

IC 10-12-2

Chapter 2. Pension, Death, Disability, Survivor, and Other Benefits

IC 10-12-2-0.2

P.L.146-1987 intended to be codification and restatement of law; no effect on substantive operation of prior law

Sec. 0.2. (a) The:

- (1) addition of IC 10-1-1.9 (before its repeal, now codified at IC 10-12-1) and IC 10-1-2.2 (before its repeal, now codified at IC 10-12-3);
- (2) amendments made to IC 10-1-2-2 (before its repeal, now codified at section 2 of this chapter); and
- (3) repeal of IC 10-1-2-1;

by P.L.146-1987 are intended to be a codification and restatement of applicable or corresponding provisions of IC 10-1-2-1. If P.L.146-1987 repealed and replaced a law in the same form or in a restated form, the substantive operation and effect of that law continue uninterrupted.

(b) The:

- (1) addition of IC 10-1-1.9 (before its repeal, now codified at IC 10-12-1) and IC 10-1-2.2 (before its repeal, now codified at IC 10-12-3);
- (2) amendments made to IC 10-1-2-2 (before its repeal, now codified at section 2 of this chapter); and
- (3) repeal of IC 10-1-2-1;

do not affect rights or liabilities accrued, penalties incurred, crimes committed, or proceedings begun before July 1, 1987. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced as if P.L.146-1987 had not been enacted.

(c) IC 10-1-2-11 (before its repeal, now codified at section 11 of this chapter), as added by P.L.69-2002, applies to the child or spouse of a regular, paid police employee of the state police department if the regular police employee of the state police department was permanently and totally disabled by a catastrophic personal injury that:

- (1) was sustained in the line of duty; and
- (2) permanently prevents the employee from performing any gainful work;

before, on, or after July 1, 2002.

As added by P.L.220-2011, SEC.235.

IC 10-12-2-1

Retention of service weapon; badge; identification card

Sec. 1. (a) If an eligible employee retires after at least twenty (20) years of service, the employee may:

- (1) retain the employee's issued service weapon; and
- (2) receive a "Retired" badge in recognition of the employee's service to the department and the public.

(b) Upon an eligible employee's retirement, the department shall

issue to the employee an identification card that:

- (1) gives the employee's name and rank;
- (2) signifies that the employee is retired; and
- (3) notes the employee's authority to retain the employee's service weapon.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-2

Pension trust; commingling funds; investment of funds; report; termination

Sec. 2. (a) The department may:

- (1) establish and operate an actuarially sound pension plan governed by a pension trust; and
- (2) make the necessary annual contribution in order to prevent any deterioration in the actuarial status of the trust fund.

(b) The department shall make contributions to the trust fund. An employee beneficiary shall make contributions to the trust fund through authorized monthly deductions from wages.

(c) The trust fund:

- (1) may not be commingled with any other funds; and
- (2) shall be invested only in accordance with state laws for the investment of trust funds, together with other investments as are specifically designated in the pension trust.

Subject to the terms of the pension trust, the trustee, with the approval of the department and the pension advisory board, may establish investment guidelines and limits on all types of investments, including stocks and bonds, and take other action necessary to fulfill its duty as a fiduciary for the trust fund.

(d) The trustee shall invest the trust fund assets with the same care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a similar character with similar aims.

(e) The trustee shall diversify the trust fund's investments in accordance with prudent investment standards. The investment of the trust fund is subject to section 3 of this chapter.

(f) The trustee shall receive and hold as trustee for the uses and purposes set forth in the pension trust the funds paid by the department, the employee beneficiaries, or any other person or persons.

(g) The trustee shall engage pension consultants to supervise and assist in the technical operation of the pension plan so that there is no deterioration in the actuarial status of the plan.

(h) Before October 1 of each year, the trustee, with the aid of the pension consultants, shall prepare and file a report with the department and the state board of accounts. The report must include the following with respect to the fiscal year ending on the preceding June 30:

SCHEDULE I. Receipts and disbursements.

SCHEDULE II. Assets of the pension trust, listing investments as to book value and current market value at the end of the

fiscal year.

SCHEDULE III. List of terminations, showing cause and amount of refund.

SCHEDULE IV. The application of actuarially computed "reserve factors" to the payroll data, properly classified for the purpose of computing the reserve liability of the trust fund as of the end of the fiscal year.

SCHEDULE V. The application of actuarially computed "current liability factors" to the payroll data, properly classified for the purpose of computing the liability of the trust fund for the end of the fiscal year.

SCHEDULE VI. An actuarial computation of the pension liability for all employees retired before the close of the fiscal year.

(i) The minimum annual contribution by the department must be of sufficient amount, as determined by the pension consultants, to prevent any deterioration in the actuarial status of the pension plan during that year. If the department fails to make the minimum contribution for five (5) successive years, the pension trust terminates and the trust fund shall be liquidated.

(j) Except as provided by applicable federal law, in the event of liquidation, the department shall take the following actions:

(1) All expenses of the pension trust must be paid.

(2) Adequate provision must be made for continuing pension payments to retired persons.

(3) Each employee beneficiary must receive the net amount paid into the trust fund from the employee beneficiary's wages.

(4) Any amount remaining in the pension trust after the department makes the payments described in subdivisions (1) through (3) must be equitably divided among the employee beneficiaries in proportion to the net amount paid from each employee beneficiary's wages into the trust fund.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-3

Qualification of trust under Internal Revenue Code; benefit limitations

Sec. 3. (a) The pension trust shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the pension trust. In order to meet those requirements, the pension trust is subject to the following provisions, notwithstanding any other provision of this chapter, IC 10-12-3, or IC 10-12-4:

(1) The pension advisory board shall distribute the corpus and income of the pension trust to participants and their beneficiaries in accordance with this chapter, IC 10-12-3, and IC 10-12-4.

(2) A part of the corpus or income of the pension trust may not be used or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or any other reason may not be applied to increase the benefits any participant would otherwise receive under this chapter, IC 10-12-3, or IC 10-12-4.

(4) If the pension trust is terminated or if all contributions to the pension trust are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the pension trust shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. To meet those requirements, the pension trust is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination for purposes of determining benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the participant died.

(C) The amount of an annuity paid to a participant's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

(6) The pension advisory board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of participants or beneficiaries;

in a manner that discriminates in favor of participants who are considered officers, supervisors, or highly compensated, as provided under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter, IC 10-12-3, or IC 10-12-4 may not exceed the maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter, IC 10-12-3, or IC 10-12-4 may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The trustee may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

(b) Notwithstanding any other provision of this chapter or IC 10-12-3, and solely for the purposes of the benefits provided under IC 10-12-3, the benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988. This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal

Revenue Code, other than Section 415(b)(2)(G) of the Internal Revenue Code, applied without regard to Section 415(b)(2)(F) of the Internal Revenue Code (before its repeal on June 7, 2001, by P.L.107-16) to anyone who did not first become a participant before January 1, 1990.

As added by P.L.2-2003, SEC.3. Amended by P.L.42-2011, SEC.28.

IC 10-12-2-4

Mortality reserve account

Sec. 4. The department may establish, operate, and make necessary contributions to a mortality reserve account for the payment of supplementary death benefits to deceased employee beneficiaries. However, a supplementary death benefit may not exceed fourteen thousand five hundred dollars (\$14,500).

As added by P.L.2-2003, SEC.3.

IC 10-12-2-5

Disability reserve account; additional department authority; disability pension payments

Sec. 5. (a) The department may establish, operate, and make necessary contributions to a disability reserve account for the payment of disability expense reimbursements and disability pensions to employee beneficiaries with a disability. The department also may do the following:

(1) Establish, under the terms of a supplementary trust agreement, disability expense reimbursements and disability pensions to be paid to employee beneficiaries who incur a disability in the line of duty.

(2) Establish, under the terms of a supplementary trust agreement, disability expense reimbursements and disability pensions to be paid to employee beneficiaries who incur a disability not in the line of duty.

(3) Seek rulings from the Internal Revenue Service as to the federal tax treatment for the line of duty disability benefits authorized by this section.

Except as provided in subsection (d), a monthly disability pension may not exceed the maximum basic pension amount. However, in the case of disability incurred in the line of duty, an employee beneficiary may receive not more than forty dollars (\$40) per month for each dependent parent and dependent child less than eighteen (18) years of age, in addition to the monthly disability pension payment under this chapter. Time in disability pension status is considered qualifying active service for purposes of calculating a retirement pension.

(b) This section shall be administered in a manner that is consistent with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and the regulations and amendments related to that act, to the extent required by that act.

(c) A disability payment made under this chapter is worker's compensation instead of a payment under IC 22-3-2 through

IC 22-3-7.

(d) A regular, paid police employee of the state police department who has a permanent and total disability from a catastrophic personal injury that:

- (1) is sustained in the line of duty after January 1, 2001; and
- (2) permanently prevents the employee from performing any gainful work;

shall receive a disability pension equal to the employee's regular salary at the commencement of the disability. The disability pension provided under this subsection is provided instead of the regular monthly disability pension. The disability pension provided under this subsection must be increased at a rate equal to any salary increases the employee would have received if the employee remained in active service.

As added by P.L.2-2003, SEC.3. Amended by P.L.99-2007, SEC.35; P.L.1-2010, SEC.52.

IC 10-12-2-6

Dependent's pension reserve account

Sec. 6. (a) The department may establish, operate, and make necessary contributions to a dependent's pension reserve account for the payment of pensions to dependent parents, surviving spouses, and dependent unmarried children of employee beneficiaries who are killed in the line of duty.

(b) The maximum monthly pension amount payable to dependent mothers, dependent fathers, and surviving spouses:

- (1) may not exceed the then current basic monthly pension amount paid to retirees; and
- (2) shall cease with the last payment before the dependent parent's or surviving spouse's death.

(c) Except as provided in subsections (d) through (f), the maximum monthly pension amount payable to each dependent unmarried child may not exceed thirty percent (30%) of the current basic monthly pension amount paid to retirees. The payment shall cease with the last payment before the child's marriage or nineteenth birthday, whichever occurs first.

(d) The total monthly pension amount paid to all dependent unmarried children of an employee beneficiary may not exceed the current basic monthly amount paid to retirees.

(e) Each unmarried dependent child who is at least nineteen (19) years of age but less than twenty-three (23) years of age is eligible to receive a pension payment while enrolled as a full-time student in a school, college, or university.

(f) A dependent child, married or unmarried, of an employee beneficiary who is killed in the line of duty is eligible to attend any Indiana state supported college or university tuition free.

(g) All dependent mothers, dependent fathers, surviving spouses, and dependent children who received a dependent pension on June 30, 1969, shall receive a pension calculated as provided by this section beginning on July 1, 1969. Any surviving spouse electing to,

or who has previously elected to, receive joint survivorship benefits instead of pension payments is eligible to receive the full pension benefit.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-7

Police benefit fund; duties of trustee; appropriations

Sec. 7. (a) The:

- (1) mortality reserve account referred to in section 4 of this chapter;
- (2) disability reserve account referred to in section 5 of this chapter; and
- (3) dependent pension reserve account referred to in section 6 of this chapter;

may be commingled and operated as one (1) fund, known as the police benefit fund, under the terms of a supplementary trust agreement between the department and the trustee for the exclusive benefit of employee beneficiaries and their dependents.

(b) The trustee shall receive and hold as trustee for the uses and purposes set out in the supplementary trust agreement all funds paid to it as the trustee by the department or by any other person or persons.

(c) The trustee shall hold, invest, and reinvest the police benefit fund in:

- (1) investments that trust funds are permitted to invest in under Indiana law; and
- (2) other investments as may be specifically designated in the supplementary trust agreement.

(d) The trustee, with the assistance of the pension engineers, shall, not more than ninety (90) days after the close of the fiscal year, prepare and file with the department and the department of insurance a detailed annual report showing receipts, disbursements, case histories, and recommendations as to the contributions required to keep the program in operation.

(e) Contributions by the department to the police benefit fund shall be provided in the general appropriations to the department.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-8

Actuarial soundness of pension trust; inspection of books and accounts

Sec. 8. (a) The department of insurance shall approve the actuarial soundness of the pension trust and the general method of operation of the police benefit fund before the police benefit fund begins operation.

(b) In addition to the annual report required by subsection (d), the department's books, reports, and accounts shall be open to inspection by the department of insurance at all times.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-9

Transfer of funds to police benefit fund; rewards and fees

Sec. 9. (a) Except as provided in subsection (b), a member of the department may not accept:

- (1) a fee for the performance of an act in the line of duty; or
- (2) a reward offered for the apprehension or conviction of any person or persons or for the recovery of any property.

(b) Any fee or reward to which a member of the department would be entitled except for the provisions of subsection (a) shall be paid to the police benefit fund.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-10

Encumbering shares of benefits before payment

Sec. 10. (a) A person entitled to, having an interest in, or sharing a pension or benefit from the trust funds does not, before the actual payment of the pension or benefit, have the right to anticipate, sell, assign, pledge, mortgage, or otherwise dispose of or encumber the pension or benefit.

(b) A person's interest, share, pension, or benefit, before the actual payment of the interest, share, pension, or benefit, may not be:

- (1) used to satisfy the debts or liabilities of the person entitled to the interest, share, pension, or benefit;
- (2) subject to attachment, garnishment, execution, or levy or sale on judicial proceedings; or
- (3) transferred by any means, voluntarily or involuntarily.

(c) The trustee may pay from the trust fund the amounts that the trustee determines are proper and necessary expenses of the trust fund.

As added by P.L.2-2003, SEC.3.

IC 10-12-2-11

College and university tuition exemption

Sec. 11. The child or spouse of an employee beneficiary who has a permanent and total disability from a catastrophic personal injury that was sustained in the line of duty and permanently prevents the employee beneficiary from performing any gainful work may not be required to pay tuition or mandatory fees at any state supported college, university, or technical school if:

- (1) the child is less than twenty-three (23) years of age and is a full-time student pursuing a prescribed course of study; or
- (2) the spouse is pursuing a prescribed course of study toward an undergraduate degree.

As added by P.L.2-2003, SEC.3. Amended by P.L.99-2007, SEC.36.