

1                   **FIREFIGHTERS' DISABILITY RETIREMENT BENEFIT**

2                                   **AMENDMENTS**

3   2017 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Karen Mayne**

6                                   House Sponsor: Daniel McCay

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8   **LONG TITLE**

9   **Committee Note:**

10           The Retirement and Independent Entities Interim Committee recommended this bill.

11   **General Description:**

12           This bill modifies the Utah State Retirement and Insurance Benefit Act by amending  
13 provisions relating to firefighter disability benefits.

14   **Highlighted Provisions:**

15           This bill:

- 16           ▶ provides and amends definitions;  
17           ▶ modifies the standard for determining a disability for members of the Firefighters'

18 Retirement System; ~~H→~~ **and**

19 [~~→~~ ~~modifies the disability payment period for certain Firefighters' Retirement System~~  
20 ~~disability payments; and~~] ~~←H~~

- 21           ▶ makes technical changes.

22   **Money Appropriated in this Bill:**

23           None

24   **Other Special Clauses:**

25           This bill provides a special effective date.

26   **Utah Code Sections Affected:**

27   AMENDS:



28 **49-16-102**, as last amended by Laws of Utah 2016, Chapter 227  
 29 **49-16-601**, as last amended by Laws of Utah 2005, Chapter 116  
 30 **49-16-601.5**, as last amended by Laws of Utah 2013, Chapter 40



31  
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **49-16-102** is amended to read:

34 **49-16-102. Definitions.**

35 As used in this chapter:

36 (1) (a) "Compensation" means the total amount of payments that are includable as  
 37 gross income which are received by a firefighter service employee as base income for the  
 38 regularly scheduled work period. The participating employer shall establish the regularly  
 39 scheduled work period. Base income shall be determined prior to the deduction of member  
 40 contributions or any amounts the firefighter service employee authorizes to be deducted for  
 41 salary deferral or other benefits authorized by federal law.

42 (b) "Compensation" includes performance-based bonuses and cost-of-living  
 43 adjustments.

44 (c) "Compensation" does not include:

- 45 (i) overtime;
- 46 (ii) sick pay incentives;
- 47 (iii) retirement pay incentives;
- 48 (iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel,  
 49 or similar payments;

50 (v) a lump-sum payment or special payments covering accumulated leave; and

51 (vi) all contributions made by a participating employer under this system or under any  
 52 other employee benefit system or plan maintained by a participating employer for the benefit of  
 53 a member or participant.

54 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
 55 under Section 401(a)(17), Internal Revenue Code.

56 ~~[(2) (a) "Disability" means a physical or mental condition that, in the judgment of the~~  
 57 ~~office, is total and presumably permanent, and prevents a member from performing firefighter~~  
 58 ~~service.]~~

59 ~~[(b) The determination of disability is based upon medical and other evidence~~  
60 ~~satisfactory to the office.]~~

61 (2) (a) "Disability" means the complete inability, due to objective medical impairment,  
62 whether physical or mental, to perform firefighter service.

63 (b) "Disability" does not include the inability to meet an employer's required standards  
64 or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined  
65 under Subsection (2)(a).

66 (3) "Final average salary" means the amount calculated by averaging the highest three  
67 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), and (c).

68 (a) Except as provided in Subsection (3)(b), the percentage increase in annual  
69 compensation in any one of the years used may not exceed the previous year's compensation by  
70 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
71 of the dollar during the previous year, as measured by a United States Bureau of Labor  
72 Statistics Consumer Price Index average as determined by the board.

73 (b) In cases where the participating employer provides acceptable documentation to the  
74 office the limitation in Subsection (3)(a) may be exceeded if:

75 (i) the member has transferred from another agency; or  
76 (ii) the member has been promoted to a new position.

77 (c) The annual compensation used to calculate final average salary shall be based on:

78 (i) a calendar year for a member employed by a participating employer that is not an  
79 educational institution; or

80 (ii) a contract year for a member employed by an educational institution.

81 (4) (a) "Firefighter service" means employment normally requiring an average of 2,080  
82 hours of regularly scheduled employment per year rendered by a member who is:

83 (i) a firefighter service employee trained in firefighter techniques and assigned to a  
84 position of hazardous duty with a regularly constituted fire department; or

85 (ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire  
86 marshal.

87 (b) "Firefighter service" does not include secretarial staff or other similar employees.

88 (5) "Firefighter service employee" means an employee of a participating employer who  
89 provides firefighter service under this chapter. An employee of a regularly constituted fire

90 department who does not perform firefighter service is not a firefighter service employee.

91 (6) (a) "Line-of-duty death or disability" means a death or ~~[any physical or mental]~~  
92 disability resulting from:

93 (i) external force, violence, or disease directly resulting from firefighter service; or

94 (ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous  
95 training or another strenuous activity required as an act of duty as a firefighter service  
96 employee.

97 (b) "Line-of-duty death or disability" does not include a death or ~~[any physical or~~  
98 ~~mental]~~ disability that:

99 (i) occurs during an activity that is required as an act of duty as a firefighter service  
100 employee if the activity is not a strenuous activity, including an activity that is clerical,  
101 administrative, or of a nonmanual nature;

102 (ii) occurs during the commission of a crime committed by the employee;

103 (iii) occurs when the employee's intoxication or use of alcohol or drugs, whether  
104 prescribed or nonprescribed, contributes to the employee's death or disability; or

105 (iv) occurs in a manner other than as described in Subsection (6)(a).

106 (c) "Line-of-duty death or disability" includes the death or disability of a paid  
107 firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid  
108 firefighter has five years of firefighter service credit.

109 (7) "Objective medical impairment" means an impairment resulting from an injury or  
110 illness which is diagnosed by a physician and which is based on accepted objective medical  
111 tests or findings rather than subjective complaints.

112 ~~[(7)]~~ (8) "Participating employer" means an employer which meets the participation  
113 requirements of Section [49-16-201](#).

114 ~~[(8)]~~ (9) "Regularly constituted fire department" means a fire department that employs  
115 a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid  
116 employment per year.

117 ~~[(9)]~~ (10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or  
118 vigorous fire suppression, rescue, hazardous material response, emergency medical service,  
119 physical law enforcement, prison security, disaster relief, or other emergency response activity.

120 (b) "Strenuous activity" includes participating in a participating employer sanctioned

121 and funded training exercise that involves difficult, stressful, or vigorous physical activity.

122 ~~[(10)]~~ (11) "System" means the Firefighters' Retirement System created under this  
123 chapter.

124 ~~[(11)]~~ (12) (a) "Volunteer firefighter" means any individual that is not regularly  
125 employed as a firefighter service employee, but who:

126 (i) has been trained in firefighter techniques and skills;

127 (ii) continues to receive regular firefighter training; and

128 (iii) is on the rolls of a legally organized volunteer fire department which provides  
129 ongoing training and serves a political subdivision of the state.

130 (b) An individual that volunteers assistance but does not meet the requirements of  
131 Subsection ~~[(11)]~~ (12)(a) is not a volunteer firefighter for purposes of this chapter.

132 ~~[(12)]~~ (13) "Years of service credit" means the number of periods, each to consist of 12  
133 full months as determined by the board, whether consecutive or not, during which a firefighter  
134 service employee was employed by a participating employer or received full-time pay while on  
135 sick leave, including any time the firefighter service employee was absent in the service of the  
136 United States on military duty.

137 Section 2. Section **49-16-601** is amended to read:

138 **49-16-601. Disability benefit -- Nonline-of-duty disability -- Benefits -- Monthly**  
139 **allowance.**

140 (1) An active member of this system [~~who is unable to perform firefighter service due~~  
141 ~~to a physical or mental condition~~] with a disability that was not incurred in the line-of-duty may  
142 apply to the office for a disability retirement benefit subject to the following provisions:

143 (a) if the member has less than five years of service credit in this system, disability  
144 benefits are not payable; and

145 (b) if the condition is classified by the office as a nonline-of-duty disability and if the  
146 member has five or more years of service credit in this system, the member shall be granted a  
147 disability retirement benefit subject to Section **49-16-602** ~~↗~~ [, that is payable for 24 months or  
147a until

148 the date the firefighter becomes eligible for a service retirement, whichever occurs first] ~~↖~~ .

149 (2) The monthly disability retirement benefit is 50% of the member's final average  
150 monthly salary.

151 Section 3. Section **49-16-601.5** is amended to read:

152           **49-16-601.5. Line-of-duty disability benefit -- Benefits -- Monthly allowance.**

153           (1) An active member of this system [~~who is unable to perform firefighter service due~~  
154 ~~to a physical or mental condition~~] with a disability incurred in the line-of-duty may apply to the  
155 office for a disability retirement benefit under this section.

156           (2) If the condition is classified by the office as a line-of-duty disability, the member  
157 shall be granted a disability retirement benefit subject to Section **49-16-602**.

158           (3) A paid firefighter who has five years of firefighter service credit is eligible for a  
159 line-of-duty disability benefit resulting from heart disease, lung disease, or a respiratory tract  
160 condition.

161           (4) A paid firefighter who receives a service connected disability benefit for more than  
162 six months due to violence or illness other than heart disease, lung disease, or respiratory tract  
163 condition, and then returns to paid firefighter service, may not be eligible for a line-of-duty  
164 disability benefit due to heart disease, lung disease, or respiratory tract condition for two years  
165 after the firefighter returned to work unless clear and convincing evidence is presented that the  
166 heart disease, lung disease, or respiratory tract condition was directly a result of firefighter  
167 service.

168           (5) The monthly disability retirement benefit is 50% of the member's final average  
169 salary.

170           **Section 4. Effective date.**

171           This bill takes effect on July 1, 2017.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**