

SENATE BILL No. 398

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Disability benefits for public safety officers. Provides that members of the 1925 police pension fund, 1937 firefighters' pension fund, 1953 police pension fund, and the 1977 police officers' and firefighters' pension fund who develop cancer or a heart condition that is related to the police officer's or firefighter's duties are entitled to 75% of the salary of a first class patrolman or firefighter. Provides that the death of a police officer or firefighter from cancer or a heart condition related to the police officer's or firefighter's duties is a death in the line of duty.

Effective: July 1, 1999.

Craycraft

January 11, 1999, read first time and referred to Committee on Pensions and Labor.

C
O
P
Y



Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 398

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-8-6-8 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) **Except as provided in**
3 **subsection (f)**, the 1925 fund shall be used to pay a pension in a sum
4 determined by the local board, but not exceeding:
5 (1) for a disability or disease occurring before July 1, 1982, fifty
6 percent (50%); and
7 (2) for a disability or disease occurring after June 30, 1982,
8 fifty-five percent (55%);
9 of the salary of a first class patrolman, to a member of the police
10 department who has suffered or contracted a mental or physical disease
11 or disability that renders him unable to perform the essential functions
12 of any duty in the police department, considering reasonable
13 accommodation to the extent required by the Americans with
14 Disabilities Act. If a member who becomes eligible for a disability
15 pension has more than twenty (20) years of service, he is entitled to
16 receive a disability pension equal to the pension he would have
17 received if he had retired on the date of the disability.

1999

IN 398—LS 6280/DI 96+



C
O
P
Y

1 (b) The member must have retired from active service after a
 2 physical examination by the police surgeon or another surgeon
 3 appointed by the local board. The disability must be determined solely
 4 by the local board after the examination and a hearing conducted under
 5 IC 36-8-8-12.7. A member shall be retained on active duty with full pay
 6 until he is retired by the local board because of the disability.

7 (c) After a member has been retired upon pension, the local board
 8 may, at any time, require the retired member to again be examined by
 9 the police surgeon or another surgeon appointed by the local board.
 10 After the examination the local board shall conduct a hearing under
 11 IC 36-8-8-12.7 to determine whether the disability still exists and
 12 whether the retired member should remain on the pension roll. The
 13 retired member shall be retained on the pension roll until reinstated in
 14 the service of the police department, except in case of resignation. If
 15 after the examination and hearing the retired member is found to have
 16 recovered from his disability and to be again fit for active duty, then the
 17 member shall be put on active duty with full pay and from that time is
 18 no longer entitled to payments from the 1925 fund. If the member fails
 19 or refuses to return to active duty, he waives all rights to further
 20 benefits from the 1925 fund.

21 (d) If the salary of a first class patrolman is increased or decreased,
 22 the pension payable shall be proportionately increased or decreased.
 23 However, the monthly pension payable to a member or survivor may
 24 not be reduced below:

25 ~~(A)~~ (1) the amount of the first full monthly pension received by
 26 that person; or

27 ~~(B)~~ (2) fifty-five percent (55%) of the salary of a first class
 28 patrolman;

29 whichever is greater.

30 (e) Time spent receiving disability benefits is considered active
 31 service for the purpose of determining retirement benefits until the
 32 member has a total of twenty (20) years of service.

33 **(f) A member of the police department who is unable to perform**
 34 **the member's duties in the police department because of a**
 35 **disabling cancer or heart condition that:**

36 **(1) develops and manifests itself while the member is in the**
 37 **service of the police department; and**

38 **(2) may be caused by exposure to heat, radiation, or a known**
 39 **or suspected carcinogen or the physical stresses of the**
 40 **member's duties;**

41 **is entitled to receive a disability benefit in the amount of**
 42 **seventy-five percent (75%) of the salary of a first class patrolman.**



C
O
P
Y

1 SECTION 2. IC 36-8-6-10.1 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10.1. (a) If a member
 3 dies in the line of duty after August 31, 1982, the surviving spouse is
 4 entitled to an additional monthly benefit, during the spouse's lifetime,
 5 equal to the difference between:

6 (1) the benefit to which the member would have been entitled on
 7 the date of the member's death, but no less than fifty percent
 8 (50%) of the monthly wage received by a first class patrolman;
 9 and

10 (2) the amount received by the spouse under section 9.8(c) of this
 11 chapter.

12 If the surviving spouse remarried before September 1, 1983, and
 13 benefits ceased on the date of remarriage, the benefits for the surviving
 14 spouse shall be reinstated on July 1, 1997, and continue during the life
 15 of the surviving spouse.

16 (b) The children of a spouse receiving benefits under this section
 17 may not receive more than a total of thirty percent (30%) of the
 18 monthly wage received by a first class patrolman. However, this
 19 limitation does not apply to the children of a spouse receiving benefits
 20 under this section who are physically or mentally disabled.

21 (c) For purposes of this section, "dies in the line of duty" means
 22 death that occurs as a direct result of personal injury or illness resulting
 23 from:

24 (1) any action that the member, in the member's capacity as a
 25 police officer, is obligated or authorized by rule, regulation,
 26 condition of employment or service, or law to perform in the
 27 course of controlling or reducing crime or enforcing the criminal
 28 law; or

29 (2) **cancer or a heart condition that:**

30 (A) **develops and manifests itself while the member is in the**
 31 **service of the police department; and**

32 (B) **may be caused by exposure to heat, radiation, or a**
 33 **known or suspected carcinogen or the physical stresses of**
 34 **the member's duties.**

35 SECTION 3. IC 36-8-7-12.1 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.1. (a) Benefits paid
 37 under this section are subject to section 2.5 of this chapter.

38 (b) The sum that shall be paid to permanently disabled members and
 39 to the surviving spouses, children, and parents of deceased members is
 40 as follows:

41 (1) **Except as provided in subdivision (4)**, upon retirement with
 42 disability during service, a member is entitled to receive in

C
O
P
Y



1 monthly installments an amount equal to fifty-five percent (55%)
 2 of the salary of a fully paid first class firefighter in the unit at the
 3 time of the payment of the pension.

4 (2) If a member dies while in active service or after retirement:

5 (A) the surviving spouse is entitled to receive an amount fixed
 6 by ordinance but not less than:

7 (i) for the surviving spouse of a member who dies before
 8 January 1, 1989, thirty percent (30%) of the salary of a fully
 9 paid first class firefighter in the unit at the time of the
 10 payment of the pension; and

11 (ii) for the surviving spouse of a member who dies after
 12 December 31, 1988, an amount per month, during the
 13 spouse's life, equal to the greater of thirty percent (30%) of
 14 the monthly pay of a first class firefighter or fifty-five
 15 percent (55%) of the monthly benefit the deceased member
 16 was receiving or was entitled to receive on the date of the
 17 member's death (these amounts shall be proportionately
 18 increased or decreased if the salary of a first class firefighter
 19 is increased or decreased); however, if the deceased member
 20 was not entitled to a benefit because the member had not
 21 completed twenty (20) years of service, for the purposes of
 22 computing the second amount under this item, the member's
 23 benefit shall be considered to be fifty percent (50%) of the
 24 monthly salary of a first class firefighter in the unit at the
 25 time of payment of the pension;

26 (B) the member's children who are:

27 (i) under eighteen (18) years of age; or

28 (ii) less than twenty-three (23) years of age if the children
 29 are enrolled in and regularly attending a secondary school or
 30 are full-time students at an accredited college or university;
 31 are each entitled to receive an amount fixed by ordinance but
 32 not less than twenty percent (20%) of the salary of a fully paid
 33 first class firefighter in the unit at the time of the payment of
 34 the pension; and

35 (C) each parent of a deceased member who was eligible for a
 36 pension is entitled to receive jointly an amount equal to thirty
 37 percent (30%) of the salary of a fully paid first class firefighter
 38 in the unit at the time of the payment of the pension.

39 (3) If a member dies in the line of duty after August 31, 1982, the
 40 surviving spouse is entitled to an additional monthly benefit,
 41 during the spouse's lifetime, equal to the difference between the
 42 benefit to which the member would have been entitled on the date

C
O
P
Y



1 of the member's death, but not less than fifty percent (50%) of the
 2 monthly wage received by a fully paid first class firefighter and
 3 the amount received by the spouse under subdivision (2)(A). If
 4 the spouse remarried before September 1, 1983, and benefits
 5 ceased on the date of remarriage, the benefits for the surviving
 6 spouse shall be reinstated on July 1, 1997, and continue during
 7 the life of the surviving spouse. The children of a spouse
 8 receiving benefits under this subdivision may not receive more
 9 than a total of thirty percent (30%) of the monthly wage received
 10 by a fully paid first class firefighter. However, this limitation does
 11 not apply to the children of a spouse receiving benefits under this
 12 subdivision who are physically or mentally disabled. For purposes
 13 of this subdivision, "dies in the line of duty" means death that
 14 occurs as a direct result of personal injury or illness resulting
 15 from:

16 (A) any action that the member, in the member's capacity as a
 17 firefighter, is obligated or authorized by rule, regulation,
 18 condition of employment or service, or law to perform while
 19 on the scene of an emergency run (including false alarms) or
 20 on the way to or from the scene; or

21 **(B) cancer or a heart condition that:**

22 **(i) develops and manifests itself while the member is in**
 23 **the service of the fire department; and**

24 **(ii) may be caused by exposure to heat, radiation, or a**
 25 **known carcinogen or the physical stresses of the**
 26 **member's duties.**

27 **(4) A member who is unable to perform the member's duties**
 28 **in the fire department because of a disabling cancer or heart**
 29 **condition that:**

30 **(A) develops and manifests itself while the member is in the**
 31 **service of the fire department; and**

32 **(B) may be caused by exposure to heat, radiation, or a**
 33 **known or suspected carcinogen or the physical stresses of**
 34 **the member's duties;**

35 **is entitled to receive a disability benefit in the amount of**
 36 **seventy-five percent (75%) of the salary of a first class**
 37 **firefighter.**

38 If the local board finds upon the submission of satisfactory proof that
 39 a child eighteen (18) years of age or older is mentally or physically
 40 incapacitated, is not a ward of the state, and is not receiving a benefit
 41 under subdivision (2)(B)(ii), the child is entitled to receive the same
 42 amount as is paid to the surviving spouse of a deceased firefighter, as

C
O
P
Y



1 long as the mental or physical incapacity continues. A sum paid for the
2 benefit of a child or children shall be paid to the remaining parent, if
3 alive, as long as the child or children reside with and are supported by
4 the parent. If the parent dies, the sum shall be paid to the lawful
5 guardian of the child or children.

6 (c) A member who has been in service twenty (20) years, upon
7 making a written application to the fire chief, may be retired from all
8 service with the department without a medical examination or
9 disability. Except as provided in subsection (g), the local board shall
10 authorize the payment to the retired member of fifty percent (50%) of
11 the salary of a fully paid first class firefighter of the unit at the time of
12 the payment of the pension, plus:

13 (1) for a member who retires before January 1, 1986, two percent
14 (2%) of that salary for each year of service; or

15 (2) for a member who retires after December 31, 1985, one
16 percent (1%) of that salary for each six (6) months of service;
17 over twenty (20) years. However, the pension in one (1) year may not
18 exceed an amount greater than seventy-four percent (74%) of the salary
19 of a fully paid first class firefighter. The pension of the dependents of
20 retired members is the same if the member dies after retirement as it is
21 for dependents of members who die in the service or after retirement
22 with disability.

23 (d) A member who is discharged from the fire department after
24 having served at least twenty (20) years is entitled to receive the
25 amount equal to the amount that the member would have received if
26 the member retired voluntarily. If a member dies after retirement and
27 leaves a surviving spouse or dependent child or children, they are
28 entitled to receive the amount provided for the dependents of members
29 who have died in the service of the fire department.

30 (e) All pensions in a class are on an equal basis. The local board
31 may not depart from this chapter in authorizing the payment of
32 pensions.

33 (f) The monthly pension payable to a member or survivor may not
34 be reduced below the amount of the first full monthly pension received
35 by that person.

36 (g) The monthly pension payable to a member who is transferred
37 from disability to regular retirement status may not be reduced below
38 fifty-five percent (55%) of the salary of a fully paid first class
39 firefighter in the unit at the time of the payment of the pension.

40 (h) A benefit payable under this section shall be paid in not less than
41 twelve (12) monthly installments.

42 SECTION 4. IC 36-8-7.5-13 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. (a) **Except as**
2 **provided in subsection (i)**, the 1953 fund shall be used to pay a
3 pension in an annual sum equal to:

4 (1) fifty percent (50%), for a disease or disability occurring before
5 July 1, 1991; and

6 (2) fifty-five percent (55%), for a disease or disability occurring
7 after June 30, 1991;

8 of the salary of a first class patrolman in the police department,
9 computed and payable as prescribed by section 12(b) of this chapter,
10 to an active member of the police department who has been in active
11 service for more than one (1) year and who has suffered or contracted
12 a mental or physical disease or disability that render the member
13 permanently unfit for active duty in the police department, or to an
14 active member of the police department who has been in active service
15 for less than one (1) year who has suffered or received personal injury
16 from violent external causes while in the actual discharge of his duties
17 as a police officer. The pensions provided for in this subsection shall
18 be paid only so long as the member of the police department remains
19 unfit for active duty in the police department.

20 (b) The 1953 fund shall be used to pay temporary benefits in an
21 annual sum equal to thirty percent (30%) of the salary of a first class
22 patrolman in the police department, computed and payable as
23 prescribed by section 12(a) of this chapter, to an active member of the
24 police department who has been in active service for more than one (1)
25 year and who has suffered any physical or mental disability that renders
26 the member temporarily or permanently unable to perform his duties
27 as a member of the police department, or to an active member of the
28 police department who has been in active service for less than one (1)
29 year and who has suffered or received personal injury from violent
30 external causes while in the actual discharge of his duties as a police
31 officer, until the time the member is physically and mentally able to
32 return to active service on the police department.

33 (c) If an application is made by an active member of the police
34 department because of physical or mental disability for temporary
35 benefits as provided in subsection (a) or (b), the benefit is not payable
36 until the local board determines after a hearing conducted under
37 IC 36-8-8-12.7 that the member is unfit for active duty on the police
38 department, considering reasonable accommodation to the extent
39 required by the Americans with Disabilities Act. Before the hearing, a
40 physician to be appointed by the local board shall examine the member
41 and certify in writing whether in his opinion the member is unfit,
42 physically or mentally, for active duty in the police department. After

C
O
P
Y

1 the pension or benefit has been granted by the local board, the payment
2 commences with the original date of the injury or illness causing the
3 disability.

4 (d) A member who has been granted a disability benefit under
5 subsection (a) or (b) and who fails or refuses to submit to a physical
6 examination at any time by the local board physician has no right in the
7 future to receive the disability benefit, and any benefit that has been
8 granted shall be immediately canceled by the local board.

9 (e) The local board may, from time to time, require a member of the
10 police department who is receiving at any time disability benefits or
11 pensions as provided in subsection (a) or (b) to be examined by the
12 physician appointed by the local board. After the examination, the local
13 board shall conduct a hearing under IC 36-8-8-12.7 to determine
14 whether the disability still exists and whether the member should
15 continue to receive the pension or benefit. If after the examination and
16 hearing the member is found to have recovered from his disability and
17 is fit for active duty on the police department, then upon written notice
18 to the member by the local board, the member shall be reinstated in
19 active service, the safety board shall be informed of the action of the
20 local board, and from that time the member is no longer entitled to
21 payments from the 1953 fund. If the member fails or refuses to return
22 to active duty after ordered by the local board, he ceases to be a
23 member of the 1953 fund and waives all rights to any further pensions
24 or benefits provided by the 1953 fund.

25 (f) Notwithstanding any other provision of this chapter, no disability
26 benefit may be paid for any disability based upon or caused by any
27 mental or physical condition that a member had at the time he entered
28 or reentered his active service in the police department.

29 (g) If a member who is receiving disability benefits under
30 subsection (a) for a disease or disability occurring after June 30, 1991,
31 is transferred from disability to regular retirement status, the member's
32 monthly pension may not be reduced below fifty-five percent (55%) of
33 the salary of a first class patrolman at the time of payment of the
34 pension.

35 (h) To the extent required by the Americans with Disabilities Act,
36 the transcripts, reports, records, and other material compiled to
37 determine the existence of a disability shall be:

- 38 (1) kept in separate medical files for each member; and
- 39 (2) treated as confidential medical records.

40 **(i) A member of the police department who is unable to perform**
41 **the member's duties in the police department because of a**
42 **disabling cancer or heart condition that:**



C
O
P
Y

1 **(1) develops and manifests itself while the member is in the**
 2 **service of the police department; and**

3 **(2) may be caused by exposure to heat, radiation, or a known**
 4 **or suspected carcinogen or the physical stresses of the**
 5 **member's duties;**

6 **is entitled to receive a disability benefit in the amount of**
 7 **seventy-five percent (75%) of the salary of a first class patrolman.**

8 SECTION 5. IC 36-8-7.5-14.1 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14.1. (a) If a member
 10 dies in the line of duty after August 31, 1982, the surviving spouse is
 11 entitled to an additional monthly benefit, during the spouse's lifetime
 12 equal to the difference between:

13 (1) the benefit to which the member would have been entitled on
 14 the date of the member's death, but not less than fifty percent
 15 (50%) of the monthly wage received by a first class patrolman;
 16 and

17 (2) the amount received by the spouse under section 13.8(c) of
 18 this chapter.

19 If the spouse remarried before September 1, 1983, benefits ceased on
 20 the date of remarriage. However, if a member of the police department
 21 dies in the line of duty after August 31, 1982, and the member's
 22 surviving spouse remarried before September 1, 1983, the benefits for
 23 the surviving spouse shall be reinstated on July 1, 1995, and continue
 24 during the life of the surviving spouse.

25 (b) The children of a spouse receiving benefits under this section
 26 may not receive more than a total of thirty percent (30%) of the
 27 monthly wage received by a first class patrolman. However, this
 28 limitation does not apply to the children of a spouse receiving benefits
 29 under this section who are physically or mentally disabled.

30 (c) For purposes of this section, "dies in the line of duty" means
 31 death that occurs as a direct result of personal injury or illness resulting
 32 from:

33 **(1) any action that the member, in the member's capacity as a**
 34 **police officer, is obligated or authorized by rule, regulation,**
 35 **condition of employment or service, or law to perform in the**
 36 **course of controlling or reducing crime or enforcing the criminal**
 37 **law; or**

38 **(2) cancer or a heart condition that:**

39 **(A) develops and manifests itself while the member is in the**
 40 **service of the police department; and**

41 **(B) may be caused by exposure to heat, radiation, or a**
 42 **known or suspected carcinogen or the physical stresses of**



C
O
P
Y

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

the member's duties.

SECTION 6. IC 36-8-8-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.5. (a) This section applies only to a fund member who:

- (1) is hired for the first time after December 31, 1989;
- (2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or
- (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

- (A) A personal injury that occurs while the fund member is on duty.
- (B) A personal injury that occurs while the fund member is off duty and is responding to:
 - (i) an offense or a reported offense, in the case of a police officer; or
 - (ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.
- (C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

(D) Cancer or a heart condition that:

- (i) develops and manifests itself while the fund member is in the service of the police or fire department; and**
- (ii) may be caused by exposure to heat, radiation, or a known or suspected carcinogen or the physical stresses of the fund member's duties.**

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (A) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (B) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure

C
O
P
Y



1 occasioned by the nature of the fund member's duties; and
 2 (C) the disease can be traced to the fund member's
 3 employment as the proximate cause.

4 (3) Whether the fund member has a Class 3 impairment. A Class
 5 3 impairment is a covered impairment that is not a Class 1
 6 impairment or a Class 2 impairment.

7 SECTION 7. IC 36-8-8-13.5 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.5. (a) This section
 9 applies only to a fund member who:

- 10 (1) is hired for the first time after December 31, 1989;
 11 (2) chooses coverage by this section and section 12.5 of this
 12 chapter under section 12.4 of this chapter; or
 13 (3) is described in section 12.3(c)(2) of this chapter.

14 (b) A fund member who is determined to have a Class 1 impairment
 15 and for whom it is determined that there is no suitable and available
 16 work within the fund member's department, considering reasonable
 17 accommodation to the extent required by the Americans with
 18 Disabilities Act, is entitled to a monthly base benefit equal to forty-five
 19 percent (45%) of the monthly salary of a first class patrolman or
 20 firefighter in the year of the local board's determination of impairment.
 21 **However, a fund member who is determined to have a Class 1**
 22 **impairment under section 12.5(b)(1)(D) of this chapter is entitled**
 23 **to receive a monthly disability benefit in the amount of seventy-five**
 24 **percent (75%) of the monthly salary of a first class patrolman or**
 25 **firefighter.**

26 (c) A fund member who is determined to have a Class 2 impairment
 27 and for whom it is determined that there is no suitable and available
 28 work within the fund member's department, considering reasonable
 29 accommodation to the extent required by the Americans with
 30 Disabilities Act, is entitled to a monthly base benefit equal to
 31 twenty-two percent (22%) of the monthly salary of a first class
 32 patrolman or firefighter in the year of the local board's determination
 33 of impairment plus one-half percent (0.5%) of that salary for each year
 34 of service, up to a maximum of thirty (30) years of service.

35 (d) For applicants hired before March 2, 1992, a fund member who
 36 is determined to have a Class 3 impairment and for whom it is
 37 determined that there is no suitable and available work within the fund
 38 member's department, considering reasonable accommodation to the
 39 extent required by the Americans with Disabilities Act, is entitled to a
 40 monthly base benefit equal to the product of the member's years of
 41 service (not to exceed thirty (30) years of service) multiplied by one
 42 percent (1%) of the monthly salary of a first class patrolman or



C
O
P
Y

1 firefighter in the year of the local board's determination of impairment.

2 (e) For applicants hired after March 1, 1992, or described in section
3 12.3(c)(2) of this chapter, a fund member who is determined to have a
4 Class 3 impairment and for whom it is determined that there is no
5 suitable and available work within the fund member's department,
6 considering reasonable accommodation to the extent required by the
7 Americans with Disabilities Act, is entitled to the following benefits
8 instead of benefits provided under subsection (d):

9 (1) If the fund member did not have a Class 3 excludable
10 condition under section 13.6 of this chapter at the time the fund
11 member entered or reentered the fund, the fund member is
12 entitled to a monthly base benefit equal to the product of the
13 member's years of service, not to exceed thirty (30) years of
14 service, multiplied by one percent (1%) of the monthly salary of
15 a first class patrolman or firefighter in the year of the local board's
16 determination of impairment.

17 (2) Except as provided in subdivision (5), a fund member is
18 entitled to receive the benefits set forth in subdivision (1) if:

19 (A) the fund member had a Class 3 excludable condition under
20 section 13.6 of this chapter at the time the fund member
21 entered or reentered the fund;

22 (B) the fund member has a Class 3 impairment that is not
23 related in any manner to the Class 3 excludable condition
24 described in clause (A); and

25 (C) the Class 3 impairment described in clause (B) occurs after
26 the fund member has completed four (4) years of service with
27 the employer after the date the fund member entered or
28 reentered the fund.

29 (3) Except as provided in subdivision (5), a fund member is not
30 entitled to a monthly base benefit for a Class 3 impairment if:

31 (A) the fund member had a Class 3 excludable condition under
32 section 13.6 of this chapter at the time the fund member
33 entered or reentered the fund; and

34 (B) the Class 3 impairment occurs before the fund member has
35 completed four (4) years of service with the employer after the
36 date the fund member entered or reentered the fund.

37 (4) A fund member is not entitled to a monthly base benefit for a
38 Class 3 impairment if:

39 (A) the fund member had a Class 3 excludable condition under
40 section 13.6 of this chapter at the time the fund member
41 entered or reentered the fund; and

42 (B) the Class 3 impairment is related in any manner to the

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- Class 3 excludable condition.
- (5) If, during the first four (4) years of service with the employer:
 - (A) a fund member with a Class 3 excludable condition is determined to have a Class 3 impairment; and
 - (B) the Class 3 impairment is attributable to an accidental injury that is not related in any manner to the fund member's Class 3 excludable condition;
 the member is entitled to receive the benefits provided in subdivision (1) with respect to the accidental injury. For purposes of this subdivision, the local board shall make the initial determination of whether an impairment is attributable to an accidental injury. The local board shall forward the initial determination to the director of the PERF board for a final determination by the PERF board or the PERF board's designee.
- (f) If a fund member is entitled to a monthly base benefit under subsection (b), (c), (d), or (e), the fund member is also entitled to a monthly amount that is no less than ten percent (10%) and no greater than forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment. The additional monthly amount shall be determined by the PERF medical authority based on the degree of impairment.
- (g) Benefits for a Class 1 impairment are payable until the fund member becomes fifty-two (52) years of age. Benefits for a Class 2 and a Class 3 impairment are payable:
 - (1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or
 - (2) until the member becomes fifty-two (52) years of age if the member's benefit is:
 - (A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or
 - (B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.
- (h) Upon becoming fifty-two (52) years of age, a fund member with a Class 1 or Class 2 impairment is entitled to receive the retirement benefit payable to a fund member with:
 - (1) twenty (20) years of service; or

C
O
P
Y



1 (2) the total years of service and salary, as of the year the member
 2 becomes fifty-two (52) years of age, that the fund member would
 3 have earned if the fund member had remained in active service
 4 until becoming fifty-two (52) years of age;
 5 whichever is greater.

6 (i) Upon becoming fifty-two (52) years of age, a fund member who
 7 is receiving or has received a Class 3 impairment benefit that is:

8 (1) equal to or greater than thirty percent (30%) of the monthly
 9 salary of a first class patrolman or firefighter in the year of the
 10 local board's determination of impairment; or

11 (2) less than thirty percent (30%) of the monthly salary of a first
 12 class patrolman or firefighter in the year of the local board's
 13 determination of impairment if the member has at least four (4)
 14 years of service;

15 is entitled to receive the retirement benefit payable to a fund member
 16 with twenty (20) years of service.

17 (j) Notwithstanding section 12.3 of this chapter and any other
 18 provision of this section, a member who:

19 (1) has had a covered impairment;

20 (2) recovers and returns to active service with the department; and

21 (3) within two (2) years after returning to active service has an
 22 impairment that, except for section 12.3(b)(3) of this chapter,
 23 would be a covered impairment;

24 is entitled to the benefit under this subsection if the impairment
 25 described in subdivision (3) results from the same condition or
 26 conditions (without an intervening circumstance) that caused the
 27 covered impairment described in subdivision (1). The member is
 28 entitled to receive the monthly disability benefit amount paid to the
 29 member at the time of the member's return to active service plus any
 30 adjustments under section 15 of this chapter that would have been
 31 applicable during the member's period of reemployment.

32 SECTION 8. IC 36-8-8-14.1 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14.1.(a) Benefits paid
 34 under this section are subject to section 2.5 of this chapter.

35 (b) If a fund member dies while receiving retirement or disability
 36 benefits, the following apply:

37 (1) Each of the member's surviving children is entitled to a
 38 monthly benefit equal to twenty percent (20%) of the fund
 39 member's monthly benefit:

40 (A) until the child reaches eighteen (18) years of age; or

41 (B) until the child reaches twenty-three (23) years of age if the
 42 child is enrolled in and regularly attending a secondary school



C
O
P
Y

1 or is a full-time student at an accredited college or university;
 2 whichever period is longer. However, if the board finds upon the
 3 submission of satisfactory proof that a child who is at least
 4 eighteen (18) years of age is mentally or physically incapacitated,
 5 is not a ward of the state, and is not receiving a benefit under
 6 subdivision (1)(B), the child is entitled to receive an amount each
 7 month that is equal to the greater of thirty percent (30%) of the
 8 monthly pay of a first class patrolman or first class firefighter or
 9 fifty-five percent (55%) of the monthly benefit the deceased
 10 member was receiving or was entitled to receive on the date of the
 11 member's death as long as the mental or physical incapacity of the
 12 child continues. Benefits paid for a child shall be paid to the
 13 surviving parent as long as the child resides with and is supported
 14 by the surviving parent. If the surviving parent dies, the benefits
 15 shall be paid to the legal guardian of the child.

16 (2) The member's surviving spouse is entitled to a monthly benefit
 17 equal to sixty percent (60%) of the fund member's monthly
 18 benefit during the spouse's lifetime. If the spouse remarried before
 19 September 1, 1983, and benefits ceased on the date of remarriage,
 20 the benefits for the surviving spouse shall be reinstated on July 1,
 21 1997, and continue during the life of the surviving spouse.

22 If a fund member dies while receiving retirement or disability benefits,
 23 there is no surviving eligible child or spouse, and there is proof
 24 satisfactory to the local board, subject to review in the manner
 25 specified in section 13.1(b) of this chapter, that the parent was wholly
 26 dependent on the fund member, the member's surviving parent is
 27 entitled, or both surviving parents if qualified are entitled jointly, to
 28 receive fifty percent (50%) of the fund member's monthly benefit
 29 during the parent's or parents' lifetime.

30 (c) If a fund member dies while on active duty or while retired and
 31 not receiving benefits, the member's children and the member's spouse,
 32 or the member's parent or parents, are entitled to receive a monthly
 33 benefit determined under subsection (b). If the fund member did not
 34 have at least twenty (20) years of service or was not at least fifty-two
 35 (52) years old, the benefit is computed as if the member:

- 36 (1) did have twenty (20) years of service; and
- 37 (2) was fifty-two (52) years of age.

38 (d) If a fund member dies in the line of duty after August 31, 1982,
 39 the member's surviving spouse is entitled to an additional monthly
 40 benefit during the spouse's lifetime, equal to the difference between the
 41 benefit payable under subsection (b)(2) and the benefit to which the
 42 member would have been entitled on the date of the member's death,



C
O
P
Y

1 but not less than the benefit payable to a member with twenty (20)
2 years service at fifty-two (52) years of age. If the spouse remarried
3 before September 1, 1983, and benefits ceased on the date of
4 remarriage, the benefits for the surviving spouse shall be reinstated on
5 July 1, 1997, and continue during the life of the surviving spouse. For
6 purposes of this subsection, "dies in the line of duty" means death that
7 occurs as a direct result of personal injury or illness resulting from:

8 (1) any action that the member, in the member's capacity as a
9 police officer, is obligated or authorized by rule, regulation,
10 condition of employment or service, or law to perform in the
11 course of controlling or reducing crime or enforcing the criminal
12 law; or

13 (2) any action that the member, in the member's capacity as a
14 firefighter, is obligated or authorized by rule, regulation,
15 condition of employment or service, or law to perform while on
16 the scene of an emergency run (including false alarms) or on the
17 way to or from the scene; or

18 **(3) cancer or a heart condition that:**
19 **(A) develops and manifests itself while the member is in the**
20 **service of the police or fire department; and**
21 **(B) may be caused by exposure to heat, radiation, or a**
22 **known or suspected carcinogen or the physical stresses of**
23 **the member's duties.**

C
O
P
Y

