs before age fifty-five but after completion of twenty-one years of service with the city, such firefighter shall receive upon the attainment of age fifty-five a pension benefit of fifty percent of regular pay;

~~(b)~~ (c) If retirement from the city occurs on or after age fifty-five with less than twenty-one years of service with the city, such firefighter shall receive a pension of at least fifty percent of the salary he or she was receiving at the time of retirement multiplied by the ratio of the years of service to twenty-one;

~~(e)~~ (d) At Unless an optional annuity benefit is selected by the retired firefighter, at the death of any such retired firefighter, the same rate of pension; as is provided for in this section; shall be paid to the surviving spouse of such deceased firefighter during such time as the surviving spouse remains unmarried and, in case there is no surviving spouse, then the minor children, if any, of such deceased firefighter shall be paid equally share such pension benefit during their minority, except that as soon as a child of such deceased firefighter ceases to be a minor, such pension as to such child shall cease; or

~~(d)~~ (e) In the event a retired firefighter or his or her surviving beneficiaries die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's firefighter's employee account, including interest at the time of the first benefit payment, the difference between the total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly-qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee, in its discretion, determines to be entitled to the funds. estate.

A firefighter entitled to a minimum pension benefit under this subsection may elect to receive such pension benefit in any form permitted by subsection (1) of this section, including a single lump-sum payment, if the firefighter retires on or after January 1, 1997, or if the city has adopted a lump-sum distribution option for firefighters retiring before January 1, 1997, in the funding medium for the retirement system. If the minimum pension benefit is paid in the form of an optional annuity benefit or a single lump-sum payment, such benefit or payment shall be the actuarial equivalent of the annuity that would otherwise be paid to the firefighter pursuant to this subsection.

If the firefighter chooses the single lump-sum payment option, the firefighter may request that the actuarial equivalent be equal to the average of the cost of three annuity contracts purchased on the open market. Of the three annuity contracts used for comparison, one shall be

chosen by the firefighter, one shall be chosen by the retirement committee, and one shall be chosen by the city.

(3) If the retirement value of a firefighter entitled to a minimum pension benefit under subsection (2) of this section is not sufficient at the time of the first payment to purchase or provide the required pension benefit, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit.

~~(3)~~ (4) Any retiring firefighter whose pension benefit is less than twenty-five dollars per month on the straight life annuity option shall be paid a lump-sum settlement equal to the retirement value in lieu of annuity and shall not be entitled to elect to receive annuity benefits.

Sec. 6. That section 16-1028, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1028. (1) A firefighter of a city of the first class may:

(a) Retire or be retired and receive a the applicable retirement pension benefit based on his or her full retirement value upon the attainment of age fifty-five while employed by the city as a firefighter; ~~or~~

(b) After twenty-one years of service with the city, terminate employment with the city and, upon the attainment of age fifty-five, receive the applicable retirement pension benefit; or

(c) Retire or be retired as a result of disability while in the line of duty, as determined under section 16-1031, at any age and receive the applicable pension benefit provided in section 16-1031.

(2) A firefighter who is eligible to retire pursuant to subdivision (1)(a) of this section but does not, shall continue to contribute to his or her employee account and the city shall continue to contribute to its employer account.

~~(3) The~~ For purposes of subdivisions (1)(a) and (c) of this section, the first of the month immediately following the last day of work shall be the retirement date. For purposes of subdivision (1)(b) of this section, the first of the month immediately following the attainment of age fifty-five shall be the retirement date.

Sec. 7. That section 16-1029, Revised Statutes Supplement, 1992, be amended to read as follows:

16-1029. (1) When prior to the commencement of retirement benefits any firefighter participating in the retirement system ~~established pursuant to sections 16-1020 to 16-1038~~ dies other than in the line of duty, and except as provided in subsection (2) of this section, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value or portion thereof may be received by the beneficiary in the form of a single lump-sum payment, a straight life annuity, or any other optional form of benefit specified in the ~~group annuity contract retirement system's funding medium.~~ In the event benefits are paid in the form of an annuity, such annuity shall be the amount provided by the

annuity contract purchased or otherwise provided by the amount of retirement value to be paid to the beneficiary as of the date of the first payment. Upon the payment of a lump-sum distribution or the purchase and distribution of such annuity contract to the beneficiary, all obligations of the retirement system to the beneficiary shall terminate, without exception.

~~(2) If such benefits are payable in the form of annuity benefits and if~~ any firefighter employed by such city as a member of its paid fire department on January 1, 1984, and any firefighter reemployed thereafter who, while employed in such department entered military service and is still in military service, dies while employed by the city as a firefighter other than in the line of duty after becoming fifty years of age and before electing to retire, and after serving in the paid fire department of such city for at least twenty-one years, then a pension of at least twenty-five percent of his or her regular pay as defined in section 16-1021, in the form of ~~under~~ a straight life annuity, shall be paid to the surviving spouse or minor children of such deceased firefighter. If the deceased firefighter is not survived by a spouse or in the event such surviving spouse dies before the minor children of such firefighter attain the age of majority, such pension benefit shall be paid to the firefighter's minor children until they have attained the age of majority. Each such child shall share equally in the total pension benefit to the age of majority, except that as soon as a child attains the age of majority, such pension benefit to such child shall cease and be reallocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

In the event that the actuarial equivalent of the pension benefit payable under this subsection exceeds the retirement value at the time of the first payment, the city shall utilize such funds as may be necessary from the unallocated employer account of the retirement system to purchase or provide for the required pension benefit. In the event a deceased firefighter described in this subsection is not survived by a spouse or minor children, his or her death benefits shall be provided under the provisions of subsection (1) of this section as if such firefighter were not employed by the city on January 1, 1984.

~~(3) In the event the surviving spouse or minor children of such deceased firefighter die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's firefighter's employee account, including interest at the time of the first benefit payment, the difference between the such total amount in the employee's account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee, in its discretion, determines to be entitled to the funds the firefighter's beneficiary, or in the absence of a surviving beneficiary, his or her estate.~~

(4) To the extent that the retirement value at the date of

death exceeds the amount required to purchase or provide the specified pension under subsection (2) of this section, the excess shall be paid in the manner provided in subsection (1) of this section.

(5) Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving spouse or, if there is none, to the legal guardian of the child. ~~the excess shall be applied to increase the amount of the pension benefit. In the event that the pension benefit is payable, the retirement value of the firefighter's retirement account who died after the age of fifty shall be deposited in the unallocated employer account.~~

Sec. 8. That section 16-1030, Revised Statutes Supplement, 1992, be amended to read as follows:

16-1030. When prior to commencement of retirement benefits any firefighter participating in the retirement system established pursuant to sections 16-1020 to 16-1038 dies in the line of duty or in case death is caused by or is the result of injuries received while in the line of duty and such firefighter is not survived by a spouse or minor children, the entire retirement value shall be payable to the beneficiary or beneficiaries specified by the deceased firefighter prior to his or her death or to the deceased firefighter's estate in the event that no beneficiary was specified. The retirement value or portion thereof may be received by the beneficiary paid in the form of a single lump-sum payment, a straight life annuity, or any other optional form of benefit specified in the group annuity contract retirement system's funding medium. For a firefighter who is survived by a spouse or minor children, a retirement pension of fifty percent of regular pay shall be paid to the surviving spouse or, upon his or her remarriage or death, to the minor child or children during such child's or children's minority subject to deduction of the amounts paid as workers' compensation benefits on account of death as provided in section 16-1032. Each such child shall share equally in the total pension benefit to the age of majority, except that as soon as a child attains the age of majority, such pension benefit to such child shall cease and be reallocated among the remaining minor children until the last remaining child dies or reaches the age of majority.

Any payments for the benefit of a minor child shall be made on behalf of such child to the surviving spouse or, if there is none, to the legal guardian of the child.

In the event the surviving spouse or minor children of such deceased firefighter die before the aggregate amount of pension payments received by the firefighter and his or her survivor beneficiaries, if any, equals the total amount in the employee's firefighter's employee account, including interest at the time of the first benefit payment, the difference between the total amount in the employee's employee account and the aggregate amount of pension payments received by the retired firefighter and his or her surviving beneficiaries, if any, shall be paid in a single sum to the firefighter's duly qualified personal representative, except that if the difference is less than five hundred dollars, the city may pay the same to such claimant or claimants as the retirement committee,

~~in its discretion, determines to be entitled to the funds~~ beneficiary or, in the absence of a surviving beneficiary, his or her estate.

To the extent that the retirement value at the date of death exceeds the amount required to purchase the specified retirement pension, reduced by any amounts paid as workers' compensation benefits, the excess shall be ~~applied to increase the amount of the pension benefit. In the event that the specified retirement pension is payable, the retirement value shall be deposited in the unallocated employer account~~ paid in the manner provided in subsection (1) of section 16-1029.

Sec. 9. That section 16-1031, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1031. ~~In case (1) Except as provided in subsection (3) of this section for temporary disability, if any firefighter shall become permanently and totally becomes disabled, from accident or other cause, while in the line of duty, and such firefighter because of such disability is unable to resume the duties he or she was performing at the time of injury; such firefighter shall forthwith be placed upon the roll of pensioned firefighters at the regular retirement pension of fifty percent of regular pay, as defined in section 16-1021 for the period of such disability. For purposes of this section, disability shall mean the complete inability of the firefighter, for reasons of accident or other cause while in the line of duty, to perform the duties of a firefighter as defined by fire department job descriptions or ordinance.~~

(2) No disability benefit payment shall be made except upon adequate proof furnished to the city, consisting of a medical examination conducted by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who certifies to the city that the firefighter is unable to perform the duties of a firefighter. The city, during the first three years of the payment of such benefits, shall have the right, at reasonable times, to require the disabled firefighter to undergo a medical examination at the city's expense to determine the continuance of the disability claimed. After such three-year period, the city may request the district court to order the firefighter to submit proof of the continuance of the disability claimed if the city has reasonable grounds to believe the firefighter is fraudulently receiving disability payments. The city shall have the right to demand a physical examination of the firefighter by a competent, disinterested physician who is duly licensed to practice medicine and surgery in this state and who is chosen by the city. The expense of such examination shall be borne by the city.

(3) In case of temporary total disability of a firefighter received while in the line of duty, he or she shall receive his or her salary during the continuance of such disability for a period not to exceed twelve months, except that if it shall be is ascertained by the city within twelve months that such temporary disability has become permanent a disability as defined in this section, then the salary shall cease and he or she shall be entitled to the benefits for pensions in case of total and permanent disability as provided in this section.

(4) All payments of pension or salary provided by this section shall be subject to deduction of amounts paid under the Nebraska Workers' Compensation Act. Total payments to a disabled firefighter, in excess of amounts paid as workers' compensation benefits, shall not be less than the retirement value at the date of disability. If the actuarial equivalent of the disability pension payable under this section exceeds the firefighter's retirement value at the time of the first payment, the city shall contribute such additional amounts as may be necessary, from time to time, to provide for the required disability pension.

(5) If a firefighter who was receiving a pension under this section is later determined to be no longer disabled, the pension provided for under this section shall terminate and the firefighter's vested retirement value, as reduced by any disability payments made from the retirement system, shall thereafter be held and administered in the same manner as for any nondisabled firefighter or former firefighter.

(6) If a firefighter who was receiving a pension under this section is later determined to be no longer disabled during the first three years when disability benefit payments are being paid, the firefighter may return to duty with the fire department under the following conditions:

(a) If a vacancy exists on the fire department for which the firefighter is qualified and the firefighter wishes to return to the fire department, the city shall hire the firefighter to fill the vacancy at a pay grade of not less than his or her previous pay grade; or

(b) If no vacancy exists in the fire department and the firefighter wishes to return to the fire department, the city shall place the firefighter on a waiting list and rehire the firefighter at a pay grade of not less than his or her previous pay grade when a vacancy occurs for which the firefighter is qualified.

The provisions of this subsection shall not apply to a firefighter whose disability benefit payments are terminated because of fraud on the part of the firefighter.

Sec. 10. That section 16-1033, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1033. In the event a firefighter quits or is discharged before his or her retirement date as defined in subsection (3) of section 16-1028, the firefighter may request and receive, as a lump sum all of the contribution he or she has made toward his or her employee account, including interest earned prior to January 1, 1984, at five percent per annum, and including regular interest earned from January 1, 1984 lump-sum payment, an amount equal to the value of his or her employee account as determined at the valuation date preceding his or her termination of employment pursuant to subdivision (9) of section 16-1021. Such firefighter, if vested, may, in lieu thereof, receive a deferred pension benefit or lump-sum benefit in an amount purchased or provided by the vested retirement value at the date of retirement. The retirement value at such retirement date shall consist of the accumulated then-accumulated value of the firefighter's employee account, less at the date of the retirement as reduced by any lump-sum distributions received prior to

retirement, together with a vested percentage of the accumulated value of the firefighter's employer account plus regular interest from the date of termination to the at the date of retirement. ~~The retirement value of a firefighter who is employed on January 1, 1984, shall include, when he or she quits, is discharged from the city, or retires, an amount equal to the employee's contributions without interest that were made prior to January 1, 1984, subject to the vesting schedule.~~ The vesting schedule is as follows:

(1) If the terminating firefighter has been a member of the system for less than four years, such vesting shall be nil; and

(2) If the terminating firefighter has been a member of the paid department of the city for at least four years, such vesting percentage shall be forty percent. Such vesting percentage shall be fifty percent after five years, sixty percent after six years, seventy percent after seven years, eighty percent after eight years, ninety percent after nine years, and one hundred percent after ten years.

The deferred pension benefit shall be payable on the first of the month immediately following his or her fifty-fifth birthday. At the option of the terminating firefighter, such pension benefit may be paid as of the first of the month after such member attains the age of fifty. Such election may be made by the firefighter any time prior to the payment of the pension benefits.

The deferred pension benefit shall be paid in the form of the benefit options specified at subsection (1) of section 16-1027 as elected by the firefighter. Notwithstanding anything in sections 16-1020 to 16-1042 to the contrary, if the firefighter's vested retirement value at the date of his or her termination of employment is less than three thousand five hundred dollars, such firefighter shall, upon request within one year of such termination, be paid his or her vested retirement value in the form of a single lump-sum payment.

Effective January 1, 1997, a firefighter may elect upon his or her termination of employment to receive his or her vested retirement value in the form of a single lump-sum payment. For a firefighter whose termination of employment is prior to January 1, 1997, this election shall be available only if the city has adopted a lump-sum distribution option for terminating firefighters in the funding medium established for the retirement system.

Upon any lump-sum payment of a terminating firefighter's retirement value under this section, such firefighter will not be entitled to any deferred pension benefit and the city and the retirement system shall have no further obligation to pay such firefighter or his or her beneficiaries any benefits under sections 16-1020 to 16-1042.

In the event that the terminating firefighter shall is not be credited with one hundred percent of his or her employer account, the remainder remaining nonvested portion of the account shall be forfeited and shall be deposited in the unallocated employer account. If the actuarial evaluation required by section 16-1026 shows that the assets of the unallocated employer account are sufficient to provide for the

projected plan liabilities, such forfeitures shall instead be used to meet the expenses incurred by the city in connection with administering the retirement system, and the remainder shall then be used to reduce the city contribution which would otherwise be required to fund pension benefits.

Sec. 11. That section 16-1034, Revised Statutes Supplement, 1992, be amended to read as follows:

16-1034. A retirement committee shall be established to supervise the general operation of the retirement system, ~~established pursuant to sections 16-1020 to 16-1038~~. The governing body of the city shall be responsible for the general administration of such retirement system unless specific functions or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee. All costs incurred with regard to the administration of the retirement system shall be paid by the city from the unallocated employer account as provided in section 16-1036.01.

The city and retirement committee shall have all powers which are necessary for or appropriate to establishing, maintaining, managing, and administering the retirement system. Whenever sections 16-1020 to 16-1042 fail to address the allocation of duties or powers in the administration of the retirement system, such powers or duties shall be vested in the city unless such powers or duties have been delegated by ordinance to the retirement committee.

Sec. 12. That section 16-1036, Revised Statutes Supplement, 1992, be amended to read as follows:

16-1036. (1) The funds in the Firefighters Retirement System Fund shall be invested by the retirement committee. The city, subject to the approval of the retirement committee, shall contract with ~~an insurance company, trust company, or other financial institution, including, but not limited to, brokerage houses, investment managers, savings and loan associations, banks, credit unions, or lenders approved by the Farmers Home Administration or United States Department of Veterans Affairs~~ a funding agent or agents to hold or invest the assets of the retirement system and to provide for the benefits provided by sections 16-1020 to 16-1042. The retirement committee, subject to the approval of the city, may also select an investment manager. The city, subject to approval of the retirement committee, may contract with investment managers registered under the Investment Advisers Act of 1940 to invest, reinvest, and otherwise manage such portion of the assets of the retirement system as may be assigned by the city or retirement committee.

(2) The retirement committee shall establish an investment plan which allows each member of the retirement system to allocate all contributions to his or her employee account to the various investment options or combinations of investment options described in such plan. Each firefighter shall have the option of investing his or her employee account in any proportion, including full allocation, in any investment option offered by the plan. Each firefighter shall be given a summary of the investment plan and a detailed current description of each investment option prior to making or revising his or her allocation.

(3) The funds in the Firefighters Retirement System Fund shall be invested pursuant to the policies established by the Nebraska Investment Council.

Sec. 13. That section 16-1038, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1038. (1) The right to any benefits under the retirement system and the assets of any fund of the retirement system shall not be assignable or subject to execution, garnishment, attachment, or the operation of any bankruptcy or insolvency laws, except that the retirement system may comply with the directions set forth in a qualified domestic relations order meeting the requirements of section 414(p) of the Internal Revenue Code of 1986, as amended. The city or retirement committee may require appropriate releases from any person as a condition to complying with any such order. The retirement system shall not recognize any domestic relations order which alters or changes benefits, provides for a form of benefit not otherwise provided for by the retirement system, increases benefits not otherwise provided by the retirement system, or accelerates or defers the time of payment of benefits. No participant or beneficiary shall have any right to any specific portion of the assets of the retirement system.

(2) The retirement system shall be administered in a manner necessary to comply with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code of 1986, as amended, including section 401(a)(9) relating to the time and manner in which benefits are required to be distributed, section 401(a)(16) relating to compliance with the maximum limitation on the plan benefits or contributions under section 415, section 401(a)(17) which limits the amount of compensation which can be taken into account under a retirement plan, section 401(a)(25) relating to the specification of actuarial assumptions, and section 401(a)(31) relating to direct rollover distribution from qualified retirement plans. Any requirements for compliance with section 401(a) of the Internal Revenue Code of 1986, as amended, may be set forth in any trust or funding medium for the retirement system. This subsection shall be in full force and effect only so long as conformity with section 401(a) of the Internal Revenue Code of 1986, as amended, is required for public retirement systems in order to secure the favorable income tax treatment extended to sponsors and beneficiaries of tax-qualified retirement plans.

(3) If the retirement committee determines that the retirement system has previously overpaid or underpaid a benefit payable under sections 16-1020 to 16-1042, it shall have the power to correct such error. In the event of an overpayment, the retirement system may, in addition to any other remedy that the retirement system may possess, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon.

(4) A firefighter whose benefit payment is adjusted by the retirement committee pursuant to subsection (3) of this section may request a review by the city council of the adjustment made by the

retirement committee.

(5) In order to provide the necessary amounts to pay for or fund a pension plan established under sections 16-1020 to ~~16-1038~~ 16-1042, the mayor and council may make a levy in addition to the multiple levies or the all-purpose and exclusive levy which such city is authorized by law to make.

Sec. 14. That section 16-1042, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-1042. In the event that after four or more years of employment a firefighter terminates his or her employment for the purpose of becoming a firefighter employed by another first class city of the first class in Nebraska; and such new employment commences within ninety days of such termination, such firefighter shall be entitled to transfer to the Firefighters Retirement System Fund of the city by which he or she is newly employed; the full amount of his or her contribution and his or her vested portion of the ~~city's contribution value of his or her employer account~~ at the time of termination, together with regular interest accrued thereon. The transferred funds shall be administered by the retirement committee of the city to which transferred. ~~For the purpose of applying the vesting schedule in section 16-1033 to contributions made following the commencement of new employment, such firefighter shall be deemed a new employee. Upon such transfer, the city and the retirement system from which the firefighter transferred shall have no further obligation to such firefighter or his or her beneficiary. Following the commencement of new employment, the transferring firefighter shall be deemed a new employee for all purposes of the retirement system of the city to which he or she transferred.~~

Beginning January 1, 1993, a firefighter who is to receive an eligible rollover distribution, within the meaning of section 401(a)(31) of the Internal Revenue Code of 1986, as amended, from the retirement system may choose to have such distribution made in the form of a direct transfer to the trustee or custodian of a retirement plan eligible to receive the transfer under the code if the election is made in the form and within the time period required by the retirement committee and the plan to which such transfer is to be made will accept such transfer.

Sec. 15. That section 81-2025, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2025. (1) Every officer who has been in the employ of the state as such and who becomes disabled and physically unfit to perform the duties of an officer shall be entitled to retire and receive an annuity as provided by law.

(2) Every officer who has been in the employ of the state as such for twenty years or more, as calculated in section 81-2033, and has attained the age of fifty years or more shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(3) Any officer who has attained the age of sixty years upon

his or her separation from state service but who has not been in the employ of the state for twenty years as such shall be entitled to the annuity as provided for in sections 81-2014 to ~~81-2034~~ 81-2036.

(4) Every officer who has been in the employ of the state as such for twenty-five years or more, as calculated in section 81-2033, and has attained the age of fifty years shall be entitled to retire and receive an annuity as provided by law. The right to retire at the age of fifty years with twenty-five years of service or more shall be at the option of the officer but such retirement shall be mandatory upon the officer attaining the age of sixty years.

(5) Payment of any benefit provided under sections 81-2014 to ~~81-2034~~ 81-2036 may not be deferred later than the sixtieth day after the end of the year in which the officer has both attained at least age seventy and one-half years and terminated his or her employment with the Nebraska State Patrol.

(6) The effective date of retirement payments shall be the first day of the month following (a) the date a member qualifies for retirement as provided in this section or (b) the date upon which a member's request for retirement is received on an application form provided by the system, whichever is later. An application may be filed no more than ninety days in advance of qualifying for retirement.

Sec. 16. That section 81-2026, Revised Statutes Supplement, 1992, be amended to read as follows:

81-2026. (1) Any officer qualified for an annuity as provided in section 81-2025 for reasons other than disability shall be entitled to receive a monthly annuity for the remainder of the officer's life. The amount of the annuity shall be a percentage of the officer's final average monthly compensation. For retirement on or after the fifty-fifth birthday of the member or on or after the fiftieth birthday of a member who has been in the employ of the state for twenty-five years, as calculated in section 81-2033, the percentage shall be three percent multiplied by the number of years of service, as calculated in section 81-2033, except that the percentage shall never be greater than seventy-five percent.

For retirement pursuant to subsection (2) of section 81-2025 on or after the fiftieth birthday of the member but prior to the fifty-fifth birthday of the member who has been in the employ of the state for less than twenty-five years, as calculated in section 81-2033, the annuity which would apply if the member were age fifty-five at the date of retirement shall be reduced by five-ninths of one percent for each month by which the early retirement date precedes age fifty-five or for each month by which the early retirement date precedes the date upon which the member has served for twenty-five years, whichever is earlier. Any officer who has completed thirty years of service with the Nebraska State Patrol shall have retirement benefits computed as if the officer had reached age fifty-five.

For purposes of this computation, final average monthly compensation shall mean the sum of the officer's total compensation during the final three years of service as an officer divided by thirty-six,

and for any officer employed on or before January 4, 1979, the officer's total compensation shall include payments received for unused vacation and sick leave and compensatory time accumulated during the final three years of service.

(2) Any officer qualified for an annuity as provided in section 81-2025 for reasons of disability shall be entitled to receive a monthly annuity for the remainder of the period of disablement as provided in sections 81-2028 to 81-2030. The amount of the annuity shall be fifty percent of the officer's monthly compensation at the date of disablement if the officer has completed seventeen or fewer years of service. If the officer has completed more than seventeen years of service, the amount of the annuity shall be three percent of the final monthly compensation at the date of disablement multiplied by the total years of service but not to exceed seventy-five percent of the final average monthly compensation as defined in subsection (1) of this section. The date of disablement shall be the date on which the benefits as provided in section 81-2028 have been exhausted.

(3) Upon the death of an officer after retirement for reasons other than disability, the officer's surviving spouse, if married to the officer on the date of retirement, shall continue to receive seventy-five percent of the amount of such officer's annuity for the remainder of the surviving spouse's life or until the surviving spouse remarries. If the surviving spouse has a dependent child or children under the age of nineteen years in his or her care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the youngest such dependent child attains the age of nineteen years, after which time the benefit shall be reduced to seventy-five percent of the amount of such officer's annuity. If there is no surviving spouse living at the date of the officer's death, the officer's child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest such child attains the age of nineteen years. If there is more than one such child under the age of nineteen years at such time, the amount thereof shall be divided equally among such children under such age and, as they attain the age of nineteen years, only the other child or children under such age shall participate therein. If there is no surviving spouse or no child under the age of nineteen years at the date of the officer's death, the amount of annuities such officer has received under sections 81-2014 to 81-2036 shall be computed. If such amount is less than the contributions to the State Patrol Retirement Fund made by such officer, plus regular interest, the difference shall be paid to the officer's designated beneficiary or estate. Upon the death of an officer after retirement for reasons of disability, benefits shall be provided as if the officer had retired for reasons other than disability. Upon the death of an officer before retirement, benefits shall be provided as if the officer had retired for reasons of disability on the date of such officer's death as follows: (a) To the surviving spouse and dependent child or children under the age of nineteen years in such spouse's care, the benefit shall be one hundred percent of the amount of such officer's annuity until such time as the

youngest dependent child attains the age of nineteen years after which time the benefit shall be reduced to seventy-five percent of the officer's annuity for the remainder of his or her life or until he or she remarries; (b) if there is no spouse living at the date of the officer's death, his or her child or children, if any, shall continue to receive seventy-five percent of the amount of such officer's annuity until such time as the youngest child attains the age of nineteen years; (c) if there is more than one child under the age of nineteen years at the date of the officer's death, the benefit shall be divided equally among such children and, as they attain the age of nineteen years, only the child or children under the age of nineteen years shall participate therein; and (d) if there is no child or children under the age of nineteen years living at the date of the officer's death, the surviving spouse shall receive seventy-five percent of the amount of such officer's annuity for the remainder of his or her life or until he or she remarries. If no benefits are paid to a surviving spouse or dependent children, benefits will be paid as described in subsection (1) of section 81-2031.

(4) Any benefits provided in subsections (1), (2), and (3) of this section shall apply only to retirements, disabilities, and deaths occurring on or after September 2, 1977. No benefits being paid under the system on September 2, 1977, shall be modified, in any way, by the enactment of Laws 1977, LB 347.

(5) Notwithstanding anything to the contrary in sections 81-2014 to 81-2036, the annual benefit payable under such sections shall not at any time exceed the lesser of (a) ninety thousand dollars, as adjusted for cost-of-living adjustments announced by the Internal Revenue Service for each calendar year in which the adjustment is announced, actuarially reduced to reflect distributions prior to age sixty-two, or (b) one hundred percent of the member's average annual compensation for the three consecutive calendar years of service during which the member received his or her highest compensation and was an active member in the Nebraska State Patrol Retirement System. The maximum amount shall be adjusted, when necessary, as follows: (i) When the annual benefit is payable under this system to a member in a form other than a straight life annuity or the joint and survivor annuity described by subsections (1) and (3) of this section, the maximum amount shall be adjusted to the equivalent of a straight life annuity beginning at the same age on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board; and (ii) when the annual benefit is payable under this system to a member who has less than ten years of service under the system, the maximum amount shall be multiplied by a fraction, the numerator of which is the member's number of years of service under the system and the denominator of which is ten.

Sec. 17. That section 81-2033, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2033. In computing length of service under sections 81-2014 to ~~81-2034~~ 81-2036, such service shall include ~~any~~ the years of service with the Nebraska State Patrol, permanent force, as established by the ~~act~~ law creating the Nebraska State Patrol computed to the

nearest one-twelfth year and shall only include such years during which the person was a member of the Nebraska State Patrol Retirement System. Length of service shall also include credit for time served in the armed forces pursuant to section 81-2034.

Sec. 18. Sections 15 to 19 and 21 of this act shall become operative on their effective date. The other sections of this act shall become operative three calendar months after the adjournment of this legislative session.

Sec. 19. That original section 81-2033, Reissue Revised Statutes of Nebraska, 1943, and sections 81-2025 and 81-2026, Revised Statutes Supplement, 1992, are repealed.

Sec. 20. That original sections 16-1021, 16-1023, 16-1024, 16-1025, 16-1028, 16-1031, 16-1033, 16-1038, and 16-1042, Reissue Revised Statutes of Nebraska, 1943, and sections 16-1027, 16-1029, 16-1030, 16-1034, and 16-1036, Revised Statutes Supplement, 1992, are repealed.

Sec. 21. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.