

ENROLLED ACT NO. 13, HOUSE OF REPRESENTATIVES

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2015 GENERAL SESSION

AN ACT relating to pension accounts; creating the volunteer firefighter and EMT pension account; providing membership qualifications; providing for contributions to the account; providing for the transfer of members of the volunteer firemen's pension account and the volunteer emergency medical technician pension account to the new pension account; creating a pension account board; providing for membership on the board; closing and repealing the volunteer firemen's pension account and the volunteer emergency medical technician pension account; directing insurance premiums to the account as specified; providing legislative intent; providing for a transfer of pension funds; requiring a report; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-9-616 through 35-9-628 are created to read:

ARTICLE 6

VOLUNTEER FIREFIGHTER AND EMT PENSION ACCOUNT

35-9-616. Definitions.

(a) As used in this act:

(i) "Account" or "pension account" means the volunteer firefighter and EMT pension account created pursuant to W.S. 35-9-617(a);

(ii) "Board" means the volunteer firefighter and EMT pension account board created pursuant to W.S. 35-9-623(a);

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(iii) "Children" means all natural children and adopted children of the participating member, born or conceived at the time of his death or retirement;

(iv) "Eligible retirement plan" means as defined in W.S. 9-3-402(a)(xxvii);

(v) "Participating member" means any volunteer firefighter or volunteer EMT for whom payments are received by the volunteer firefighter and EMT pension account as prescribed in W.S. 35-9-621(e);

(vi) "Rollover contribution" means as defined in W.S. 9-3-402(a)(xxviii);

(vii) "Spouse" means the lawful spouse of a participating member who was married to the volunteer firefighter or volunteer EMT at the time of the volunteer firefighter or volunteer EMT's entry into the account, or who although married after the date of entry, is recognized as the spouse covered by the benefits of the account as a result of special action of the board;

(viii) "Volunteer emergency medical technician" or "EMT" means as defined by W.S. 33-36-102(a)(x), and a person who performs EMT services as an attendant with a state licensed ambulance service and who devotes less than his entire time of employment to, but is carried on the rolls of, a regularly constituted Wyoming ambulance service, the members of which may be partly paid and partly volunteer. Persons performing EMT services for an industrial ambulance service as defined in W.S. 33-36-102(a)(vi) or a privately owned, for profit ambulance service shall not be considered a volunteer emergency medical technician or EMT. Payment of compensation for services actually rendered by enrolled volunteers does not

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take them out of this classification. Any individual who volunteers assistance but is not regularly enrolled as an EMT is not a volunteer within the meaning of this chapter;

(ix) A "volunteer fire department" means any duly constituted and organized firefighting unit:

(A) Recognized by the appropriate local government with jurisdiction of the area the unit services and which provides fire protection services to the community as a whole pursuant to a contract or agreement with, or as sponsored by, a governmental entity;

(B) Operating under duly adopted bylaws;

(C) All or a portion of the members of which are volunteers;

(D) Holding monthly meetings to conduct business and training; and

(E) The membership of which is not comprised exclusively of employees of a sponsoring nongovernmental entity.

(x) "Volunteer firefighter" or "firefighter" means any individual who may or may not receive compensation for services rendered as a volunteer firefighter and who:

(A) Is carried on the regular rolls of, but devotes less than his entire time of employment to, activities of a volunteer fire department, all or a portion of the members of which are volunteer; and

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(B) During the course of any one (1) year, attends not less than fifty percent (50%) of the monthly volunteer fire department meetings.

(xi) "This act" means W.S. 35-9-616 through 35-9-628.

35-9-617. Volunteer firefighter and EMT pension account; merger with other pension accounts; membership.

(a) The volunteer firefighter and EMT pension account is created. All awards, benefits and pensions established under this article shall be paid from the account.

(b) The account established under subsection (a) of this section shall be controlled by the board and administered by the director of the Wyoming retirement system. All expenses of administration shall be paid from the account. Disbursements from the account shall be made only upon warrants drawn by the state auditor upon certification by authorized system employees.

(c) The account shall be comprised of all funds and liabilities of the volunteer firemen's pension account created pursuant to W.S. 35-9-602, the volunteer emergency medical technician pension account created pursuant to W.S. 35-29-102, funds directed into the account as provided by W.S. 26-4-102(b), 35-9-619(a), 35-9-621(e) and 35-9-628 and all other funds as directed by this article and the legislature for the benefit of the account, or the volunteer firemen's pension account or volunteer emergency medical technician pension account, respectively.

(d) All members and retirees of the volunteer emergency medical technician pension account created pursuant to W.S. 35-29-101 through 35-29-112, including

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those members who are no longer participating or contributing members of the volunteer emergency medical technician pension account, but who have not withdrawn their funds as provided by W.S. 35-29-106(f) on or before June 30, 2015, shall become members or retirees of the pension account created pursuant to this section.

(e) All members and retirees of the volunteer firemen's pension account created pursuant to W.S. 35-9-601 through 35-9-615, including those contributing members who are no longer active but who have not withdrawn their funds as provided by W.S. 35-9-608(f) on or before June 30, 2015, shall become members or retirees of the pension account created pursuant to this section.

(f) The director of the retirement system shall determine by rule and regulation a benefit level for all members joining the pension account under subsections (d) and (e) of this section equal to or greater than the benefits the member would have received under the volunteer firemen's or volunteer emergency medical technician pension accounts, respectively.

35-9-618. Annual audit; state's liability.

(a) The director of the Wyoming retirement system shall hire an independent audit firm to perform an annual audit of the account established under W.S. 35-9-617 and shall report audit findings to the board and the governor.

(b) Nothing in this article shall be construed to:

(i) Except for obligations transferred pursuant to W.S. 35-9-617(c), acknowledge any past, present or future liability of or obligate the state of Wyoming for contribution except the employer's contributions provided

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for in this article, to either the volunteer firefighter and EMT pension system provided by this article or any other retirement system previously existing in the state of Wyoming; or

(ii) Constitute a contract or binding obligation of any kind whatsoever or, except as provided in subsection (c) of this section, to create or grant any vested right or interest in any individual, corporation or body politic.

(c) If the account is terminated, all affected members have a nonforfeitable interest in their benefits that were accrued and funded to date. The value of the accrued benefits to be credited to the account of each affected member shall be calculated as of the date of termination.

35-9-619. Authority to receive donations; investment of monies; employment of actuary; actuarial reports.

(a) In addition to contributions from the state, volunteer fire departments and licensed ambulance services, the board may receive and credit to the account any gifts, donations and other contributions made by individuals, organizations and cities, towns, counties and other political subdivisions for the benefit of the account. The board may invest monies within the account not immediately necessary to pay benefits, awards or pensions under this article, in investments authorized under W.S. 9-3-408(b).

(b) The board shall employ a consulting actuary to review the account annually to determine its solvency and to make recommendations as to revisions and modifications to the pension account. The board may employ legal and other consultants as necessary. Actuarial reports are

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public records and available for inspection by all participating members of the account.

35-9-620. Contributions on behalf of volunteer firefighters and EMTs; collection; dual participation prohibited.

(a) The county, city, town, fire district, volunteer fire department or licensed ambulance service for whom a participating volunteer firefighter or EMT performs firefighting or EMT services shall pay to the pension account the amount required under W.S. 35-9-621(e). Payments shall be collected upon terms and conditions established by the board under W.S. 35-9-621(e) and shall be forwarded by each collecting officer to the state retirement director for deposit in the account. Any entity listed in this subsection may elect to provide for a member's contribution or any portion thereof provided that any payment of a contribution is made on behalf of a member. Whether an entity makes a contribution for a member shall be at the discretion of the entity as an incentive to improve their local volunteer fire department or emergency medical services.

(b) No volunteer firefighter member of the pension account shall participate as a member of the firemen's pension accounts under W.S. 15-5-201 through 15-5-209 or 15-5-401 through 15-5-422 if participation is based upon covered service for the same fire department.

35-9-621. Benefits enumerated; death of participant or spouse; amount and payment of contributions; death benefits; withdrawal from pension account.

(a) For any participating member attaining the retirement age and service requirements as specified under

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subsection (d) of this section, the board shall authorize a monthly payment to the member during the member's remaining lifetime of an amount equal to sixteen dollars (\$16.00) per year of service for the first ten (10) years of service and nineteen dollars (\$19.00) per year of service over ten (10) years of service.

(b) When any participating member or retired member dies, the board shall immediately authorize payment monthly to the member's surviving spouse during the spouse's remaining lifetime of an amount equal to sixty-six percent (66%) of the member's monthly benefit as provided in this section, if the deceased member had at least five (5) years of active participation in the pension account. If a participating member dies with less than five (5) years of active participation in the pension account, the board shall immediately authorize payment monthly to the member's spouse, during the spouse's remaining lifetime, of an amount equal to sixty-six percent (66%) of the equivalent of the deceased member's benefit as if the member had attained five (5) years of active participation in the pension account.

(c) When any participating member or retired member and the participating member's or retired member's spouse die with children who have not attained the age of twenty-one (21) years, the board shall immediately authorize payment monthly to the lawful guardians of the children of an amount equal to a proportional share of thirty-three percent (33%) of the member's benefit as provided in this section, if the deceased member had at least five (5) years of active participation in the pension account. If a participating member or retired member and the participating member's or retired member's spouse die with children who have not attained the age of twenty-one (21) years, and the deceased member had less than five (5)

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years of active participation in the pension account, the board shall immediately authorize payment monthly to the lawful guardians of the children of an amount equal to a proportional share of thirty-three percent (33%) of the equivalent of the deceased member's benefit as if the member had attained five (5) years of active participation in the pension account.

(d) Members who begin to participate in the pension account prior to attaining the age of fifty-five (55) years shall be eligible for retirement at sixty (60) years of age, if the member has at least five (5) years of active participation in the pension account. Members who begin participation in the pension account after attaining the age of fifty-five (55) years shall be eligible for retirement after participating in the pension account for at least five (5) years.

(e) A volunteer firefighter or volunteer EMT is a participating member under this article for each month a contribution of fifteen dollars (\$15.00) is made by or on behalf of the member. For purposes of eligibility for benefits under subsections (b) and (c) of this section, a volunteer firefighter or EMT is a participating member beginning the first month following the month in which the required monthly payment and any required application for participation is actually received by the Wyoming retirement system. To continue as a participating member, subsequent monthly payments shall be received by the Wyoming retirement system not later than three (3) months following the close of the calendar month for which the payments are applicable. With the consent of and upon any terms and conditions established by the board, payments may be accepted at an earlier or later date. The board shall maintain full and complete records of the contributions made on behalf of each participating member and on request,

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shall furnish any participating member a statement of the contribution amounts and the dates for which contributions were received. If contributions have varied in amount, the board may make appropriate adjustments in the benefits awarded. In making any adjustment, the board shall be guided by actuarial practice to afford substantial equity to members of the pension account. No penalty shall be imposed upon any participating member transferring employment in Wyoming if required payments are made on a timely basis.

(f) A participating member may withdraw from the pension account and upon withdrawal shall be paid an amount equal to the amount contributed into the member's account together with interest at the rate of three percent (3%) per annum compounded annually.

(g) If a member with less than five (5) years of active participation in the pension account fails to provide contributions to the account as provided in subsection (e) of this section, the member's account shall be deemed delinquent. No interest shall accrue on delinquent accounts. A member's account that remains delinquent for nine (9) months shall be closed and the associated funds shall revert into the pension account. A member whose account is closed pursuant to this subsection who subsequently reenrolls in the pension account shall be entitled to a refund equal to the amount that was reverted into the pension account upon the closing of the member's delinquent account.

(h) The board shall authorize benefit payments from the account in accordance with qualified domestic relations orders pursuant to W.S. 9-3-426.

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(j) Any participating member with at least five (5) years of participation in the pension account who retires from active service as a volunteer firefighter or EMT before reaching retirement age and does not withdraw from the pension account as provided in subsection (f) of this section shall be entitled to a monthly benefit payment as provided in subsection (a) of this section upon reaching the retirement age specified in subsection (d) of this section. A member with ten (10) or more years of active participation in the pension account may choose to remove himself from active service as a volunteer firefighter or EMT and continue to contribute to the pension account for an amount of time not to exceed the total number of years the member was an active participant in the pension account, as provided in subsection (e) of this section and rules promulgated by the board.

(k) The board shall adopt rules to allow service for any period of time, after commencement of participation under this article, which a participating member spends in active military or other emergency service of the United States as required by the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 et seq. to count towards a member's years of active participation.

(m) Upon the death of any participating member, a death benefit shall be paid from the deceased member's account in the following manner and amount:

(i) A lump sum payment of five thousand dollars (\$5,000.00) or the amount in the deceased member's account, whichever is greater, to the estate of a deceased member without a survivor eligible for a benefit under subsection (b) or (c) of this section;

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(ii) If a spouse who is eligible to receive a benefit under subsection (b) of this section dies, an amount equal to five thousand dollars (\$5,000.00) less the total amount of benefits received under subsection (b) of this section or the amount remaining in the deceased member's account, whichever is greater, shall be paid to the spouse's estate unless the spouse is survived by a person eligible to receive a benefit under subsection (c) of this section;

(iii) When the last person under the age of twenty-one (21) years who is eligible for the benefit provided by subsection (c) of this section dies or attains the age of twenty-one (21) years, an amount equal to five thousand dollars (\$5,000.00) less the total amount of benefits received under subsections (b) and (c) of this section or the amount remaining in the deceased member's account, whichever is greater, shall be paid in equal shares to each of the children alive on that date;

(iv) For former members of the volunteer firemen's account created pursuant to W.S. 35-9-602(a) who contributed five dollars (\$5.00) per month before July 1, 1989, the appropriate benefit shall be determined by substituting two thousand five hundred dollars (\$2,500.00) for five thousand dollars (\$5,000.00) in paragraphs (i) through (iii) of this subsection.

(n) Cost of living increases may be recommended by the board for retirees of the pension account pursuant to W.S. 9-3-454(a).

(o) Retired recipients of the account and their survivors shall receive any benefit increases provided to members of the account.

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35-9-622. Death benefits in addition to other benefits.

Death benefits received under this article shall be in addition to, and are payable after the application of, worker's compensation benefits which are payable to volunteer firefighters or volunteer EMTs under the Wyoming Worker's Compensation Act.

35-9-623. Board; established; nomination; appointment; terms and qualification of members; first members.

(a) The volunteer firefighter and EMT pension board is created. The board shall control the account.

(b) The board shall consist of seven (7) members who shall be appointed by the governor to staggered terms of three (3) years. The governor may remove any board member as provided in W.S. 9-1-202. Of these board members:

(i) Six (6) members shall be volunteer firefighters who have a minimum of five (5) years service as a volunteer firefighter in the state. Appointments under this paragraph shall be made from nominees recommended to the governor by the Wyoming state firemen's association; and

(ii) One (1) member shall be a volunteer EMT who has a minimum of five (5) years service as a volunteer EMT in the state. Appointments under this paragraph shall be made by the governor.

(c) The members of the initial board shall be comprised of the volunteer firemen members of the volunteer firemen's pension board created pursuant to W.S. 35-9-610

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serving on June 30, 2015 and one (1) member of the volunteer emergency medical technician pension board created pursuant to W.S. 35-29-108 serving on June 30, 2015, as selected by the governor. The volunteer firefighter members and volunteer EMT member of the initial board shall serve for the same term to which they were appointed to the volunteer firemen's pension board or volunteer emergency medical technician pension board, respectively.

35-9-624. Board; chairman; compensation of members; powers and duties.

(a) Members of the board shall serve without compensation, but actual and reasonable expenses incurred by members for attending meetings and representing the board shall be reimbursed from the account.

(b) The board may:

(i) Adjust claims made by participating members under this article and may waive or alter specific requirements relating to benefits under this article, but shall not have authority to make a general increase in benefits;

(ii) Promulgate rules and regulations governing its operation;

(iii) Investigate claim applications, conduct hearings, receive evidence and otherwise act in a quasi-judicial capacity in accordance with the Wyoming Administrative Procedure Act;

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(iv) Permit the suspension of payments in certain cases deemed appropriate by the board, with a commensurate reduction in benefits paid under this article.

35-9-625. Board; hearings; appeals.

(a) The board shall provide an opportunity for hearing to any person petitioning the board for a hearing with or without counsel or witnesses. The board shall provide petitioners the power to subpoena witnesses to testify in their behalf. The taking of evidence shall be summary, giving a full opportunity to all parties to develop the facts. The board shall provide a written transcript of all testimony received at any hearing conducted by the board to any requesting party.

(b) The decision of the board upon hearing is a final administrative decision and is subject to judicial review in accordance with the Wyoming Administrative Procedure Act.

35-9-626. Adjustment of benefits in case of impairment of funds.

If at any time the net assets of the account become actuarially impaired, the board may adjust the benefits provided, pro rata, until the impairment is removed.

35-9-627. Purchase of service credit.

Any member who has been a participating member for at least five (5) years may elect to make a one (1) time purchase of up to five (5) years of service credit as authorized and limited by section 415(c) and 415(n) of the Internal Revenue Code and as established in rules promulgated by the board. Any member electing to purchase service credit

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shall pay into the account a single lump sum amount equal to the actuarial equivalent of the benefits to be derived from the service credit computed on the basis of actuarial assumptions approved by the board, the individual's attained age and the benefit structure at the time of purchase. A member may purchase service credit with personal funds or, subject to rules and regulations established by the board, through rollover contributions. Unless received by the pension account in the form of a direct rollover, rollover contributions shall be paid to the pension account on or before sixty (60) days after the date the rollover contribution was received by the member.

35-9-628. Deposit of tax on fire insurance premiums into account.

(a) As provided in this subsection, the state treasurer shall deposit into the account an amount not to exceed seventy percent (70%) of the gross tax levied upon fire insurance premiums paid to insurance companies for fire insurance in the state of Wyoming for the preceding calendar quarter, as computed under W.S. 26-4-102(b)(ii) and provided by W.S. 26-4-103(k). The sum specified shall be calculated by the Wyoming retirement system:

(i) Before giving effect to any premium tax credits which may otherwise be provided by law; and

(ii) To achieve one hundred seven percent (107%) funding of the account, taking into account the benefits and employee contribution specified in W.S. 35-9-621 and actuarial assumptions adopted by the Wyoming retirement board;

(iii) After the account achieves one hundred seven percent (107%) actuarial funding, the board shall

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recommend a funding amount of not less than sixty percent (60%) of the gross tax levied upon fire insurance premiums. A recommended funding amount under this section in an amount greater than sixty percent (60%) which results in an actuarial funding level greater than one hundred seven percent (107%) requires approval of the legislature.

Section 2. W.S. 9-12-1305(c) and 26-4-102(b)(ii) are amended to read:

9-12-1305. Wyoming small business investment credit.

(c) The credit for any tax year shall not exceed the participating investor's state premium tax liability for that tax year. If the amount of the credit determined under this section for any tax year exceeds the liability for tax under this chapter, the credit may be carried forward to future tax years without limitation. The premium tax credits provided by W.S. 26-19-312, 26-42-111 and 26-43-105, and deposits to the volunteer firemen's firefighter and EMT pension account pursuant to W.S. 26-4-102(b)(ii), shall take priority over the premium tax credits provided by this section and shall be calculated using the gross premium tax before the credits provided by this section.

26-4-102. Record of receipts; payment to treasurer; credit to fund.

(b) The commissioner shall promptly pay all monies he receives from any charges to the state treasurer for credit to the general fund, except that:

(ii) Fifty percent (50%) ~~An amount not to exceed seventy percent (70%)~~ of the gross premium tax levied upon fire insurance premiums shall be deposited by the state

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treasurer in the volunteer ~~firemen's~~ firefighter and EMT pension account pursuant to W.S. ~~35-9-604~~ 35-9-628. For purposes of this paragraph, the gross premium tax levied upon fire insurance premiums is equal to ~~twenty-six percent (26%)~~ thirty percent (30%) of the total gross premium tax levied upon all property, casualty and multiple line insurers.

Section 3. W.S. 35-9-601 through 35-9-615 and 35-29-101 through 35-29-112 are repealed.

Section 4. The Wyoming retirement system and the state treasurer shall transfer all funds within the volunteer firemen's pension account created pursuant to W.S. 35-9-602(a) and the volunteer emergency medical technician pension account created pursuant to W.S. 35-29-102(a) to the volunteer firefighter and EMT pension account created pursuant to this act.

Section 5. It is the intent of the legislature that all members and retirees of the volunteer firemen's pension account and volunteer emergency medical technician pension account on June 30, 2015 shall be able to continue to participate in the pension account created by this act.

Section 6.

(a) The volunteer firefighter and EMT pension board, with the assistance and input of the Wyoming retirement system, shall provide the joint appropriations interim committee with a report no later than December 1, 2015. The report shall contain:

(i) An update on enrollment under the pension account created by this act and any difficulties encountered therein;

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(ii) An update on the transfer of members and retirees of the volunteer firemen's pension account and the volunteer emergency medical technician pension account, respectively, and any difficulties encountered therein;

(iii) The projected actuarial soundness of the account; and

(iv) Any proposed statutory changes necessary to administer the pension account.

Section 7. This act is effective July 1, 2015.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk