

HOUSE BILL 693

Introduced by Addy

2/14	Introduced
2/14	Referred to State Administration
2/16	Hearing
2/16	Tabled in Committee

1 House BILL NO. 693
2 INTRODUCED BY Adley
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
5 PENSION LAWS TO PROVIDE FOR PAYMENT OF BENEFITS IN
6 ACCORDANCE WITH QUALIFIED DOMESTIC RELATIONS ORDERS;
7 AMENDING SECTIONS 19-3-105, 19-3-703, 19-3-1101, 19-3-1301,
8 19-3-1302, 19-4-603, 19-4-702, 19-4-706, 19-4-1001,
9 19-4-1002, 19-5-403, 19-5-503, 19-5-602, 19-5-604, 19-5-701,
10 19-5-704, 19-6-503, 19-6-505, 19-6-602, 19-6-705, 19-7-504,
11 19-7-602, 19-7-604, 19-7-701, 19-7-705, 19-8-604, 19-8-702,
12 19-8-801, 19-8-805, 19-9-804, 19-9-912, 19-9-1006,
13 19-10-503, 19-10-504, 19-11-502, 19-11-605, 19-11-607,
14 19-11-612, 19-12-405, 19-13-304, 19-13-704, 19-13-901
15 THROUGH 19-13-903, 19-13-1004, AND 19-21-212, MCA; AND
16 PROVIDING A DELAYED EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 19-3-105, MCA, is amended to read:

20 "19-3-105. Exemption from taxes and legal process --
21 exception for qualified domestic relations order. (1) The
22 Except as provided in subsection (2), the right of a person
23 to a retirement allowance or any other benefit under this
24 chapter and the moneys money in the fund created under this
25 chapter is not:

1 ~~(1)~~(a) subject to execution, garnishment, attachment,
2 or any other process;
3 ~~(2)~~(b) subject to state, county, or municipal taxes
4 except for a refund paid under 19-3-703 of a member's
5 contributions picked up by an employer after June 30, 1985,
6 as provided in 19-3-701; or
7 ~~(3)~~(c) assignable except as specifically provided in
8 this chapter specifically provided.
9 (2) Benefits must be paid in accordance with the
10 applicable requirements of a qualified domestic relations
11 order as set forth in 29 U.S.C. 1056(d)(3). The board may
12 prescribe the format in which the order must be given to the
13 board."

14 **Section 2.** Section 19-3-703, MCA, is amended to read:
15 "19-3-703. Refund of member's contributions on
16 termination of service. (1) Except as provided in this
17 section and 19-3-105, any member whose service has been
18 discontinued by other than by death or retirement shall be
19 paid his accumulated contributions at his request.

20 (2) Upon qualification for any other benefit under this
21 chapter, a member having any accumulated contributions
22 ~~standing~~ to his credit in the retirement fund shall receive
23 the benefit based upon the creditable service during which
24 such the contributions were made.

25 (3) The board may, in its discretion, withhold, for not

1 more than 1 year after a member last rendered service, all
2 or part of his accumulated contributions if after a previous
3 discontinuance of service he withdrew all or part of his
4 contributions and failed to redeposit ~~such the~~ withdrawn
5 amount in the retirement fund as provided in 19-3-704.

6 (4) An employer who has an employment-related claim
7 against a terminating member may, within 30 days after the
8 date of termination, submit to the board a written request,
9 signed by the employer and the member, authorizing the
10 payment of all or any part of the accumulated contributions
11 of the member directly to the employer to satisfy the claim
12 in whole or in part. The request, if timely submitted, is
13 sufficient authority for the department of administration to
14 make ~~such the~~ direct payment to the employer as part of the
15 member's refund. The total of the payments made to the
16 employer and those made to the member may not exceed the
17 member's accumulated contributions."

18 **Section 3.** Section 19-3-1101, MCA, is amended to read:

19 "19-3-1101. **Optional retirement allowance.** (1) The
20 Except as provided in 19-3-105, the retirement allowance of
21 a member who so elects shall be converted, in lieu of all
22 other benefits under this chapter, into an optional
23 retirement allowance which is the actuarial equivalent of
24 the regular retirement allowance. The optional retirement
25 allowance is a reduced amount payable during the member's

1 lifetime with a subsequent benefit as follows:

2 (a) option 2--a continuation of the reduced retirement
3 allowance during the lifetime of his named contingent
4 annuitant;

5 (b) option 3--a continuation of one-half of the reduced
6 retirement allowance during the lifetime of his named
7 contingent annuitant;

8 (c) option 4--~~such other~~ another actuarially equivalent
9 benefit as may be approved by the board.

10 (2) Election of an optional retirement allowance must
11 be by written application filed prior to the first payment
12 of the regular retirement allowance.

13 (3) If either the member or his contingent annuitant
14 dies before the member has received the first payment under
15 option 2 or 3, the election of the option is automatically
16 canceled.

17 (4) If a member dies after retirement and within 30
18 days from the date his election or changed election of an
19 optional retirement allowance is received by the board, then
20 the election is void and the death is considered as that of
21 a member before retirement.

22 (5) (a) Upon written request to the board, a retired
23 member who is receiving an optional retirement allowance may
24 designate a different contingent annuitant, select a
25 different option, or convert his optional retirement

1 allowance to a regular retirement allowance if:

2 (i) the original contingent annuitant has died; or

3 (ii) the member has been divorced from the original
4 contingent annuitant and the original contingent annuitant
5 has not been granted the right to receive the optional
6 retirement allowance as part of the divorce settlement.

7 (b) Upon receipt of the request, the board shall
8 actuarially adjust the member's monthly retirement allowance
9 to reflect the change."

10 **Section 4.** Section 19-3-1301, MCA, is amended to read:

11 "19-3-1301. Designation of beneficiary. The Except as
12 provided in 19-3-105, the beneficiaries of a member shall be
13 such natural persons, charitable organizations, or trusts
14 for the benefit of natural living persons as the member
15 shall designate in the appropriate written application. A
16 member may revoke such a designation and name different
17 beneficiaries by filing written notice with the board."

18 **Section 5.** Section 19-3-1302, MCA, is amended to read:

19 "19-3-1302. Effect of no designation. (1) if Except as
20 provided in 19-3-105, if no living beneficiary, existing
21 charitable organization, or natural living person who is the
22 beneficiary of a trust is designated, the estate of the
23 member shall be the beneficiary. If the estate would not be
24 probated but for the amount due from the retirement system,
25 all of the amount due, including retirement allowances

1 accrued but not received prior to death, shall be paid
2 directly, without probate, to the surviving next of kin of
3 the deceased or the guardians of ~~said~~ the survivor's estate,
4 share and share alike.

5 (2) Payment shall be made in the same order in which
6 the following groups are listed:

7 (a) husband or wife;

8 (b) children;

9 (c) father and mother;

10 (d) grandchildren;

11 (e) brothers and sisters; or

12 (f) nieces and nephews.

13 (3) ~~No payment shall~~ Payment may not be made to persons
14 included in any of ~~said the~~ groups referred to in subsection
15 (2) if at the date of payment there ~~be~~ are living persons in
16 any of the groups preceding it, as listed. Payment shall be
17 made upon receipt from ~~said~~ persons in lower groups of an
18 affidavit, upon a form supplied by the retirement board,
19 that there are no living individuals in the groups preceding
20 it and that the estate of the deceased will not be probated.

21 (4) The payment shall be in full and complete discharge
22 and acquittance of the board and system on account of ~~said~~
23 the death."

24 **Section 6.** Section 19-4-603, MCA, is amended to read:

25 "19-4-603. Withdrawal of accumulated contributions. Any

1 Except as provided in 19-4-706, any inactive member electing
 2 to do so or any person whose membership terminates may
 3 withdraw his accumulated contributions from his annuity
 4 account in the retirement system in accordance with the
 5 following provisions:

6 (1) An inactive member under the provisions of
 7 ~~subsection--(1)--or--(3)--of~~ 19-4-303 (1) or (3) may elect,
 8 without right of revocation, to withdraw his accumulated
 9 contributions. If he does not withdraw his accumulated
 10 contributions, he remains an inactive member of the
 11 retirement system with the right to qualify for its
 12 benefits.

13 (2) Upon recovery from a disabling illness or
 14 separation from the armed forces, any person qualifying as
 15 an inactive member under the provisions of 19-4-303(2) may
 16 withdraw his accumulated contributions unless he returns to
 17 active membership.

18 (3) Any person whose membership terminates under the
 19 provisions of 19-4-304(4) may withdraw his accumulated
 20 contributions."

21 **Section 7.** Section 19-4-702, MCA, is amended to read:

22 "19-4-702. Optional allowances. (1) ~~Until~~ Except as
 23 provided in 19-4-706, until the first payment on account of
 24 any benefit becomes normally due, any member may elect to
 25 receive one of the optional allowances described in

1 subsection (2) in lieu of the normal form of retirement
 2 allowance, which is provided for in part 8 of this chapter
 3 and 19-4-902. If a beneficiary dies within 30 days after
 4 retirement, his election to receive an optional allowance is
 5 void and his death will be considered as that of an active
 6 member.

7 (2) An optional allowance is the actuarial equivalent
 8 of the member's retirement or disability allowance at the
 9 time of his retirement and provides an allowance payable to
 10 him throughout his lifetime and, upon his death, an
 11 allowance payable to the person that he nominated by written
 12 designation, duly acknowledged and filed with the retirement
 13 board at the time of his retirement, in accordance with one
 14 of the following options:

15 (a) Option A--the optional allowance will be paid to
 16 the member throughout his lifetime and, upon his death,
 17 continue throughout the lifetime of his designated
 18 beneficiary.

19 (b) Option B--the optional allowance will be paid to
 20 the member throughout his lifetime, and upon his death,
 21 one-half of the optional allowance will be continued
 22 throughout the lifetime of his designated beneficiary.

23 (c) Option C--the optional allowance will be paid to
 24 the member throughout his lifetime, and upon his death,
 25 two-thirds of the optional allowance will be continued

throughout the lifetime of his designated beneficiary.

(d) Option D--the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.

(e) Option E--the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor.

(f) Option F--some other benefit will be paid either to the member or his surviving designated beneficiary in accordance with provisions approved by the retirement board.

(3) (a) Upon Except as provided in 19-4-706, upon written request to the retirement board, a retired member who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert his optional retirement allowance to a regular retirement or disability allowance if:

(i) the original beneficiary has died; or

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change."

Section 8. Section 19-4-706, MCA, is amended to read:

"19-4-706. Exemption from taxation and legal process -- exception for qualified domestic relations order. (1) The Except as provided in subsection (2), the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1)(a) exempted from any state, county, or municipal tax of the state of Montana except for a refund paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;

(2)(b) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3)(c) unassignable except as specifically provided in this chapter.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 9. Section 19-4-1001, MCA, is amended to read:

"19-4-1001. Allowances for death of member. (1) If Except as provided in 19-4-706, if a member dies before retirement, his accumulated contributions shall be paid to his estate or such a person as he may have nominated by a written designation filed with the retirement board prior to his death, in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-4-802, 19-4-804(1), and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-4-702(2)(a).

(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If Except as provided in 19-4-706, if the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of \$500 is payable to his designated beneficiary.

(4) If Except as provided in 19-4-706, if a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of \$100 per month shall be paid to each minor child of the deceased member until such each child reaches his 18th birthday."

Section 10. Section 19-4-1002, MCA, is amended to read:

"19-4-1002. Payments upon death of retiree. (1) Except as provided in 19-4-706, in the event of the death of a member after retirement, a death benefit of \$500 is payable to his designated beneficiary.

(2) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If Except as provided in 19-4-706, if a deceased member had 5 or more years of creditable service and was retired at the time of his death, the sum of \$100 per month shall be paid to each minor child of the deceased member until such each child reaches his 18th birthday."

Section 11. Section 19-5-403, MCA, is amended to read:

"19-5-403. Refunds in case of resignation or discharge. Where Except as provided in 19-5-704, if a contributor resigns of his own volition or is discharged for cause

1 before becoming entitled to a retirement allowance, then the
2 deductions standing to his credit shall be paid to him."

3 **Section 12.** Section 19-5-503, MCA, is amended to read:

4 "19-5-503. Involuntary retirement allowance. (1) If
5 Except as provided in 19-5-704, if a contributor is
6 involuntarily discontinued from service after having
7 completed 5 years of total service but before reaching
8 retirement age, he shall, upon filing an application in the
9 manner prescribed by the board, be paid whichever of the
10 following allowances that he elects:

11 (a) the full amount of his accumulated deductions; or

12 (b) a member's annuity of equivalent actuarial value to
13 his accumulated deductions, plus an annuity which is the
14 actuarial equivalent of the present value of the state
15 annuity then standing to his credit.

16 (2) If Except as provided in 19-5-704, if a contributor
17 elected or appointed to office prior to July 1, 1983, is
18 involuntarily discontinued from service after having
19 completed 12 years of total service but before reaching
20 retirement age, he shall, upon filing an application in the
21 manner prescribed by the board, be paid whichever of the
22 following allowances that he elects:

23 (a) the full amount of his accumulated deductions; or

24 (b) a member's annuity of equivalent actuarial value to
25 his accumulated deductions, plus a state annuity in an

1 amount which, when added to the member's annuity, will
2 provide a total annuity equal to the allowance provided for
3 in 19-5-502.

4 (3) If Except as provided in 19-5-704, if a contributor
5 elected or appointed to office after July 1, 1983, is
6 involuntarily discontinued from service after having
7 completed 12 years of total service but before reaching
8 retirement age, he may apply for and receive benefits under
9 this chapter pursuant to subsection (1)."

10 **Section 13.** Section 19-5-602, MCA, is amended to read:

11 "19-5-602. Nomination of beneficiary. Every Except as
12 provided in 19-5-704, every contributor shall have the
13 authority to name his beneficiary by written designation
14 duly acknowledged and filed with the board."

15 **Section 14.** Section 19-5-604, MCA, is amended to read:

16 "19-5-604. Payments in case of death from other causes.

17 (1) If Except as provided in 19-5-704, if the retired judge
18 or justice dies before receiving in payments the present
19 value of his member's annuity and the state annuity as it
20 was at the time of his retirement, the balance shall be paid
21 to his beneficiary.

22 (2) If a member dies before reaching retirement age,
23 his beneficiary shall be entitled to the actuarial
24 equivalent of the options as provided in 19-5-503."

25 **Section 15.** Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional retirement allowance. (1) A Except as provided in 19-5-704, a member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A Except as provided in 19-5-704, a member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2--upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 3--upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the

time of his retirement.

(c) Option 4--~~such~~ other benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board."

Section 16. Section 19-5-704, MCA, is amended to read:

"19-5-704. Exemption from taxes and legal process -- exception for qualified domestic relations order. (1) Any Except as provided in subsection (2), any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 19-5-705.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 17. Section 19-6-503, MCA, is amended to read:

"19-6-503. Retirement allowance for member discontinued from service other than for cause. If Except as provided in 19-6-705, if a member is discontinued from service other

than for cause after having completed 5 years of total service but before reaching retirement age, he shall, upon filing a written application with the department, be paid whichever of the following allowances that he elects:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity based on a retirement age of 60."

Section 18. Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement allowance. (1) The Except as provided in 19-6-705, the department shall pay the service retirement allowance provided for in 19-6-502 to the retired patrolman for the remainder of his life.

(2) Upon Except as provided in 19-6-705, upon the retired patrolman's death, the department shall pay the retirement allowance to the patrolman's surviving spouse, if there is one, for as long as the spouse remains unmarried.

(3) Except as provided in 19-6-705:

(a) if if upon the retired patrolman's death there is no surviving spouse or if the spouse remarries or dies, the department shall pay the retirement allowance as provided in subsection (3)(c) to the retired patrolman's child, if there is one, for as long as the child remains dependent as defined in 19-6-101;

(b) ~~if if~~ if there is more than one dependent child, the retirement allowance must be paid as provided in subsection (3)(c) to the children collectively. When a child no longer qualifies as dependent as defined in 19-6-101, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent;

(c) Payments payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) ~~if~~ Except as provided in 19-6-705, if upon the retired patrolman's death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-6-602, the department shall pay to the designated beneficiary an amount equal to the retired patrolman's accumulated deductions less any retirement benefits paid to the member before his death.

(5) ~~if~~ Except as provided in 19-6-705, if the retired patrolman did not designate a beneficiary or if the beneficiary predeceased the retired patrolman, the amount provided in subsection (4) must be paid to the patrolman's estate."

Section 19. Section 19-6-602, MCA, is amended to read:

"19-6-602. Nomination of beneficiary. ~~(1)-Every~~ Except as provided in 19-6-705, every member may name a beneficiary who is eligible to receive a retirement allowance if there

is no surviving spouse or dependent child. Nomination is by written designation, duly acknowledged and filed with the department, and may be changed in like manner.

~~{2}--Nothing--in--this--section--affects--the--right--of--a--surviving--spouse--or--dependent--child--to--receive--a--retirement--allowance--"~~

Section 20. Section 19-6-705, MCA, is amended to read:

"19-6-705. Exemption from taxes and legal process -- exception for qualified domestic relations order. Any (1) Except as provided in subsection (2), any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

{1}(a) exempt from any state, county, or municipal tax except for a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;

{2}(b) exempt from levy, sale, garnishment, attachment, or any other process; and

{3}(c) unassignable except as specifically provided in 19-6-706.

{2} Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 21. Section 19-7-504, MCA, is amended to read:

"19-7-504. Involuntary retirement allowance. If Except as provided in 19-7-705, if a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his 55th birthday, calculated under the provisions of 19-7-502."

Section 22. Section 19-7-602, MCA, is amended to read:

"19-7-602. Designation of beneficiary. Every Except as provided in 19-7-705, every member may name a beneficiary by a written, acknowledged designation properly filed with the board and change the beneficiary in like manner. The designation and any changes may be filed with the board up until but not after the time of retirement."

Section 23. Section 19-7-604, MCA, is amended to read:

"19-7-604. Payments in case of death before retirement.

(1) If Except as provided in 19-7-705, if a member dies before retirement, his beneficiary is entitled to elect one of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) a retirement allowance based on 2% of the final salary for each year of service up to a maximum of 25 years, reduced actuarially from age 65 or the date he would have completed 25 years of creditable service, whichever provides a larger retirement allowance;

(c) a retirement allowance based on one-half of final salary, reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation, if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board."

Section 24. Section 19-7-701, MCA, is amended to read:

"19-7-701. Optional retirement allowance. (1) A Except as provided in 19-7-705, a member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A Except as provided in 19-7-705, a member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2--upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 3--upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 4--such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board."

Section 25. Section 19-7-705, MCA, is amended to read:

"19-7-705. Exemption from taxes and legal process -- exception for qualified domestic relations order. Any (1) Except as provided in subsection (2), any money received or

to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

~~1~~ (a) exempt from any state, county, or municipal tax except for a refund paid under 19-7-304(1) of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

~~2~~ (b) exempt from levy, sale, garnishment, attachment, or any other process; and

~~3~~ (c) unassignable except as specifically provided in 19-7-706.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 26. Section 19-8-604, MCA, is amended to read:

"19-8-604. Involuntary retirement allowance. If Except as provided in 19-8-805, if a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid in one of the following ways that he elects:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his 55th birthday calculated under the provisions of 19-8-603."

Section 27. Section 19-8-702, MCA, is amended to read:

"19-8-702. Nomination of beneficiary. Each Except as provided in 19-8-805, each contributor may name his beneficiary by written designation, duly acknowledged and filed with the board, and may change the beneficiary in like manner. The designation and all changes must be filed with the board."

Section 28. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional retirement allowance. (1) A Except as provided in 19-8-805, a member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A Except as provided in 19-8-805, a member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 2--upon his death, his lesser retirement

1 allowance will be continued throughout the life of and paid
2 to the person that he nominated by written designation, duly
3 executed and filed with the board at the time of his
4 retirement.

5 (b) Option 3--upon his death, one-half of his lesser
6 retirement allowance will be continued throughout his life
7 of and paid to the person that he nominated by written
8 designation, duly executed and filed with the board at the
9 time of his retirement.

10 (c) Option 4--such other benefits will be paid, either
11 to the beneficiary or to any other person that he nominated,
12 as together with the lesser retirement allowance are the
13 actuarial equivalent of his retirement allowance and have
14 been approved by the board."

15 **Section 29.** Section 19-8-805, MCA, is amended to read:

16 "19-8-805. Exemption from taxes and legal process --
17 exception for qualified domestic relations order. Any (1)
18 Except as provided in subsection (2), any money received or
19 to be paid as a member's annuity, state annuity, or return
20 of deductions or the right of any of these is:

21 (1)(a) exempt from any state, county, or municipal tax
22 except for a refund paid under 19-8-503 of the member's
23 contributions picked up by an employer after June 30, 1985,
24 as provided in 19-8-502;

25 (2)(b) exempt from levy, sale, garnishment, attachment,

1 or any other process; and

2 (3)(c) unassignable except as specifically provided in
3 19-8-806.

4 (2) Benefits must be paid in accordance with the
5 applicable requirements of a qualified domestic relations
6 order as set forth in 29 U.S.C. 1056(d)(3). The board may
7 prescribe the format in which the order must be given to the
8 board."

9 **Section 30.** Section 19-9-804, MCA, is amended to read:

10 "19-9-804. Amount of service retirement allowance --
11 continuation of allowance after death of member. (1) A
12 police officer who is eligible under subsection (1) or (2)
13 of 19-9-801 (1) or (2) and does not elect to serve any
14 additional years as an active police officer shall receive a
15 service retirement allowance equal to one-half his final
16 average salary.

17 (2) A police officer who is eligible for service
18 retirement after 20 years of service and who elects to serve
19 additional years shall receive the allowance provided for in
20 subsection (1) plus an additional 1% of such allowance per
21 year of additional service, up to a maximum of 60% of the
22 final average salary.

23 (3) Upon Except as provided in 19-9-1006, upon the
24 death of a police officer receiving a service retirement
25 allowance under this section, his surviving spouse, if there

1 is one, shall, for as long as the spouse remains unmarried,
 2 receive from the fund a sum equal to one-half of the
 3 officer's final average salary. If the officer leaves one or
 4 more dependent children, then upon his death, if he leaves
 5 no surviving spouse or upon the death or remarriage of the
 6 surviving spouse, the officer's surviving dependent child,
 7 or children collectively if there are more than one, shall
 8 receive the same monthly payments a surviving spouse would
 9 receive for as long as the child or one of the children
 10 remains dependent as defined in 19-9-104. The payments must
 11 be made to the child's appointed guardian for the child's
 12 use. If there is more than one dependent child, upon each
 13 child no longer qualifying as dependent under 19-9-104, the
 14 pro rata payments to that child must cease and be made to
 15 the remaining children until all the children are no longer
 16 dependent."

17 **Section 31.** Section 19-9-912, MCA, is amended to read:

18 "19-9-912. Payment of death benefits in absence of
 19 spouse or child. If Except as provided in 19-9-1006, if a
 20 member dies without leaving a surviving spouse or dependent
 21 child and if the member had designated a beneficiary in
 22 writing to the administrator, the administrator shall pay to
 23 the designated beneficiary an amount equal to the member's
 24 contributions less any retirement benefits paid to the
 25 member before his death. If the deceased member did not

1 designate a beneficiary or the beneficiary predeceased the
 2 member, this amount must be paid to the member's estate."

3 **Section 32.** Section 19-9-1006, MCA, is amended to read:

4 "19-9-1006. Protection from legal process --
 5 nonassignability -- exception for qualified domestic
 6 relations order. (1) Except as provided in this chapter, the
 7 benefits payable hereunder under this chapter are not
 8 subject to the claims of any creditor of a member,
 9 beneficiary, or survivor or to attachment, garnishment, or
 10 other legal or equitable process and no a member,
 11 beneficiary, or survivor may not alienate, anticipate,
 12 commute, pledge, encumber, assign, or sell any of such
 13 benefits.

14 (2) Benefits must be paid in accordance with the
 15 applicable requirements of a qualified domestic relations
 16 order as set forth in 29 U.S.C. 1056(d)(3). The board may
 17 prescribe the format in which the order must be given to the
 18 board."

19 **Section 33.** Section 19-10-503, MCA, is amended to read:

20 "19-10-503. Death benefits. (1) Upon Except as provided
 21 in 19-10-504, upon the death of a police officer on the
 22 active list or retired list of a city, his surviving spouse,
 23 if there is one, shall, as long as such spouse remains the
 24 surviving spouse, be paid from the city's police retirement
 25 fund a sum equal to one-half the base salary, excluding

1 overtime and payments in lieu of sick leave and annual
2 leave, he was receiving as an active officer computed on the
3 highest salary received in any one month during his last
4 year of active service.

5 (2) if Except as provided in 19-10-504, if the officer
6 leaves one or more dependent minor children, upon his death
7 if he leaves no surviving spouse or upon the death or
8 remarriage of the surviving spouse, his surviving dependent
9 minor children, collectively if there is more than one,
10 shall receive the same monthly payments as a surviving
11 spouse would receive, until they reach the age of 18 years
12 or are married. The payments shall be made to their duly
13 appointed, qualified, and acting guardian for their use. If
14 there is more than one such minor child, upon each child
15 reaching the age of 18 or marrying, the pro rata payments to
16 that child shall cease and shall be made to the remaining
17 children, until all the children have either reached the age
18 of 18 or are married."

19 **Section 34.** Section 19-10-504, MCA, is amended to read:

20 "19-10-504. Protection of benefits from legal process
21 -- exception for qualified domestic relations order. The (1)
22 Except as provided in subsection (2), the benefits provided
23 for in this part are not subject to execution, garnishment,
24 attachment, or the operation of bankruptcy, insolvency, or
25 other process of law and are unassignable except as

1 specifically provided in 19-10-505.

2 (2) Benefits must be paid in accordance with the
3 applicable requirements of a qualified domestic relations
4 order as set forth in 29 U.S.C. 1056(d)(3). The board may
5 prescribe the format in which the order must be given to the
6 board."

7 **Section 35.** Section 19-11-502, MCA, is amended to read:

8 "19-11-502. Refund of firefighter's contribution. A
9 Except as provided in 19-11-612, a firefighter is entitled
10 to a refund, in a lump sum and without interest, of all his
11 monthly contributions to the fund, within 60 days after his
12 permanent separation from service in the fire department,
13 except for separation by reason of retirement, death, or
14 disability which would otherwise qualify him or his
15 surviving spouse or children to receive benefits or an
16 allowance from the association. A firefighter who is
17 eligible to receive a partial service pension under
18 19-11-603 may either elect to take the refund provided for
19 in this section or elect to receive the partial pension."

20 **Section 36.** Section 19-11-605, MCA, is amended to read:

21 "19-11-605. Pensions to surviving spouses and children.
22 (1) Each Except as provided in 19-11-612, each association
23 shall pay, out of its disability and pension fund, a monthly
24 pension to the surviving spouse or children of a deceased
25 member of the association who on the date of his death was

an active member of the fire department in the city or town in which the association was formed, who had elected to retire from active service in the fire department and receive a service pension as provided for by 19-11-602, or who, prior to death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 19-11-604. The pension shall be equal to one-half of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for services rendered as an active member of the fire department in the city or town in which the association was formed.

(2) Effective July 1, 1974, if the deceased member had completed 20 years of service and had elected to serve additional years, the pension provided for in subsection (1) shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by the deceased member for his services as an active member of the fire department.

(3) The monthly pension paid to the surviving spouse or children of an active member who dies after July 1, 1973, or an active member who elects to retire after July 1, 1973, must be at least one-half the regular monthly salary paid to

a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to the surviving spouse or children of an active member who died prior to July 1, 1974, or who elected to retire before July 1, 1974, must be at least \$200. In the case of a volunteer firefighter, the pension paid to a surviving spouse or children may not exceed the amount provided for a service pension for a volunteer firefighter under 19-11-602(3).

(4) A Except as provided in 19-11-612, a pension may be paid to the surviving spouse only so long as such the spouse remains unmarried. A surviving spouse is not entitled to a pension under this section if the marriage was entered into after the firefighter had elected to retire from active service and had begun to receive a service pension as provided for by 19-11-602 or if the marriage was entered into after the firefighter had qualified for and had begun to receive a disability pension as provided for by 19-11-604. The pension provided for in this section may not be paid to the children of deceased firefighters after they have attained the age of 18.

Section 37. Section 19-11-607, MCA, is amended to read:

"19-11-607. Payment of death benefits in absence of spouse or child. If (1) Except as provided in 19-11-612, if a firefighter dies without leaving a surviving spouse or

child, the association shall compute the total contributions made to the fund by the deceased member, and if the deceased member had designated a beneficiary in writing to the association, the association shall issue a warrant for the amount of the total contributions payable to that beneficiary.

(2) if Except as provided in 19-11-612, if the deceased member had not nominated a beneficiary, the contributions shall be paid to his estate."

Section 38. Section 19-11-612, MCA, is amended to read:

"19-11-612. Protection of benefits from legal process -- nonassignability -- exception for qualified domestic relations order. Any (1) Except as provided in subsection (2), any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 39. Section 19-12-405, MCA, is amended to read:

"19-12-405. Pension benefits to surviving spouse or

children. (1) The Except as provided in subsection (3), the full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer firefighter left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death on or after July 1, 1985, of a volunteer firefighter who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death on or after July 1, 1985, of a volunteer firefighter after qualifying for full participation but before receiving payments totaling at least \$4,000; or

(d) the death on or after July 1, 1985, of a volunteer firefighter after he has qualified for partial participation but before he has received payments totaling the proportion of \$4,000 determined under the formula prescribed in 19-12-401(1)(b).

(2) Payments under subsection (1) shall terminate, in the case of a full participation pension, when a total of

\$4,000 has been paid upon the pension, including any payments made to the volunteer firefighter before his death, or in the case of a partial participation pension, when a total of the proportion of \$4,000 determined under the formula prescribed in 19-12-401(1)(b) has been paid upon the pension, including any payments made to the volunteer firefighter before his death.

(3) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 40. Section 19-13-304, MCA, is amended to read:

"19-13-304. Termination of employment prior to retirement. (1) Except as provided in subsection (2) and 19-13-1004, an active member may withdraw the amount of his member's contributions, plus regular interest as determined by the board, in lieu of all other benefits under the plan upon his termination of employment prior to his retirement. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 19-13-902.

(2) If a member has 10 years or more of creditable service before termination, he may keep his contributions on deposit and be eligible for a service retirement at age 50."

Section 41. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of retirement allowance. (1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If Except as provided in 19-13-1004, if the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse

beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or if the surviving spouse dies or remarries and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service."

Section 42. Section 19-13-901, MCA, is amended to read:

"19-13-901. Payment of service or disability allowance upon death of member. A Except as provided in 19-13-1004, a member's service or disability allowance shall be paid first to the member during his lifetime and, upon his death, to his surviving spouse as long as such spouse remains unmarried. If upon a member's death he leaves no surviving spouse, or upon the death or remarriage of a surviving spouse, his allowance shall be paid to his dependent

children as long as they remain dependent as defined in 19-13-104."

Section 43. Section 19-13-902, MCA, is amended to read:

"19-13-902. Survivorship allowance. (1) (a) Upon Except as provided in 19-13-1004, upon the death before retirement of an active member hired before July 1, 1981, his surviving spouse, if there is one, shall, as long as such the spouse remains unmarried, receive a survivorship allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. If the member leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received as long as the children remain dependent as defined in 19-13-104.

(b) If the deceased member completed over 20 years of service, the survivorship allowance provided in subsection (1)(a) must be increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) Upon Except as provided in 19-13-1004, upon the death before retirement of a member hired on or after July 1, 1981, his surviving spouse, if there is one, shall, as long as such spouse remains unmarried, receive a

survivorship allowance equal to one-half of the member's final average salary. If the firefighter leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received, as long as the children remain dependent as defined in 19-13-104."

Section 44. Section 19-13-903, MCA, is amended to read:

"19-13-903. Payment of death benefits in absence of spouse or child. Except as provided in 19-13-1004, if a member dies without leaving a surviving spouse or child and if the member had designated a beneficiary in writing to the administrator, the administrator shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before his death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate."

Section 45. Section 19-13-1004, MCA, is amended to read:

"19-13-1004. Protection from legal process -- unassignability -- exception for qualified domestic relations order. The (1) Except as provided in subsection (2), the benefits payable under this chapter are not subject

to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations order as set forth in 29 U.S.C. 1056(d)(3). The board may prescribe the format in which the order must be given to the board."

Section 46. Section 19-21-212, MCA, is amended to read:

"19-21-212. Exemption from taxation, legal process, and assessments -- exception for qualified domestic relations order. (1) All Except as provided in subsection (2), all contracts, benefits, and contributions under the optional retirement program and the earnings thereon are:

(a) exempt from any state, county, or municipal tax;
(b) not subject to execution, garnishment, attachment, or other process;

(c) not covered or assessable by an insurance guaranty association; and

(d) unassignable except as specifically provided in the contracts.

(2) Benefits must be paid in accordance with the applicable requirements of a qualified domestic relations

LC 1046/01

1 order as set forth in 29 U.S.C. 1056(d)(3). The board may
2 prescribe the format in which the order must be given to the
3 board."

4 NEW SECTION. **Section 47.** Delayed effective date. [This
5 act] is effective January 1, 1990.

-End-