

LEGISLATIVE BILL 268

Approved by the Governor April 7, 2005

Introduced by Urban Affairs Committee: Friend, 10, Chairperson; Connealy, 16; Janssen, 15; Landis, 46; Schimek, 27

AN ACT relating to the Volunteer Emergency Responders Recruitment and Retention Act; to amend sections 35-1310, 35-1312, 35-1320, 35-1324, and 35-1330, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to administration of service award programs; and to repeal the original sections.

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

Section 1. Section 35-1310, Reissue Revised Statutes of Nebraska, is amended to read:

35-1310. Each volunteer department serving a city, village, or rural or suburban fire protection district conducting a service award benefit program shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of that city, village, or rural or suburban fire protection district. It shall be the duty of the certification administrator to keep and maintain records on the activities of all volunteer members and participants and award points for such activities based upon the standard criteria for qualified active service. Each volunteer member and participant shall be provided by the certification administrator with notice of the total points he or she has accumulated during each six-month period in which the program is in operation. No later than ~~one month~~ thirty days following the ~~first end~~ of each year of service, ~~during which a service award benefit program has been in existence,~~ the certification administrator shall forward to the governing body of the city, village, or fire protection district a report specifying the name of each volunteer member of the volunteer department, the number of points accumulated by each volunteer during the year of service, and the names of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. At the time of the filing of the report, each volunteer member of the department whose name does not appear on the list of qualified volunteers shall be informed of such fact in writing by the certification administrator by mailing the same by first-class United States mail, postage prepaid. No sooner than forty-five days nor later than sixty days after the end of each year of service, ~~following the first year of service during which a service award benefit program has been in existence,~~ the governing body of the city, village, or fire protection district conducting the program shall formally approve and certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. Any volunteer member whose name does not appear on the approved certification list may, within fifteen days after the filing of the report, appeal in writing to the governing body to have his or her name added to the certification list by filing the same with the clerk of the governing body. The appeal shall set out the basis upon which the volunteer believes he or she should be placed upon the certification list and shall specify whether or not a public hearing is requested. If requested by the appealing party, the governing body shall hold a public hearing on the appeal prior to or upon the date upon which the certification list is approved. The governing body shall designate an appropriate person to investigate the appeal and report on its merits to the governing body which shall, by majority vote, add the name of the person to the certification list if there is sufficient evidence to indicate that the individual performed sufficient activities or services to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter as provided in the standard criteria for qualified active service during the prior year of service. The decision of the governing body may be appealed to the district court of the county in which the volunteer member resides.

Sec. 2. Section 35-1312, Reissue Revised Statutes of Nebraska, is amended to read:

35-1312. (1) Except as provided in section 35-1313, service award benefits provided under a service award benefit program shall be paid to a participant only upon the date he or she reaches the age of sixty-five or upon the first day of the first year of service after the first year of service in which such participant was not on the certification list of his or her

volunteer department, whichever is later, if the participant has been an active emergency responder, active rescue squad member, or active volunteer firefighter for the number of years of service specified by the city, village, or fire protection district administering the service award benefit program.

(2) Upon the completion of the specified years of service as determined by the city, village, or rural or suburban fire protection district, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in (a) the principal amount of all contributions deposited into the annual account for such year of service and (b) all income derived therefrom.

(3) Nothing in this section shall be construed as preventing a city, village, or rural or suburban fire protection district from establishing a vesting schedule under which a stated proportion of a participant's interest in his or her annual accounts becomes nonforfeitable upon completion of a specified number of years of service, subject to sections 35-1313, 35-1323, and 35-1329.

Sec. 3. Section 35-1320, Reissue Revised Statutes of Nebraska, is amended to read:

35-1320. (1) Any city, village, or rural or suburban fire protection district conducting a service award benefit program shall, within thirty days after the adoption of a program, provide all volunteers providing its local political subdivision with emergency response services with a summary of the program's provisions, including the program's provisions relating to participation and the applicable standard criteria for qualified active service, the manner in which nonforfeitable interests in annual accounts are obtained, the amount of all contributions to the annual account, and any other information relating to participation in the program. The city, village, or rural or suburban fire protection district shall provide copies of the summary to all new volunteer members and to any applicant for membership to the volunteer department.

(2) Any summary of a program's provisions provided pursuant to this section shall include the following statement and such additional explanation as is deemed appropriate by the sponsoring city, village, or rural or suburban fire protection district: Due to definitive interpretations of the relevant provisions of the Internal Revenue Code, in order to insure that funds deposited on behalf of a participant are not taxable to the participant in that or any subsequent year in which they are nonforfeitable, any funds held by a city, village, or rural or suburban fire protection district on behalf of qualifying program participants will be subject to the claims of creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of that city, village, or district.

(3) Any material modification to the program shall be provided in writing to all participants within thirty days after its adoption by the city, village, or rural or suburban fire protection district.

(4) No later than December 1 of each year following the end of the first full year of service after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall provide to each participant listed in the certification list for that year of service a summary and copy of the relevant documents relating to the contributions to the annual account for such year of service. By December 1 of each subsequent year, the city, village, or rural or suburban fire protection district shall provide each participant who appears for the first time in the certification list for the immediately preceding year of service with the same information.

(5) All documents relating to any program, the certification lists, the annual accounts, the investment of the funds of the annual accounts, the contributions to the account and the income derived therefrom, and the identity of the administrator of the annual accounts shall be public records within the meaning of section 84-712.01.

Sec. 4. Section 35-1324, Reissue Revised Statutes of Nebraska, is amended to read:

35-1324. (1) All deposits made to annual accounts under any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act, all property and rights purchased with such deposits, and all investment income, property, or rights attributable to such deposits shall be held in a grantor trust for the exclusive benefit of participants and their beneficiaries within the meaning of subtitle A, chapter 1, subchapter J, part I, subpart E of the Internal Revenue Code, as defined in section 49-801.01, established by the city, village, or rural or suburban fire

protection district conducting the program, until such time as payments shall be paid under the terms of a program and the act. All such assets held in trust shall be invested by the city, village, or rural or suburban fire protection district conducting the program in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.

(2) ~~All deposits made to annual accounts under service award benefit programs~~ The trust established pursuant to subsection (1) of this section shall provide that all deposits made to the trust, all property and rights purchased with the deposits, and all investment income, property, or rights attributable to such deposits under the Volunteer Emergency Responders Recruitment and Retention Act, until paid to participants or their beneficiaries, are subject to the claims of the creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of the city, village, or rural or suburban fire protection district. With respect to any participant or beneficiary, the trust established pursuant to subsection (1) of this section shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.

(3) The trust established pursuant to subsection (1) of this section may contain such other terms and provisions as are necessary to insure that the participation by a participant in the service award benefit program does not result in taxable income to such participant under any provision of the Internal Revenue Code, as defined in section 49-801.01, until such time as service award benefits are paid pursuant to section 35-1312 or 35-1313.

Sec. 5. Section 35-1330, Reissue Revised Statutes of Nebraska, is amended to read:

35-1330. All unallocated contributions forfeited pursuant to section 35-1314 shall be used by the city, village, or rural or suburban fire protection district to finance the cost of conducting the service award benefit program or, at the discretion of the city, village, or rural or suburban fire protection district, to reduce the current or future deposits to the service award benefit program.

Sec. 6. Original sections 35-1310, 35-1312, 35-1320, 35-1324, and 35-1330, Reissue Revised Statutes of Nebraska, are repealed.