

CHAPTER 265

S.B. No. 594

AN ACT

relating to the firemen's relief and retirement fund in certain municipalities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (l), Section 2, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(l) (1) The board may, from fund assets, purchase from an insurer licensed to do business in this state insurance to cover liabilities and losses of the fund and to indemnify and hold the members of the board and employees of the board, individually and collectively, harmless from the effects and consequences of their acts, omissions, and conduct within the scope of their official capacity as fiduciaries or cofiduciaries or within the scope of what the board member or employee believed in good faith, at the time, to be the board member's or employee's official capacity. However, an insurance company through which insurance is purchased under this subsection has a cause of action against a board member or employee to the extent that a loss results from the board member's or employee's wilful and malicious misconduct or gross negligence.

(2) If insurance under Subdivision (1) of this subsection is unavailable, insufficient, inadequate, or not in effect, the board may indemnify board members or employees of the board for liability imposed as damages and for reasonable costs and expenses incurred by those individuals in defense of an alleged act, error, or omission committed in the individual's official capacity or within the scope of what the board member or employee believed in good faith, at the time, to be the board member's or employee's official capacity. The board may not indemnify a board member or an employee for the amount of a loss that results from the board member's or the employee's wilful and malicious misconduct or gross negligence.

(3) The board may establish a self-insurance fund to pay claims for indemnification as provided by Subdivision (2) of this subsection. The board shall provide that the self-insurance fund must be limited to an amount not to exceed the greater of three percent of the fund assets or \$5 million. The self-insurance fund shall be invested in the same manner as other assets of the fund, and all earnings and losses from investing the self-insurance fund shall be credited to the self-insurance fund unless that credit exceeds the limit on the self-insurance fund set by the board or this subdivision. Amounts held in the self-insurance fund may not be included in the actuarial valuation for purposes of determining:

(A) the city contribution rate; or

(B) the assets available to satisfy the actuarial liabilities of the fund to pay service, disability, or death benefits provided by this Act.

(4) A decision to indemnify or make a reimbursement out of the self-insurance fund must be made by a majority vote of board members eligible to vote on the matter. If the proposed indemnification or reimbursement is of a board member, that board member may not vote on the matter.

SECTION 2. Section 4, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended by adding Subsection (o) to read as follows:

(o) Notwithstanding any other provision of this Act, a member or survivor receiving pension or survivor benefits may make a one-time election to receive a smaller pension or survivor benefit and may make a one-time election not to receive any future cost-of-living increases in the pension or survivor benefits received by the person or the person's beneficiary. An election under this subsection must be made in writing and submitted to the board of trustees for approval. On the date the board grants approval of an election under this subsection, the election is irrevocable.

SECTION 3. Section 6, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. **DISABILITY.** (a) (1) *A member is eligible for an on-duty disability allowance under Subdivision (2) or (3) of this subsection on:*

(A) application to the board of trustees for disability benefits by the member or the member's legal representative;

(B) a finding by the board of trustees that the member is physically or mentally disabled because of a bodily injury received in, or illness caused by, the performance of the member's duties; and

(C) a finding by the board of trustees that the disability of the member is likely to be permanent.

(2) If the board of trustees finds that an eligible member is not capable of performing the usual and customary duties of the member's classification or position because of the member's disability, the board shall retire the member on a monthly disability allowance in an amount equal to the greater of:

(A) 50 percent of the member's average monthly salary; or

(B) the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's disability retirement.

(3) If the board of trustees finds that an eligible member is not capable of performing any substantial gainful activity because of the member's disability, the board shall retire the member on a monthly disability allowance in an amount equal to the greater of:

(A) 75 percent of the member's average monthly salary; or

(B) the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's disability retirement [~~Whenever a member becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the member is not capable of performing the usual and customary duties of his classification or position, retire the member on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his participation, or so much thereof as he may have served].~~

(b) (1) *A member is eligible for an off-duty disability allowance under Subdivision (2) of this subsection on:*

(A) application to the board of trustees for disability benefits by the member or the member's legal representative;

(B) a finding by the board of trustees that:

(i) the member is physically or mentally disabled from any cause other than an injury received in, or illness caused by, the performance of the member's duties; and

(ii) the member is not capable of performing the usual and customary duties of the member's classification or position; and

(C) a finding by the board of trustees that the disability of the member is likely to be permanent.

(2) *The board of trustees shall retire the member on a monthly disability allowance in an amount equal to the greater of:*

(A) *25 percent of the member's average monthly salary, plus 2½ percent of the member's average monthly salary for each full year of service and participation in the fund, except that the total monthly disability allowance under this paragraph may not exceed 50 percent of the member's average monthly salary; or*

(B) *the benefit the member would have been entitled to receive based on years of service under Section 4 of this Act if the member had retired from service on the effective date of the member's disability retirement [~~Whenever a member becomes disabled from any cause other than a disability acquired in the performance of his duty as a fire fighter, a monthly pension allowance shall be paid to the member. Such monthly pension allowance shall be equal to 25 percent of the average monthly salary of the member, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund, except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the member's salary for the highest 36 months during his participation or so much as he may have served preceding the date of the retirement].~~*

(c) *A member is not eligible for an on-duty or off-duty disability allowance as provided by Subsection (a) or (b) of this section if the member becomes disabled as a direct and proximate result of a condition that existed on the date the member began membership in the fund. If the member is not eligible to retire under Section 4 of this Act, the member may elect a refund of benefits or, if eligible, a deferred pension under Section 5 of this Act. A member has a preexisting condition under this subsection if the member has:*

(1) *symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment within a five-year period before the effective date of the member's membership in the fund; or*

(2) *a condition for which medical advice or treatment was recommended by or received from a physician within a five-year period before the effective date of the member's membership in the fund.*

(d) *The board of trustees shall determine the disability of a member in accordance with uniform principles consistently applied on the basis of medical or other evidence that the board determines is necessary or desirable.*

(e) *In this section, "average monthly salary" means the monthly average of the member's salary for the highest 36 months during the member's participation in the fund or, if the member participated in the fund for less than 36 months, the monthly average of the member's salary for the number of months the member participated in the fund [~~if the member is eligible to be retired under the provisions of Section 4 of this Act, he may elect to have his monthly pension allowance calculated under that section].~~*

SECTION 4: Subsection (e), Section 7, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Any member may designate *one or more beneficiaries* [~~a beneficiary~~] to receive the total contribution made by the member to the fund if the member has no eligible survivors prescribed in Section 11 of this Act. The member shall file a written designation of *beneficiary* with the board of trustees of the Firemen's Relief and Retirement Fund [~~stating his beneficiary~~]. Such designation shall include the name and the address of *each* [~~the~~] beneficiary. The board shall upon the death of the member pay only a *total amount equal to the amount contributed by the member to the stated beneficiary or beneficiaries* except that *the designated beneficiary or beneficiaries of a member dying after August 31, 1987, are* [~~if the board of trustees adopts Section 5(b) of this Act by majority vote, a designated beneficiary entitled to a distribution because of the death of a member after the date of the adoption is~~] entitled to receive a *total amount equal to the amount, if any, payable pursuant to Section 5(b) of this Act as if the member terminated employment on the date of death. On application of a member's estate, the board shall pay the estate an amount equal to the amount contributed by the member if the member failed to designate a beneficiary. An amount payable under this subsection may not escheat to the state.*

SECTION 5. Section 8, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) No person may be retired [either] for [total or temporary] disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(d) (1) *A benefit payable on the death of a member or eligible beneficiary may not be paid to a person convicted of causing that death but instead is payable to a person who would have been entitled to the benefit had the convicted person predeceased the decedent. If no person is entitled to the benefit under this subdivision, the benefit is payable to the decedent's estate.*

(2) *Except as provided by Subdivision (3) of this subsection, the board is not required to pay a benefit in the manner provided by Subdivision (1) of this subsection unless the board receives actual notice of the conviction of the person who would have been entitled to the benefit.*

(3) *The board may suspend payment of a benefit payable on the death of a member or an eligible beneficiary on indictment of the person who would have been entitled to the benefits, and the suspension shall remain in effect until final disposition of the charges relating to the cause of death. If the benefit payment is suspended under this subdivision and the person is not convicted, the benefit is payable with interest computed at the rate earned by the fund during the time the benefit payment was suspended.*

(4) *For purposes of this subsection, a person has been convicted of causing the death of a member or eligible beneficiary if the person:*

(A) *has pleaded guilty or nolo contendere to, or the person has been found guilty by a court of, an offense at the trial of which it is established that the person's intentional or knowing act or omission caused the death of the member or eligible beneficiary, regardless of whether sentence is imposed or probated; and*

(B) *has no appeal of the conviction pending, and the time provided for appeal has expired.*

SECTION 6. Subdivision (2), Subsection (d), Section 10, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) The board of trustees shall establish minimum physical requirements which shall not exceed the physical requirements established by the Commission pursuant to Section 143.022, Local Government Code, and its subsequent amendments [9, Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes)], for membership in the fund, which physical requirements shall be the same for all applicants. *At the time that physical examinations are administered on behalf of the city, each applicant shall be provided written notice that a copy of the results of the examination will be forwarded to the board of trustees of the fund to determine eligibility for membership in the fund and the existence of any preexisting conditions.* Within 10 days after the date of a physical examination performed on an applicant for a beginning position in the fire department as required by Section 143.022, Local Government Code, and its subsequent amendments [9, Chapter 325, Acts of the 50th Legislature, 1947 (Article 1269m, Vernon's Texas Civil Statutes)], *the city shall provide to the board of trustees [shall obtain] a copy of all documents resulting from the physical examination.* The board of trustees may require additional physical examinations if necessary to determine whether the applicant meets the minimum physical requirements for membership in the fund. The fund [applicant] shall pay the cost of any additional physical examination required by the board of trustees. *Within a reasonable time after receiving the examination reports of an applicant, the [The] board of trustees shall, on the basis of one or more physical examinations, determine whether the applicant meets the minimum physical requirements for membership in the fund. The board of trustees shall notify the applicant and the chief of the fire department*

not later than 10 calendar days *after the date of the board decision on the applicant's satisfaction of the minimum physical requirements* [~~before the first day of cadet training of their acceptance or rejection of the applicant~~]. If the board of trustees rejects the applicant, the applicant may request further examination by a board of three physicians appointed by the board of trustees at the expense of the applicant. If a physician board finds that an applicant meets the minimum physical requirements for membership in the fund, the board of trustees shall accept the applicant for membership. If accepted by the board of trustees, the applicant's membership is effective on being appointed to the position of probationary fire fighter.

SECTION 7. Section 15, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. MEDICAL EXAMINATION OF MEMBER RETIRING FOR DISABILITY OR PERSON CLAIMING SURVIVOR BENEFITS AS DISABLED CHILD. (a) The board of trustees, in its discretion, at any time may cause any person retired for disability or receiving survivor benefits as a disabled child under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose.

(b) *A person retired for disability under Section 6(a)(3) of this Act or a person receiving survivor benefits as a disabled child under this Act shall file an annual report of employment activities and earnings with the board of trustees. The board of trustees shall establish the form of the report and the time for filing the report.*

(c) ~~The~~, ~~and the~~ result of the examination, ~~the~~ [and] report by the physician, ~~and the report of employment activities and earnings~~ shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees, ~~fail to appear and be reexamined or fail to file the report of employment activities and earnings~~, unless excused by the board, [~~fail to appear or refuse to submit to reexamination~~], the board of trustees may in its discretion reduce or entirely discontinue relief.

SECTION 8. Section 22, Chapter 432, Acts of the 64th Legislature, 1975 (Article 6243e.2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. EMPLOYMENT OF PROFESSIONAL INVESTMENT MANAGERS [~~COUNSELING SERVICE~~]. The board of trustees may engage and employ professional investment managers as provided by Section 802.204, Government Code, and its subsequent amendments [~~counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund~~].

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 21, 1993: Yeas 30, Nays 0; the Senate concurred in House amendment on May 11, 1993: Yeas 31, Nays 0; passed the House, with amendment, on May 7, 1993: Yeas 139. Nays 0. two present not voting.

Approved May 23, 1993.

Effective May 23, 1993.