

1 **FIREFIGHTERS DEATH BENEFIT**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Mary Carlson**

5 AN ACT RELATING TO PENSIONS; PROVIDING A DEATH BENEFIT FOR FORMER
6 SPOUSES OF CERTAIN FIREFIGHTER AND PUBLIC SAFETY RETIREMENT SYSTEM
7 MEMBERS IN THE EVENT OF A COURT ORDER; AND PROVIDING AN EFFECTIVE
8 DATE.

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11 **49-1-609**, as last amended by Chapter 197, Laws of Utah 1995

12 **49-4-702**, as enacted by Chapter 1, Laws of Utah 1987

13 **49-4-703**, as last amended by Chapter 90, Laws of Utah 1994

14 **49-4-704**, as last amended by Chapter 31, Laws of Utah 1997

15 **49-4a-702**, as enacted by Chapter 260, Laws of Utah 1989

16 **49-4a-703**, as last amended by Chapter 90, Laws of Utah 1994

17 **49-4a-704**, as last amended by Chapter 31, Laws of Utah 1997

18 **49-5-702**, as last amended by Chapter 157, Laws of Utah 1992

19 **49-5-703**, as last amended by Chapter 90, Laws of Utah 1994

20 **49-5-704**, as last amended by Chapter 31, Laws of Utah 1997

21 ENACTS:

22 **49-4-705**, Utah Code Annotated 1953

23 **49-4-706**, Utah Code Annotated 1953

24 **49-4a-705**, Utah Code Annotated 1953

25 **49-4a-706**, Utah Code Annotated 1953

26 **49-5-705**, Utah Code Annotated 1953

27 **49-5-706**, Utah Code Annotated 1953

1 *Be it enacted by the Legislature of the state of Utah:*

2 Section 1. Section **49-1-609** is amended to read:

3 **49-1-609. Nonassignability of benefits or payments -- Exemption from legal process**
4 **-- Deduction of amounts owned.**

5 (1) Except as provided in Subsection (4), the right of any member or beneficiary to any
6 benefit, payment, or any other right accrued or accruing to any person under this title and the assets
7 of the fund created by this title are not subject to alienation or assignment by the member or
8 beneficiary and are not subject to attachment, execution, garnishment, or any other legal or
9 equitable process.

10 (2) This section may not be construed to prohibit the administrator from deducting medical
11 or other insurance premiums from a retirant's allowance as requested by the retirant providing that
12 any request is within limitations and rules prescribed by the board.

13 (3) (a) Notwithstanding Subsection (1), the retirement board shall provide for the division
14 of a member's retirement allowance or refund of contributions upon termination to former spouses
15 and family members pursuant to an order of a court of competent jurisdiction with respect to
16 domestic relations matters on file with the retirement office.

17 (b) [~~The~~] Except as provided in Subsection (3)(c), the court order shall specify the manner
18 in which the retirement allowance or refund of contributions shall be partitioned, whether as a
19 fixed amount or as a percentage of the benefit.

20 (c) If there is a court order with respect to domestic relations matters for a Division B
21 member covered under Title 49, Chapter 4, Public Safety Retirement Act, Title 49, Chapter 4a,
22 Public Safety Noncontributory Retirement Act, or Title 49, Chapter 5, Firefighters' Retirement
23 Act, the member's death benefit shall be partitioned in accordance with the provisions of Section
24 49-4-702, 49-4-705, 49-4-706, 49-4a-702, 49-4a-705, 49-4a-706, 49-5-702, 49-5-705, or 49-5-706.

25 [~~(c)~~] (d) The board may also provide for the division of a member's defined contribution
26 account.

27 [~~(d)~~] (e) The board shall make rules to implement this section.

28 (4) In accordance with federal law, the board may deduct the required amount from any
29 benefit, payment, or other right accrued or accruing to any member of a system, plan, or program
30 under this title to offset any amount that member owes to a system, plan, or program administered
31 by the board.

1 Section 2. Section **49-4-702** is amended to read:

2 **49-4-702. Death of active member in Division B -- Payment of benefits.**

3 (1) As used in this section, "former spouse" means a member's former spouse:

4 (a) to whom the member was married ten or more years; and

5 (b) with a court order complying with Section 49-1-609.

6 (2) If an active member of the system enrolled in Division B under Section 49-4-301 dies,
7 [the following] benefits are payable according to the conditions stipulated[?] in this section.

8 [(1)] (3) If the death is classified as a line-of-duty death, the dependent spouse shall receive
9 a lump sum of \$1,500 [and a monthly allowance equal to 37-1/2% of the deceased member's final
10 average monthly salary].

11 (4) (a) Except as provided under Subsection (3), if the death is classified as a line-of-duty
12 death, the total death benefit payable to dependent or former spouses, or both, is a monthly
13 allowance not to exceed 37-1/2% of the deceased member's final average monthly salary.

14 (b) The effective date of accrual of the benefit as provided under this section for a
15 dependent spouse is the first day of the month following the month in which the member died.

16 (c) The effective date of accrual of the benefit as provided under this section for a former
17 spouse is the first day of the month following the month in which the former spouse is age 62.

18 (d) If the member does not have a former spouse or at any time no longer has a living
19 former spouse, the dependent spouse is entitled to the total death benefit under Subsection (4)(a).

20 (e) (i) If the member does not have a dependent spouse at the time of death or the member
21 has a total of more than one dependent and former spouses, each spouse's share of the member's
22 death benefit under Subsection (4)(a) shall be calculated as provided under this Subsection (4)(e).

23 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
24 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
25 the amount provided for any former spouse under Subsections (4)(e)(iii) and (4)(e)(iv), whichever
26 is greater.

27 (iii) Except as provided under Subsection (4)(e)(ii), a former spouse's share of a member's
28 death benefit shall be calculated by dividing the member's years of service in which the member
29 was married to the spouse by the member's total years of service and multiplying this fraction by
30 the member's death benefit.

31 (iv) If a member has more than one former spouse, the death benefit for each former

1 spouse shall be apportioned using the calculation under Subsection (4)(e)(iii), subject to the
2 dependent spouse's share as provided under Subsection (4)(e)(ii).

3 [(2)] (5) If the death is not classified as line-of-duty death, and the deceased member has
4 two or more years of service credit at the time of death, the death is considered line-of-duty and
5 the benefit payable is the same as provided under [~~Subsection (1)~~] Subsections (3) and (4).

6 [(3)] (6) If the death is not classified as line-of-duty death and the deceased member has
7 less than two years of service credit at the time of death, the benefit payable is a refund of the
8 deceased member's contributions, plus 50% of the member's most recent 12 months' regular salary.

9 [(4)] (7) If the deceased member has two or more years of service at the time of death, the
10 benefit payable to each of the member's unmarried children to age 18 is a monthly allowance of
11 \$50. Payments shall be made to the surviving parent or to a duly appointed guardian, or as
12 otherwise provided under Title 49, Chapter 1, Utah State Retirement Act.

13 [(5)] (8) In the event of the death of both parents, the dependent spouse's benefit shall be
14 prorated and paid to each of the member's unmarried children to age 18.

15 [(6)] (9) If the benefit is not distributed under this section, and there is a beneficiary, the
16 vested contribution shall be paid to the beneficiary.

17 [(7)] (10) The total monthly payments to be made on behalf of any one deceased member's
18 account may not exceed 75% of the member's final average monthly salary.

19 Section 3. Section **49-4-703** is amended to read:

20 **49-4-703. Death of active or inactive member in Division A having no spouse or**
21 **minor children as beneficiary -- Benefits payable on death of inactive member.**

22 (1) The death benefit payable on behalf of an active or an inactive member who dies and
23 has no spouse or minor children as a beneficiary is 100% of the deceased member's contributions
24 or \$500, whichever amount is larger.

25 (2) (a) The death benefit payable on behalf of an inactive member who dies and is survived
26 by a spouse to whom that member was married at the time of death is a monthly pension if that
27 member had 20 or more years of public safety service at the time of retirement from public safety
28 employment.

29 (b) The pension payable to the spouse is 50% of the amount the member would have
30 received had retirement occurred on the first of the month in which death occurred, the benefit
31 being based upon years of service and final average salary under Section 49-4-402, reduced

1 actuarially from age 50 to the age at death if the member is under age 50 at the time of death.

2 (3) The death benefit payable upon the death of an inactive member who has less than 20
3 years of public safety service and who leaves a spouse or minor children as the beneficiary is a
4 100% refund of the deceased member's contributions or \$500, whichever is larger.

5 (4) This section only applies to active or inactive members enrolled in Division A under
6 Section 49-4-301.

7 Section 4. Section **49-4-704** is amended to read:

8 **49-4-704. Death of retired member in Division A -- Benefits.**

9 (1) (a) Except as provided in Subsection [~~(3)~~] (2), if the member retired under Division
10 A [~~or Division B~~], the death benefit payable to the dependent spouse after the death of the retired
11 member of this system is a monthly amount equal to 65% of the allowance that was being paid to
12 the retired member at the time of death.

13 [~~(2) (a) Except as provided in Subsection (3), if the member retired solely under Division~~
14 ~~B or dies leaving dependent children, the children shall qualify for a benefit as prescribed for~~
15 ~~children under Section 49-4-702, with the total being paid as limited by that section.]~~

16 (b) The effective date of accrual of this pension is on the first day of the month following
17 the month in which the retirant died.

18 (c) Except as provided in Subsection [~~(3)~~] (2), payment of the full pension for this latter
19 month shall be made to the dependent beneficiary [~~in lieu~~] instead of the deceased member.

20 [~~(3)~~] (2) (a) In the event of a court order complying with Section 49-1-609, a former
21 spouse of a retired member is entitled to the court designated share of the retired member's
22 monthly retirement benefit and the same percentage share of the spouse's death benefit.

23 (b) This subsection supersedes conflicting subsections of this section.

24 Section 5. Section **49-4-705** is enacted to read:

25 **49-4-705. Death of retired member in Division B -- Benefits.**

26 (1) As used in this section, "former spouse" means a retired member's former spouse:

27 (a) to whom the member was married ten or more years; and

28 (b) with a court order complying with Section 49-1-609.

29 (2) (a) The total death benefit payable to dependent or former spouses, or both, after the
30 death of a retired member in Division B is a monthly amount not to exceed 65% of the allowance
31 that was being paid to the retired member at the time of death.

1 (b) Payment of the full pension for the month in which the retired member died shall be
2 made to the dependent beneficiary instead of the deceased member.

3 (c) The effective date of accrual of the benefit as provided under this section for a
4 dependent spouse is the first day of the month following the month in which the member died.

5 (d) The effective date of accrual of the benefit as provided under this section for a former
6 spouse is the first day of the month following the month in which the former spouse is age 62.

7 (3) (a) If the retired member does not have a former spouse or at any time no longer has
8 a living former spouse, the dependent spouse is entitled to the total death benefit under Subsection
9 (2)(a).

10 (b) If the retired member does not have a dependent spouse at the time of death or the
11 member has a total of more than one dependent and former spouses, each spouse's share of the
12 retired member's death benefit shall be calculated as provided under Subsection (4).

13 (4) (a) If the member has a dependent spouse at the time of death, the dependent spouse
14 shall be entitled to the first 25% of the member's death benefit or the remainder of the death benefit
15 after the amount provided for any former spouse under Subsections (4)(b) and (4)(c), whichever
16 is greater.

17 (b) Except as provided under Subsection (4)(a), a former spouse's share of a member's
18 death benefit shall be calculated by dividing the member's years of service in which the member
19 was married to the spouse by the member's total years of service used to calculate the member's
20 monthly retirement benefit and multiplying this fraction by the member's death benefit.

21 (c) If a member has more than one former spouse, the death benefit for each former spouse
22 shall be apportioned using the calculation under Subsection (4)(b), subject to the dependent
23 spouse's share as provided under Subsection (4)(a).

24 (5) If the retired member under Division B dies leaving dependent children, they qualify
25 for benefits as provided for children under Section 49-4-702, with the total being paid as limited
26 by that section.

27 Section 6. Section **49-4-706** is enacted to read:

28 **49-4-706. Death of active or inactive member in Division B having no spouse or**
29 **minor children as beneficiary -- Benefits payable on death of inactive member.**

30 (1) As used in this section, "former spouse" means a member's former spouse:

31 (a) to whom the member was married ten or more years; and

1 (b) with a court order complying with Section 49-1-609.

2 (2) This section only applies to active or inactive members enrolled in Division B under
3 Section 49-4-301.

4 (3) The death benefit payable on behalf of an active or an inactive member who dies and
5 has no dependent spouse, former spouse, or minor children as a beneficiary is 100% of the
6 deceased member's contributions or \$500, whichever amount is larger.

7 (4) (a) The death benefit payable on behalf of an inactive member who dies and is survived
8 by a dependent or former spouse, or both, is a monthly pension if that member had 20 or more
9 years of public safety service at the time of retirement from public safety employment.

10 (b) The pension payable to the dependent or former spouses, or both, is an amount not to
11 exceed 50% of the amount the inactive member would have received had retirement occurred on
12 the first of the month in which death occurred, the benefit being based upon years of service and
13 final average salary under Section 49-4-402, reduced actuarially from age 50 to the age at death
14 if the member is under age 50 at the time of death.

15 (5) The death benefit payable upon the death of an inactive member who has less than 20
16 years of public safety service and who leaves a spouse or minor children as the beneficiary is a
17 100% refund of the deceased member's contributions or \$500, whichever is larger.

18 (6) (a) The effective date of accrual of the benefit as provided under this section for a
19 dependent spouse is the first day of the month following the month in which the member died.

20 (b) The effective date of accrual of the benefit as provided under this section for a former
21 spouse is the first day of the month following the month in which the former spouse is age 62.

22 (7) (a) If the member does not have a former spouse or at any time no longer has a living
23 former spouse, the dependent spouse is entitled to the total death benefit under this section.

24 (b) (i) If the member does not have a dependent spouse at the time of death or the member
25 has a total of more than one dependent and former spouses, each spouse's share of the member's
26 death benefit under this section shall be calculated as provided under this Subsection (7)(b).

27 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
28 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
29 the amount provided for any former spouse under Subsections (7)(b)(iii) and (7)(b)(iv), whichever
30 is greater.

31 (iii) Except as provided under Subsection (7)(b)(ii), a former spouse's share of a member's

1 death benefit shall be calculated by dividing the member's years of service in which the member
2 was married to the spouse by the member's total years of service and multiplying this fraction by
3 the member's death benefit.

4 (iv) If a member has more than one former spouse, the death benefit for each former
5 spouse shall be apportioned using the calculation under Subsection (7)(b)(iii), subject to the
6 dependent spouse's share as provided under Subsection (7)(b)(ii).

7 Section 7. Section **49-4a-702** is amended to read:

8 **49-4a-702. Death of active member in Division B -- Payment of benefits.**

9 (1) As used in this section, "former spouse" means a member's former spouse:

10 (a) to whom the member was married ten or more years; and

11 (b) with a court order complying with Section 49-1-609.

12 (2) If an active member of the system enrolled in Division B under Section 49-4a-301 dies,
13 [the following] benefits are payable according to the conditions stipulated[:] in this section.

14 [(H)] (3) If the death is classified as a line-of-duty death, the dependent spouse shall receive
15 a lump sum of \$1,500 [and a monthly allowance equal to 37-1/2% of the deceased member's final
16 average monthly salary].

17 (4) (a) Except as provided under Subsection (3), if the death is classified as a line-of-duty
18 death, the total death benefit payable to dependent or former spouses, or both, is a monthly
19 allowance not to exceed 37-1/2% of the deceased member's final average monthly salary.

20 (b) The effective date of accrual of the benefit as provided under this section for a
21 dependent spouse is the first day of the month following the month in which the member died.

22 (c) The effective date of accrual of the benefit as provided under this section for a former
23 spouse is the first day of the month following the month in which the former spouse is age 62.

24 (d) If the member does not have a former spouse or at any time no longer has a living
25 former spouse, the dependent spouse is entitled to the total death benefit under Subsection (4)(a).

26 (e) (i) If the member does not have a dependent spouse at the time of death or the member
27 has a total of more than one dependent and former spouses, each spouse's share of the member's
28 death benefit under Subsection (4)(a) shall be calculated as provided under this Subsection (4)(e).

29 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
30 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
31 the amount provided for any former spouse under Subsections (4)(e)(iii) and (4)(e)(iv), whichever

1 is greater.

2 (iii) Except as provided under Subsection (4)(e)(ii), a former spouse's share of a member's
 3 death benefit shall be calculated by dividing the member's years of service in which the member
 4 was married to the spouse by the member's total years of service and multiplying this fraction by
 5 the member's death benefit.

6 (iv) If a member has more than one former spouse, the death benefit for each former
 7 spouse shall be apportioned using the calculation under Subsection (4)(e)(iii), subject to the
 8 dependent spouse's share as provided under Subsection (4)(e)(ii).

9 [~~(2)~~] (5) If the death is not classified as line-of-duty death, and the deceased member has
 10 two or more years of service credit at the time of death, the death is considered line-of-duty and
 11 the benefit payable is the same as provided under [~~Subsection (1)~~] Subsections (3) and (4).

12 [~~(3)~~] (6) If the death is not classified as line-of-duty death, and the deceased member has
 13 less than two years of service credit at the time of death, the benefit payable is a refund of the
 14 deceased member's contributions, plus 50% of the member's most recent 12 months' regular salary.

15 [~~(4)~~] (7) If the deceased member has two or more years of service at the time of death, the
 16 benefit payable to each of the member's unmarried children to age 18 is a monthly allowance of
 17 \$50. Payments shall be made to the surviving parent or to a duly appointed guardian, or as
 18 otherwise provided under Title 49, Chapter 1, Utah State Retirement Act.

19 [~~(5)~~] (8) In the event of the death of both parents, the dependent spouse's benefit shall be
 20 prorated and paid to each of the member's unmarried children to age 18.

21 [~~(6)~~] (9) If the benefit is not distributed under this section, and there is a beneficiary, the
 22 vested contribution shall be paid to the beneficiary.

23 [~~(7)~~] (10) The total monthly payments to be made on behalf of any one deceased member's
 24 account may not exceed 75% of the member's final average monthly salary.

25 Section 8. Section **49-4a-703** is amended to read:

26 **49-4a-703. Death of active or inactive member in Division A having no spouse or**
 27 **minor children as beneficiary -- Benefits payable on death of inactive member.**

28 (1) The death benefit payable on behalf of an active or an inactive member who dies and
 29 has no spouse or minor children as a beneficiary is 100% of the deceased member's contributions
 30 or \$500, whichever amount is greater.

31 (2) (a) The death benefit payable on behalf of an inactive member who dies and is survived

1 by a spouse to whom that member was married at the time of death is a monthly pension if that
2 member had 20 or more years of public safety service at the time of retirement from public safety
3 employment.

4 (b) The pension payable to the spouse is 50% of the amount the member would have
5 received had retirement occurred on the first of the month in which death occurred, the benefit
6 being based upon years of service and final average salary under Section 49-4a-402, reduced
7 actuarially from age 50 to the age at death if the member is under age 50 at the time of death.

8 (3) The death benefit payable upon the death of an inactive member who has less than 20
9 years of public safety service and who leaves a spouse or minor children as the beneficiary is a
10 100% refund of the deceased member's contributions or \$500, whichever is greater.

11 (4) This section only applies to active or inactive members enrolled in Division A under
12 Section 49-4a-301.

13 Section 9. Section **49-4a-704** is amended to read:

14 **49-4a-704. Death of retired member in Division A -- Benefits.**

15 (1) (a) Except as provided in Subsection [(3)] (2), if the member retired under Division
16 A [~~or Division B~~], the death benefit payable to the dependent spouse after the death of the retired
17 member of this system is a monthly amount equal to 65% of the allowance that was being paid to
18 the retired member at the time of death.

19 [(2) (a) Except as provided in Subsection (3), if the member retired solely under Division
20 B or dies leaving dependent children, the children shall qualify for a benefit as prescribed for
21 children under Section 49-4a-702, with the total being paid as limited by that section.]

22 (b) The effective date of accrual of this pension is on the first day of the month following
23 the month in which the retirant died.

24 (c) Except as provided in Subsection [(3)] (2), payment of the full pension for this latter
25 month shall be made to the dependent beneficiary [~~in lieu~~] instead of the deceased member.

26 [(3)] (2) (a) In the event of a court order complying with Section 49-1-609, a former
27 spouse of a retired member is entitled to a court designated share of the retired member's monthly
28 retirement benefit and the same percentage share of the spouse's death benefit.

29 (b) This Subsection (2) supersedes conflicting subsections of this section.

30 Section 10. Section **49-4a-705** is enacted to read:

31 **49-4a-705. Death of retired member in Division B -- Benefits.**

1 (1) As used in this section, "former spouse" means a retired member's former spouse:

2 (a) to whom the member was married ten or more years; and

3 (b) with a court order complying with Section 49-1-609.

4 (2) (a) The total death benefit payable to dependent or former spouses, or both, after the
5 death of a retired member in Division B is a monthly amount not to exceed 65% of the allowance
6 that was being paid to the retired member at the time of death.

7 (b) Payment of the full pension for the month in which the retired member died shall be
8 made to the dependent beneficiary instead of the deceased member.

9 (c) The effective date of accrual of the benefit as provided under this section for a
10 dependent spouse is the first day of the month following the month in which the member died.

11 (d) The effective date of accrual of the benefit as provided under this section for a former
12 spouse is the first day of the month following the month in which the former spouse is age 62.

13 (3) (a) If the retired member does not have a former spouse or at any time no longer has
14 a living former spouse, the dependent spouse is entitled to the total death benefit under Subsection
15 (2)(a).

16 (b) If the retired member does not have a dependent spouse at the time of death or the
17 member has a total of more than one dependent and former spouses, each spouse's share of the
18 retired member's death benefit shall be calculated as provided under Subsection (4).

19 (4) (a) If the member has a dependent spouse at the time of death, the dependent spouse
20 shall be entitled to the first 25% of the member's death benefit or the remainder of the death benefit
21 after the amount provided for any former spouse under Subsections (4)(b) and (4)(c), whichever
22 is greater.

23 (b) Except as provided under Subsection (4)(a), a former spouse's share of a member's
24 death benefit shall be calculated by dividing the member's years of service in which the member
25 was married to the spouse by the member's total years of service used to calculate the member's
26 monthly retirement benefit and multiplying this fraction by the member's death benefit.

27 (c) If a member has more than one former spouse, the death benefit for each former spouse
28 shall be apportioned using the calculation under Subsection (4)(b), subject to the dependent
29 spouse's share as provided under Subsection (4)(a).

30 (5) If the retired member under Division B dies leaving dependent children, they qualify
31 for benefits as provided for children under Section 49-4a-702, with the total being paid as limited

1 by that section.

2 Section 11. Section **49-4a-706** is enacted to read:

3 **49-4a-706. Death of active or inactive member in Division B having no spouse or**
4 **minor children as beneficiary -- Benefits payable on death of inactive member.**

5 (1) As used in this section, "former spouse" means a member's former spouse:

6 (a) to whom the member was married ten or more years; and

7 (b) with a court order complying with Section 49-1-609.

8 (2) This section only applies to active or inactive members enrolled in Division B under
9 Section 49-4a-301.

10 (3) The death benefit payable on behalf of an active or an inactive member who dies and
11 has no dependent spouse, former spouse, or minor children as a beneficiary is 100% of the
12 deceased member's contributions or \$500, whichever amount is larger.

13 (4) (a) The death benefit payable on behalf of an inactive member who dies and is survived
14 by a dependent or former spouse, or both, is a monthly pension if that member had 20 or more
15 years of public safety service at the time of retirement from public safety employment.

16 (b) The pension payable to the dependent or former spouses, or both, is an amount not to
17 exceed 50% of the amount the inactive member would have received had retirement occurred on
18 the first of the month in which death occurred, the benefit being based upon years of service and
19 final average salary under Section 49-4a-402, reduced actuarially from age 50 to the age at death
20 if the member is under age 50 at the time of death.

21 (5) The death benefit payable upon the death of an inactive member who has less than 20
22 years of public safety service and who leaves a spouse or minor children as the beneficiary is a
23 100% refund of the deceased member's contributions or \$500, whichever is larger.

24 (6) (a) The effective date of accrual of the benefit as provided under this section for a
25 dependent spouse is the first day of the month following the month in which the member died.

26 (b) The effective date of accrual of the benefit as provided under this section for a former
27 spouse is the first day of the month following the month in which the former spouse is age 62.

28 (7) (a) If the member does not have a former spouse or at any time no longer has a living
29 former spouse, the dependent spouse is entitled to the total death benefit under this section.

30 (b) (i) If the member does not have a dependent spouse at the time of death or the member
31 has a total of more than one dependent and former spouses, each spouse's share of the member's

1 death benefit under this section shall be calculated as provided under this Subsection (7)(b).

2 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
3 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
4 the amount provided for any former spouse under Subsections (7)(b)(iii) and (7)(b)(iv), whichever
5 is greater.

6 (iii) Except as provided under Subsection (7)(b)(ii), a former spouse's share of a member's
7 death benefit shall be calculated by dividing the member's years of service in which the member
8 was married to the spouse by the member's total years of service and multiplying this fraction by
9 the member's death benefit.

10 (iv) If a member has more than one former spouse, the death benefit for each former
11 spouse shall be apportioned using the calculation under Subsection (7)(b)(iii), subject to the
12 dependent spouse's share as provided under Subsection (7)(b)(ii).

13 Section 12. Section **49-5-702** is amended to read:

14 **49-5-702. Death of active member in Division B -- Payment of benefits.**

15 (1) As used in this section, "former spouse" means a member's former spouse:

16 (a) to whom the member was married ten or more years; and

17 (b) with a court order complying with Section 49-1-609.

18 (2) If an active member of the system enrolled in Division B dies, [the following] benefits
19 are payable[?] according to the conditions described in this section.

20 ~~[(1)]~~ (3) If death is classified as line-of-duty, the dependent spouse receives a lump sum
21 of \$1,500 [and a monthly allowance equal to 37-1/2% of the deceased member's final average
22 monthly salary, subject to Section 49-5-503].

23 (4) (a) Except as provided under Subsection (3), if the death is classified as a line-of-duty
24 death, the total death benefit payable to dependent or former spouses, or both, is a monthly
25 allowance not to exceed 37-1/2% of the deceased member's final average monthly salary, subject
26 to Section 49-5-503.

27 (b) The effective date of accrual of the benefit as provided under this section for a
28 dependent spouse is the first day of the month following the month in which the member died.

29 (c) The effective date of accrual of the benefit as provided under this section for a former
30 spouse is the first day of the month following the month in which the former spouse is age 62.

31 (d) If the member does not have a former spouse or at any time no longer has a living

1 former spouse, the dependent spouse is entitled to the total death benefit under Subsection (4)(a).

2 (e) (i) If the member does not have a dependent spouse at the time of death or the member
3 has a total of more than one dependent and former spouses, each spouse's share of the member's
4 death benefit under Subsection (4)(a) shall be calculated as provided under this Subsection (4)(e).

5 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
6 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
7 the amount provided for any former spouse under Subsections (4)(e)(iii) and (4)(e)(iv), whichever
8 is greater.

9 (iii) Except as provided under Subsection (4)(e)(ii), a former spouse's share of a member's
10 death benefit shall be calculated by dividing the member's years of service in which the member
11 was married to the spouse by the member's total years of service and multiplying this fraction by
12 the member's death benefit.

13 (iv) If a member has more than one former spouse, the death benefit for each former
14 spouse shall be apportioned using the calculation under Subsection (4)(e)(iii), subject to the
15 dependent spouse's share as provided under Subsection (4)(e)(ii).

16 [(2)] (5) If death is classified as line-of-duty, and the member has 20 or more years of
17 service credit, the member shall be considered to have retired and the dependent [spouse] and
18 former spouse shall receive the death benefit payable to a retired member under Section 49-5-704.

19 [(3)] (6) If death is not classified as line-of-duty and the deceased member has five or more
20 years of service credit, the death is considered line-of-duty and the same benefits are payable as
21 established under [~~Subsection (1)~~] Subsections (3) and (4).

22 [(4)] (7) If death is not classified as line-of-duty and the deceased member has less than
23 five years of service credit, the benefit is a refund of the deceased member's contributions, plus
24 50% of the member's most recent 12 months regular salary.

25 [(5)] (8) If the deceased member has five or more years of service credit, the member's
26 unmarried children, until they reach age 21, receive a monthly allowance of \$75. In the event of
27 the death of the member and dependent spouse, the dependent spouse's benefits are equally divided
28 and paid to each unmarried child until the child reaches age 21. The payments shall be made to
29 the surviving parent or duly appointed guardian or pursuant to Section 49-1-607.

30 [(6)] (9) If the benefit is not distributed under this section, and there is a beneficiary, the
31 vested contribution shall be paid to the beneficiary.

1 ~~[(7)]~~ (10) The total monthly payments made on behalf of any one deceased member's
2 account may not exceed 75% of the member's final average salary.

3 Section 13. Section **49-5-703** is amended to read:

4 **49-5-703. Death of active or inactive member in Division A having no spouse or**
5 **minor children as beneficiary -- Benefits payable on death of inactive member.**

6 (1) The death settlement payable on behalf of an active or inactive member who dies
7 without spouse or minor children is 100% of the employee's contributions or \$500, whichever is
8 larger.

9 (2) The death benefit payable monthly on behalf of an inactive member who dies and is
10 survived by a spouse to whom the member was married at the time of death is 50% of the amount
11 the member would have received had the member retired on the first day of the month following
12 the month death occurred, the computation being based upon years of service and final average
13 salary, reduced actuarially from age 50 to age at death, if the member was not 50 years of age
14 when death occurred.

15 (3) No monthly pension may be paid under this section unless the member had 20 years
16 of service credit at the time of death.

17 (4) This section only applies to active or inactive members enrolled in Division A under
18 Section 49-5-301.

19 Section 14. Section **49-5-704** is amended to read:

20 **49-5-704. Death of retired member in Division A -- Benefits.**

21 (1) (a) Except as provided in Subsection ~~[(3)]~~ (2), the death benefit payable to a dependent
22 spouse after death of the retirant in Division A is a monthly amount equal to 75% of the allowance
23 being paid to the retirant at the time of death.

24 (b) The effective date of accrual of this pension is the first day of the month following the
25 month the retirant died.

26 (c) Except as provided in Subsection ~~[(3)]~~ (2), payment of the full pension for this latter
27 month shall be made to the dependent beneficiary instead of the deceased member.

28 ~~[(2) If the member retires under Division B and dies leaving dependent children, they~~
29 ~~qualify for benefits prescribed for children under Section 49-5-701 or 49-5-702.]~~

30 ~~[(3)]~~ (2) (a) In the event of a court order complying with Section 49-1-609, a former
31 spouse of a retired member is entitled to the court designated share of the retirant's monthly

1 retirement benefit and the same percentage share of the spouse's death benefit.

2 (b) This Subsection (2) supersedes conflicting subsections of this section.

3 Section 15. Section **49-5-705** is enacted to read:

4 **49-5-705. Death of retired member in Division B -- Benefits.**

5 (1) As used in this section, "former spouse" means a retired member's former spouse:

6 (a) to whom the member was married ten or more years; and

7 (b) with a court order complying with Section 49-1-609.

8 (2) (a) The total death benefit payable to dependent or former spouses, or both, after the
9 death of a retired member in Division B is a monthly amount not to exceed 65% of the allowance
10 that was being paid to the retired member at the time of death.

11 (b) Payment of the full pension for the month in which the retired member died shall be
12 made to the dependent beneficiary instead of the deceased member.

13 (c) The effective date of accrual of the benefit as provided under this section for a
14 dependent spouse is the first day of the month following the month in which the member died.

15 (d) The effective date of accrual of the benefit as provided under this section for a former
16 spouse is the first day of the month following the month in which the former spouse is age 62.

17 (3) (a) If the retired member does not have a former spouse or at any time no longer has
18 a living former spouse, the dependent spouse is entitled to the total death benefit under Subsection
19 (2)(a).

20 (b) If the retired member does not have a dependent spouse at the time of death or the
21 member has a total of more than one dependent and former spouses, each spouse's share of the
22 retired member's death benefit shall be calculated as provided under Subsection (4).

23 (4) (a) If the member has a dependent spouse at the time of death, the dependent spouse
24 shall be entitled to the first 25% of the member's death benefit or the remainder of the death benefit
25 after the amount provided for any former spouse under Subsections (4)(b) and (4)(c), whichever
26 is greater.

27 (b) Except as provided under Subsection (4)(a), a former spouse's share of a member's
28 death benefit shall be calculated by dividing the member's years of service in which the member
29 was married to the spouse by the member's total years of service used to calculate the member's
30 monthly retirement benefit and multiplying this fraction by the member's death benefit.

31 (c) If a member has more than one former spouse, the death benefit for each former spouse

1 shall be apportioned using the calculation under Subsection (4)(b), subject to the dependent
2 spouse's share as provided under Subsection (4)(a).

3 (5) If the retired member under Division B dies leaving dependent children, they qualify
4 for benefits as provided for children under Section 49-5-701 or 49-5-702.

5 Section 16. Section **49-5-706** is enacted to read:

6 **49-5-706. Death of active or inactive member in Division B having no spouse or minor**
7 **children as beneficiary -- Benefits payable on death of inactive member.**

8 (1) As used in this section, "former spouse" means a member's former spouse:

9 (a) to whom the member was married ten or more years; and

10 (b) with a court order complying with Section 49-1-609.

11 (2) This section only applies to active or inactive members enrolled in Division B under
12 Section 49-5-301.

13 (3) The death benefit payable on behalf of an active or an inactive member who dies and
14 has no dependent spouse, former spouse, or minor children as a beneficiary is 100% of the
15 deceased member's contributions or \$500, whichever amount is larger.

16 (4) (a) The death benefit payable monthly on behalf of an inactive member who dies and
17 is survived by a dependent or former spouse, or both, is an amount not to exceed 50% of the
18 amount the member would have received had the member retired on the first day of the month
19 following the month in which death occurred, the computation being based upon years of service
20 and final average salary, reduced actuarially from age 50 to the age at death if the member is under
21 age 50 at the time of death.

22 (b) A monthly pension may not be paid under this section unless the member had 20 or
23 more years of service credit at the time of death.

24 (5) (a) The effective date of accrual of the benefit as provided under this section for a
25 dependent spouse is the first day of the month following the month in which the member died.

26 (b) The effective date of accrual of the benefit as provided under this section for a former
27 spouse is the first day of the month following the month in which the former spouse is age 62.

28 (6) (a) If the member does not have a former spouse or at any time no longer has a living
29 former spouse, the dependent spouse is entitled to the total death benefit under this section.

30 (b) (i) If the member does not have a dependent spouse at the time of death or the member
31 has a total of more than one dependent and former spouses, each spouse's share of the member's

1 death benefit under this section shall be calculated as provided under this Subsection (6)(b).

2 (ii) If the member has a dependent spouse at the time of death, the dependent spouse shall
3 be entitled to the first 25% of the member's death benefit or the remainder of the death benefit after
4 the amount provided for any former spouse under Subsections (6)(b)(iii) and (6)(b)(iv), whichever
5 is greater.

6 (iii) Except as provided under Subsection (6)(b)(ii), a former spouse's share of a member's
7 death benefit shall be calculated by dividing the member's years of service in which the member
8 was married to the spouse by the member's total years of service and multiplying this fraction by
9 the member's death benefit.

10 (iv) If a member has more than one former spouse, the death benefit for each former
11 spouse shall be apportioned using the calculation under Subsection (6)(b)(iii), subject to the
12 dependent spouse's share as provided under Subsection (6)(b)(ii).

13 **Section 17. Effective date.**

14 This act takes effect on July 1, 1998.

Legislative Review Note
as of 12-2-97 3:20 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel