

CHAPTER 424A

VOLUNTEER FIREFIGHTERS' RETIREMENT

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424A.001 DEFINITIONS.

Subdivision 1. **Terms defined.** As used in this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Fire department.** "Fire department" includes municipal fire department and independent nonprofit firefighting corporation.

Subd. 3. **Municipality.** "Municipality" means a municipality which has a fire department with which the relief association is directly associated, or the municipalities which contract with the independent nonprofit firefighting corporation of which the relief association is a subsidiary.

Subd. 4. **Relief association.** "Relief association" means (a) a volunteer firefighters' relief association or volunteer firefighters' division or account of a partially salaried and partially volunteer firefighters' relief association organized and incorporated under chapter 317A and any laws of the state, governed by this chapter and chapter 69, and directly associated with a fire department established by municipal ordinance; or (b) any separate incorporated volunteer firefighters' relief association subsidiary to and providing service pension and retirement benefit coverage for members of an independent nonprofit firefighting corporation organized under the provisions of chapter 317A, governed by this chapter, and operating exclusively for firefighting purposes. A relief association is a governmental entity that receives and manages public money to provide retirement benefits for individuals providing the governmental services of firefighting and emergency first response.

Subd. 5. **Special fund.** "Special fund" means special fund of a volunteer firefighters' relief association or the account for volunteer firefighters within the special fund of a partially salaried and partially volunteer firefighters' relief association.

Subd. 6. **Surviving spouse.** For purposes of this chapter, and the governing bylaws of any relief association to which this chapter applies, the term "surviving spouse" means any person who was the dependent spouse of a deceased active member or retired former member living with the member at the time of the death of the active member or retired former member for at least one year prior to the date on which the member terminated active service and membership.

Subd. 7. **Fiduciary responsibility.** In the discharge of their respective duties, the officers and trustees shall be held to the standard of care enumerated in section 11A.09. In addition, the trustees must act in accordance with chapter 356A.

Each member of the board is a fiduciary and shall undertake all fiduciary activities in accordance with the standard of care of section 11A.09, and in a manner consistent with chapter 356A. No fiduciary of a relief association shall cause a relief association to engage in a transaction if the fiduciary knows or should know that a transaction constitutes one of the following direct or indirect transactions:

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(1) sale or exchange or leasing of any real property between the relief association and a board member;

(2) lending of money or other extension of credit between the relief association and a board member or member of the relief association;

(3) furnishing of goods, services, or facilities between the relief association and a board member; or

(4) transfer to a board member, or use by or for the benefit of a board member, of any assets of the relief association. Transfer of assets does not mean the payment of relief association benefits or administrative expenses permitted by law.

Subd. 8. Firefighting service. "Firefighting service," if the applicable municipality approves for a fire department that is a municipal department, or if the contracting municipality or municipalities approve for a fire department that is an independent nonprofit firefighting corporation, includes service rendered by fire prevention personnel.

Subd. 9. Separate from active service. "Separate from active service" means to permanently cease to perform fire suppression duties with a particular volunteer fire department, to permanently cease to perform fire prevention duties, to permanently cease to supervise fire suppression duties, and to permanently cease to supervise fire prevention duties.

Subd. 10. Volunteer firefighter. "Volunteer firefighter" means a person who:

(1) was a member of the applicable fire department or the firefighting corporation and a member of the relief association on July 1, 2006; or

(2) became a member of the applicable fire department or the firefighting corporation and is eligible for membership in the applicable relief association after June 30, 2006, and

(i) is engaged in providing emergency response services or delivering fire education or prevention services as a member of a municipal fire department, a joint powers entity fire department, or an independent nonprofit firefighting corporation;

(ii) is trained in or is qualified to provide fire suppression duties or to provide fire prevention duties under subdivision 8; and

(iii) meets any other minimum firefighter and service standards established by the fire department or firefighting corporation or specified in the articles of incorporation or bylaws of the relief association.

History: 1983 c 219 s 4; 1986 c 359 s 18,19; 1Sp1986 c 3 art 2 s 40; 1989 c 304 s 137; 1989 c 319 art 8 s 26; 1996 c 438 art 8 s 1,2; 2000 c 461 art 15 s 4; 2006 c 271 art 13 s 2

NOTE: Subdivision 10 as added by Laws 2006, chapter 271, article 13, section 2, is effective January 1, 2008. Laws 2006, chapter 271, article 13, section 7.

424A.01 MEMBERSHIP IN A VOLUNTEER FIREFIGHTERS' RELIEF ASSOCIATION.

Subdivision 1. Minors. It is unlawful for any municipality or independent nonprofit firefighting corporation to employ a minor as a volunteer firefighter or to permit a minor to serve in any capacity performing any firefighting duties with a volunteer fire department.

Subd. 2. Status of substitute volunteer firefighters. No person who is serving as a substitute volunteer firefighter shall be deemed to be a firefighter for purposes of chapter 69 or this chapter nor shall be authorized to be a member of any volunteer firefighters' relief association governed by chapter 69 or this chapter.

Subd. 3. Status of nonmember volunteer firefighters. No person who is serving as a firefighter in a fire department but who is not a member of the applicable firefighters' relief association shall be entitled to any service pension or ancillary benefits from the relief association.

Subd. 3a. [Repealed, 1989 c 319 art 10 s 8]

Subd. 4. Exclusion of persons constituting an unwarranted health risk. The board of trustees of every relief association may exclude from membership in the relief association

all applicants who, due to some medically determinable physical or mental impairment or condition, would constitute a predictable and unwarranted risk of imposing liability for an ancillary benefit at any age earlier than the minimum age specified for receipt of a service pension. Notwithstanding any provision of section 363A.25, it shall be a good and valid defense to a complaint or action brought under chapter 363A that the board of trustees of the relief association made a good faith determination that the applicant suffers from an impairment or condition constituting a predictable and unwarranted risk for the relief association if the determination was made following consideration of: (a) the person's medical history; and (b) the report of the physician completing a physical examination of the applicant completed at the expense of the relief association.

Subd. 5. Fire prevention personnel. (a) If the fire department is a municipal department and the applicable municipality approves, or if the fire department is an independent nonprofit firefighting corporation and the contracting municipality or municipalities approve, the fire department may employ or otherwise utilize the services of persons as volunteer firefighters to perform fire prevention duties and to supervise fire prevention activities.

(b) Personnel serving in fire prevention positions are eligible to be members of the applicable volunteer firefighter relief association and to qualify for service pension or other benefit coverage of the relief association on the same basis as fire department personnel who perform fire suppression duties.

(c) Personnel serving in fire prevention positions also are eligible to receive any other benefits under the applicable law or practice for services on the same basis as personnel employed to perform fire suppression duties.

History: 1979 c 201 s 11; 1981 c 224 s 274; 1982 c 460 s 7; 1983 c 219 s 5; 1989 c 319 art 10 s 2; 1996 c 438 art 8 s 3

424A.02 VOLUNTEER FIREFIGHTERS; SERVICE PENSIONS.

Subdivision 1. Authorization. (a) A relief association, when its articles of incorporation or bylaws so provide, may pay out of the assets of its special fund a service pension to each of its members who: (1) separates from active service with the fire department; (2) reaches age 50; (3) completes at least five years of active service as an active member of the municipal fire department to which the relief association is associated; (4) completes at least five years of active membership with the relief association before separation from active service; and (5) complies with any additional conditions as to age, service, and membership that are prescribed by the bylaws of the relief association. A service pension computed under this section may be prorated monthly for fractional years of service, if the bylaws or articles of incorporation of the relief association so provide. The service pension may be paid whether or not the municipality or nonprofit firefighting corporation to which the relief association is associated qualifies for fire state aid under chapter 69.

(b) In the case of a member who has completed at least five years of active service as an active member of the fire department to which the relief association is associated on the date that the relief association is established and incorporated, the requirement that the member complete at least five years of active membership with the relief association before separation from active service may be waived by the board of trustees of the relief association if the member completes at least five years of inactive membership with the relief association before the payment of the service pension. During the period of inactive membership, the member is not entitled to receive disability benefit coverage, is not entitled to receive additional service credit towards computation of a service pension, and is considered to have the status of a person entitled to a deferred service pension under subdivision 7.

(c) No municipality or nonprofit firefighting corporation may delegate the power to take final action in setting a service pension or ancillary benefit amount or level to the board of trustees of the relief association or to approve in advance a service pension or ancillary benefit amount or level equal to the maximum amount or level that this chapter would allow rather than a specific dollar amount or level.

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(d) No relief association as defined in section 424A.001, subdivision 4, may pay a service pension or disability benefit to a former member of the relief association if that person has not separated from active service with the fire department to which the relief association is directly associated, unless:

(1) the person is employed subsequent to retirement by the municipality or the independent nonprofit firefighting corporation, whichever applies, to perform duties within the municipal fire department or corporation on a full-time basis;

(2) the governing body of the municipality or of the corporation has filed its determination with the board of trustees of the relief association that the person's experience with and service to the fire department in that person's full-time capacity would be difficult to replace; and

(3) the bylaws of the relief association were amended to provide for the payment of a service pension or disability benefit for such full-time employees.

Subd. 2. Nonforfeitable portion of service pension. If the articles of incorporation or bylaws of a relief association so provide, a relief association may pay a reduced service pension to a retiring member who has completed fewer than 20 years of service. The reduced service pension may be paid when the retiring member meets the minimum age and service requirements of subdivision 1.

The amount of the reduced service pension may not exceed the amount calculated by multiplying the service pension appropriate for the completed years of service as specified in the bylaws times the applicable nonforfeitable percentage of pension.

For a volunteer firefighter relief association that pays a lump-sum service pension, a monthly benefit service pension, or a lump-sum service pension or a monthly benefit service pension as alternative benefit forms, the nonforfeitable percentage of pension amounts are as follows:

Completed Years of Service	Nonforfeitable Percentage of Pension Amount
5	40 percent
6	44 percent
7	48 percent
8	52 percent
9	56 percent
10	60 percent
11	64 percent
12	68 percent
13	72 percent
14	76 percent
15	80 percent
16	84 percent
17	88 percent
18	92 percent
19	96 percent
20 and thereafter	100 percent

For a volunteer firefighter relief association that pays a defined contribution service pension, the nonforfeitable percentage of pension amounts are as follows:

Completed Years of Service	Nonforfeitable Percentage of Pension Amount
5	40 percent
6	52 percent
7	64 percent

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8	76 percent
9	88 percent
10 and thereafter	100 percent

Subd. 3. **Flexible service pension maximums.** (a) Annually on or before August 1 as part of the certification of the financial requirements and minimum municipal obligation determined under section 69.772, subdivision 4, or 69.773, subdivision 5, as applicable, the secretary or some other official of the relief association designated in the bylaws of each relief association shall calculate and certify to the governing body of the applicable qualified municipality the average amount of available financing per active covered firefighter for the most recent three-year period. The amount of available financing shall include any amounts of fire state aid received or receivable by the relief association, any amounts of municipal contributions to the relief association raised from levies on real estate or from other available revenue sources exclusive of fire state aid, and one-tenth of the amount of assets in excess of the accrued liabilities of the relief association calculated under section 69.772, subdivision 2; 69.773, subdivisions 2 and 4; or 69.774, subdivision 2, if any.

(b) The maximum service pension which the relief association has authority to provide for in its bylaws for payment to a member retiring after the calculation date when the minimum age and service requirements specified in subdivision 1 are met must be determined using the table in paragraph (c) or (d), whichever applies.

(c) For a relief association where the governing bylaws provide for a monthly service pension to a retiring member, the maximum monthly service pension amount per month for each year of service credited that may be provided for in the bylaws is the greater of the service pension amount provided for in the bylaws on the date of the calculation of the average amount of the available financing per active covered firefighter or the maximum service pension figure corresponding to the average amount of available financing per active covered firefighter:

Minimum Average Amount of Available Financing per Firefighter	Maximum Service Pension Amount Payable per Month for Each Year of Service
\$...	\$.25
41	.50
81	1.00
122	1.50
162	2.00
203	2.50
243	3.00
284	3.50
324	4.00
365	4.50
405	5.00
486	6.00
567	7.00
648	8.00
729	9.00
810	10.00
891	11.00
972	12.00
1053	13.00
1134	14.00
1215	15.00

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1296	16.00
1377	17.00
1458	18.00
1539	19.00
1620	20.00
1701	21.00
1782	22.00
1823	22.50
1863	23.00
1944	24.00
2025	25.00
2106	26.00
2187	27.00
2268	28.00
2349	29.00
2430	30.00
2511	31.00
2592	32.00
2673	33.00
2754	34.00
2834	35.00
2916	36.00
2997	37.00
3078	38.00
3159	39.00
3240	40.00
3321	41.00
3402	42.00
3483	43.00
3564	44.00
3645	45.00
3726	46.00
3807	47.00
3888	48.00
3969	49.00
4050	50.00
4131	51.00
4212	52.00
4293	53.00
4374	54.00
4455	55.00
4536	56.00

(d) For a relief association in which the governing bylaws provide for a lump sum service pension to a retiring member, the maximum lump sum service pension amount for each year of service credited that may be provided for in the bylaws is the greater of the service pension amount provided for in the bylaws on the date of the calculation of the average amount of the available financing per active covered firefighter or the maximum service pen-

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sion figure corresponding to the average amount of available financing per active covered firefighter for the applicable specified period:

Minimum Average Amount of Available Financing per Firefighter	Maximum Lump Sum Service Pension Amount Payable for Each Year of Service
\$...	\$ 10
11	20
16	30
23	40
27	50
32	60
43	80
54	100
65	120
77	140
86	160
97	180
108	200
131	240
151	280
173	320
194	360
216	400
239	440
259	480
281	520
302	560
324	600
347	640
367	680
389	720
410	760
432	800
486	900
540	1000
594	1100
648	1200
702	1300
756	1400
810	1500
864	1600
918	1700
972	1800
1026	1900
1080	2000
1134	2100
1188	2200
1242	2300

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1296	2400
1350	2500
1404	2600
1458	2700
1512	2800
1566	2900
1620	3000
1672	3100
1726	3200
1753	3250
1780	3300
1820	3375
1834	3400
1888	3500
1942	3600
1996	3700
2023	3750
2050	3800
2104	3900
2158	4000
2212	4100
2265	4200
2319	4300
2373	4400
2427	4500
2481	4600
2535	4700
2589	4800
2643	4900
2697	5000
2751	5100
2805	5200
2859	5300
2913	5400
2967	5500
3021	5600
3075	5700
3129	5800
3183	5900
3237	6000
3291	6100
3345	6200
3399	6300
3453	6400
3507	6500
3561	6600
3615	6700
3669	6800

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3723	6900
3777	7000
3831	7100
3885	7200
3939	7300
3993	7400
4047	7500

(e) For a relief association in which the governing bylaws provide for a monthly benefit service pension as an alternative form of service pension payment to a lump sum service pension, the maximum service pension amount for each pension payment type must be determined using the applicable table contained in this subdivision.

(f) If a relief association establishes a service pension in compliance with the applicable maximum contained in paragraph (c) or (d) and the minimum average amount of available financing per active covered firefighter is subsequently reduced because of a reduction in fire state aid or because of an increase in the number of active firefighters, the relief association may continue to provide the prior service pension amount specified in its bylaws, but may not increase the service pension amount until the minimum average amount of available financing per firefighter under the table in paragraph (c) or (d), whichever applies, permits.

(g) No relief association is authorized to provide a service pension in an amount greater than the largest applicable flexible service pension maximum amount even if the amount of available financing per firefighter is greater than the financing amount associated with the largest applicable flexible service pension maximum.

Subd. 3a. Penalty for paying pension greater than applicable maximum. (a) If a relief association pays a service pension greater than the maximum service pension associated with the applicable average amount of available financing per active covered firefighter under the table in subdivision 3, paragraph (c) or (d), whichever applies, the maximum service pension under subdivision 3, paragraph (f), or the applicable maximum service pension amount specified in subdivision 3, paragraph (g), whichever is less, the state auditor shall:

(1) disqualify the municipality or the nonprofit firefighting corporation associated with the relief association from receiving fire state aid by making the appropriate notification to the municipality and the commissioner of revenue, with the disqualification applicable for the next apportionment and payment of fire state aid; and

(2) recover the amount of the overpaid service pension or pensions from any retired firefighter who received an overpayment.

(b) Fire state aid amounts from disqualified municipalities for the period of disqualifications under paragraph (a), clause (1), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(c) The amount of any overpaid service pension recovered under paragraph (a), clause (2), must be credited to the amount of fire insurance premium tax proceeds available for the next subsequent fire state aid apportionment.

(d) The determination of the state auditor that a relief association has paid a service pension greater than the applicable maximum must be made on the basis of the information filed by the relief association and the municipality with the state auditor under sections 69.011, subdivision 2, and 69.051, subdivision 1 or 1a, whichever applies, and any other relevant information that comes to the attention of the state auditor. The determination of the state auditor is final. An aggrieved municipality, relief association, or person may appeal the determination under section 480A.06.

Subd. 4. Defined contribution lump sum service pensions. (a) If the bylaws governing the relief association so provide exclusively, the relief association may pay a defined con-

tribution lump sum service pension in lieu of any defined benefit service pension governed by subdivision 2.

(b) An individual account for each firefighter who is a member of the relief association must be established. To each individual active member account must be credited an equal share of: (1) any amounts of fire state aid received by the relief association; (2) any amounts of municipal contributions to the relief association raised from levies on real estate or from other available revenue sources exclusive of fire state aid; and (3) any amounts equal to the share of the assets of the special fund to the credit of: (i) any former member who terminated active service with the fire department to which the relief association is associated before meeting the minimum service requirement provided for in subdivision 1 and has not returned to active service with the fire department for a period no shorter than five years; or (ii) any retired member who retired before obtaining a full nonforfeitable interest in the amounts credited to the individual member account under subdivision 2 and any applicable provision of the bylaws of the relief association. In addition, any investment return on the assets of the special fund must be credited in proportion to the share of the assets of the special fund to the credit of each individual active member account through the date on which the investment return is recognized by and credited to the special fund.

(c) At the time of retirement under subdivision 1 and any applicable provision of the bylaws of the relief association, a retiring member is entitled to that portion of the assets of the special fund to the credit of the member in the individual member account which is nonforfeitable under subdivision 2 and any applicable provision of the bylaws of the relief association based on the number of years of service to the credit of the retiring member.

Subd. 5. [Repealed, 1999 c 222 art 11 s 1]

Subd. 6. **Payment of service pensions; nonassignability.** The method of calculating service pensions shall be applied uniformly for all years of active service and credit shall be given for all years of active service, except as otherwise provided in this section. No service pension shall be paid to any person while the person remains an active member of the respective fire department, and no person who is receiving a service pension shall be entitled to receive any other benefits from the special fund of the relief association. No service pension or ancillary benefits paid or payable from the special fund of a relief association to any person receiving or entitled to receive a service pension or ancillary benefits shall be subject to garnishment, judgment, execution, or other legal process, except as provided in section 518.58, 518.581, or 518A.53. No person entitled to a service pension or ancillary benefits from the special fund of a relief association may assign any service pension or ancillary benefit payments, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned.

Subd. 7. **Deferred service pensions.** (a) A member of a relief association is entitled to a deferred service pension if the member:

- (1) has completed the lesser of the minimum period of active service with the fire department specified in the bylaws or 20 years of active service with the fire department;
- (2) has completed at least five years of active membership in the relief association; and
- (3) separates from active service and membership before reaching age 50 or the minimum age for retirement and commencement of a service pension specified in the bylaws governing the relief association if that age is greater than age 50.

(b) The deferred service pension is payable when the former member reaches age 50, or the minimum age specified in the bylaws governing the relief association if that age is greater than age 50, and when the former member makes a valid written application.

(c) A relief association that provides a lump sum service pension governed by subdivision 3 may, when its governing bylaws so provide, pay interest on the deferred lump sum service pension during the period of deferral. If provided for in the bylaws, interest must be paid in one of the following manners:

- (1) at the investment performance rate actually earned on that portion of the assets if the deferred benefit amount is invested by the relief association in a separate account established

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and maintained by the relief association or if the deferred benefit amount is invested in a separate investment vehicle held by the relief association;

(2) at an interest rate of up to five percent, compounded annually, as set by the board of directors and approved as provided in subdivision 10; or

(3) at a rate equal to the actual time weighted total rate of return investment performance of the special fund as reported by the Office of the State Auditor under section 356.219, up to five percent, compounded annually, and applied consistently for all deferred service pensioners.

A relief association may not use the method provided for in clause (3), until it has modified its bylaws to be consistent with that clause.

(d) Interest under paragraph (c), clause (2) or (3), is payable from the first day of the month next following the date on which the municipality has approved the deferred service pension interest rate established by the board of trustees or from the first day of the month next following the date on which the member separated from active fire department service and relief association membership, whichever is later, to the last day of the month immediately before the month in which the deferred member becomes eligible to begin receipt of the service pension and applies for the deferred service pension.

(e) A relief association that provides a defined contribution service pension may, if its governing bylaws so provide, credit interest or additional investment performance on the deferred lump sum service pension during the period of deferral. If provided for in the bylaws, the interest must be paid in one of the manners specified in paragraph (c) or alternatively the relief association may credit any investment return on the assets of the special fund of the defined contribution volunteer firefighter relief association in proportion to the share of the assets of the special fund to the credit of each individual deferred member account through the date on which the investment return is recognized by and credited to the special fund.

(f) For a deferred service pension that is transferred to a separate account established and maintained by the relief association or separate investment vehicle held by the relief association, the deferred member bears the full investment risk subsequent to transfer and in calculating the accrued liability of the volunteer firefighters relief association that pays a lump sum service pension, the accrued liability for deferred service pensions is equal to the separate relief association account balance or the fair market value of the separate investment vehicle held by the relief association.

(g) The deferred service pension is governed by and must be calculated under the general statute, special law, relief association articles of incorporation, and relief association by-law provisions applicable on the date on which the member separated from active service with the fire department and active membership in the relief association.

Subd. 8. Lump sum service pensions; installment payments. Any relief association, if the governing bylaws so provide, may pay, at the option of the retiring member and in lieu of a single payment of a lump sum service pension, a lump sum service pension in installments.

The election of installment payments shall be irrevocable and shall be made by the retiring member in writing and filed with the secretary of the relief association no later than 30 days prior to the commencement of payment of the service pension. The amount of the installment payments shall be determined so that the present value of the aggregate installment payments computed at an interest rate of five percent, compounded annually, is equal to the amount of the single lump sum payment which would have been made had the installment payments option not been elected. The payment of each installment shall include interest at the rate of five percent, compounded annually on the reserve supporting the remaining installment payments as of the date on which the previous installment payment was paid and computed from the date on which the previous installment payment was paid to the date of payment for the current installment payment.

To the extent that the commissioner of commerce deems it to be necessary or practical, the commissioner may specify and issue procedures, forms or mathematical tables for use in performing the calculations required pursuant to this subdivision.

Subd. 8a. Purchase of annuity contracts. A relief association providing a lump-sum service pension, if the governing articles of incorporation or bylaws so provide, may purchase an annuity contract on behalf of a retiring member in an amount equal to the service pension otherwise payable at the request of the person and in place of a direct payment to the person. The annuity contract must be purchased from an insurance carrier licensed to do business in this state and approved for this product by the commerce commissioner under section 60A.40.

Subd. 8b. Transfer to individual retirement account. A relief association that is a qualified pension plan under section 401(a) of the federal Internal Revenue Code, as amended, and that provides a lump sum service pension, at the written request of the applicable retiring member or, following the death of the active member, at the written request of the deceased member's surviving spouse, may directly transfer the eligible member's lump sum pension or the death, funeral, or survivor benefit attributable to the member, whichever applies, to the requesting person's individual retirement account under section 408(a) of the federal Internal Revenue Code, as amended.

Subd. 9. Limitation on ancillary benefits. Any relief association, including any volunteer firefighters relief association governed by section 69.77 or any volunteer firefighters division of a relief association governed by chapter 424, may only pay ancillary benefits which would constitute an authorized disbursement as specified in section 424A.05 subject to the following requirements or limitations:

(1) with respect to a relief association in which governing bylaws provide for a lump sum service pension to a retiring member, no ancillary benefit may be paid to any former member or paid to any person on behalf of any former member after the former member (i) terminates active service with the fire department and active membership in the relief association; and (ii) commences receipt of a service pension as authorized under this section; and

(2) with respect to any relief association, no ancillary benefit paid or payable to any member, to any former member, or to any person on behalf of any member or former member, may exceed in amount the total earned service pension of the member or former member. The total earned service pension must be calculated using the service pension amount specified in the bylaws of the relief association and the years of service credited to the member or former member. The years of service must be determined as of (i) the date the member or former member became entitled to the ancillary benefit; or (ii) the date the member or former member died entitling a survivor or the estate of the member or former member to an ancillary benefit. The ancillary benefit must be calculated (i) without regard to whether the member or former member had attained the minimum amount of service and membership credit specified in the governing bylaws; and (ii) without regard to the percentage amounts specified in subdivision 2; except that the bylaws of any relief association may provide for the payment of a survivor benefit in an amount not to exceed five times the yearly service pension amount specified in the bylaws on behalf of any member who dies before having performed five years of active service in the fire department with which the relief association is affiliated.

Subd. 9a. Postretirement increases. Notwithstanding any provision of general or special law to the contrary, a relief association paying a monthly service pension may provide a postretirement increase to retired members and ancillary benefit recipients of the relief association if (1) the relief association adopts an appropriate bylaw amendment; and (2) the bylaw amendment is approved by the municipality pursuant to subdivision 10 and section 69.773, subdivision 6. The postretirement increase shall be applicable only to retired members and ancillary benefit recipients receiving a service pension or ancillary benefit as of the effective date of the bylaw amendment. The authority to provide a postretirement increase to retired members and ancillary benefit recipients of a relief association contained in this sub-

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division shall supersede any prior special law authorization relating to the provision of post-retirement increases.

Subd. 9b. Repayment of service pension in certain instances. If a retired volunteer firefighter does not permanently separate from active firefighting service as required by subdivision 1 and section 424A.001, subdivision 9, by resuming active service as a firefighter in the same volunteer fire department or as a person in charge of firefighters in the same volunteer fire department, no additional service pension amount is payable to the person, no additional service is creditable to the person, and the person shall repay any previously received service pension.

Subd. 10. Local approval of bylaw amendments; filing requirements. (a) Each relief association to which this section applies shall file a revised copy of its governing bylaws with the state auditor upon the adoption of any amendment to its governing bylaws by the relief association or upon the approval of any amendment to its governing bylaws granted by the governing body of each municipality served by the fire department to which the relief association is directly associated. Failure of the relief association to file a copy of the bylaws or any bylaw amendments with the state auditor shall disqualify the municipality from the distribution of any future fire state aid until this filing requirement has been completed.

(b) If the special fund of the relief association does not have a surplus over full funding pursuant to section 69.772, subdivision 3, clause (2), subclause (e), or 69.773, subdivision 4, and if the municipality is required to provide financial support to the special fund of the relief association pursuant to section 69.772 or 69.773, no bylaw amendment which would affect the amount of, the manner of payment of, or the conditions for qualification for service pensions or ancillary benefits or disbursements other than administrative expenses authorized pursuant to section 69.80 payable from the special fund of the relief association shall be effective until it has been ratified by the governing body or bodies of the appropriate municipalities. If the municipality is not required to provide financial support to the special fund pursuant to this section, the relief association may adopt or amend without municipal ratification its articles of incorporation or bylaws which increase or otherwise affect the service pensions or ancillary benefits payable from the special fund so long as the changes do not cause the amount of the resulting increase in the accrued liability of the special fund to exceed 90 percent of the amount of the prior surplus over full funding and the changes do not result in the financial requirements of the special fund exceeding the expected amount of the future fire state aid to be received by the relief association.

(c) If the relief association pays only a lump sum pension, the financial requirements are to be determined by the board of trustees following the preparation of an estimate of the expected increase in the accrued liability and annual accruing liability of the relief association attributable to the change. If the relief association pays a monthly benefit service pension, the financial requirements are to be determined by the board of trustees following either an updated actuarial valuation including the proposed change or an estimate of the expected actuarial impact of the proposed change prepared by the actuary of the relief association. If a relief association adopts or amends its articles of incorporation or bylaws without municipal ratification pursuant to this subdivision, and, subsequent to the amendment or adoption, the financial requirements of the special fund pursuant to this section are such so as to require financial support from the municipality, the provision which was implemented without municipal ratification shall no longer be effective without municipal ratification, and any service pensions or ancillary benefits payable after that date shall be paid only in accordance with the articles of incorporation or bylaws as amended or adopted with municipal ratification.

Subd. 11. [Repealed, 2000 c 461 art 16 s 13]

Subd. 12. Transfer of service credit to new district. Notwithstanding the requirements of subdivision 1 or any other law, a member of a fire department which is disbanded upon formation of a fire district to serve substantially the same geographic area, who serves as an active firefighter with the new district fire department, and is a member of the district firefighters' relief association shall be entitled to a nonforfeitable service pension from the

new relief association upon completion of a combined total of 20 years active service in the disbanded and the new departments. The amount of the service pension shall be based upon years of service in the new department only, and shall be in an amount equal to the accrued liability for the appropriate years of service calculated in accordance with section 69.772, subdivision 2.

Subd. 13. Combined service pensions. (a) If the articles of incorporation or bylaws of the associations so provide, a volunteer firefighter with credit for service as an active firefighter in more than one volunteer firefighters relief association is entitled, when the applicable requirements of paragraph (b) are met and when otherwise qualified, to a prorated service credit from each relief association.

(b) A volunteer firefighter receiving a prorated service pension under this subdivision must have total service credit of ten years or more, if every affected relief association does not require only a five-year service vesting requirement, or five years or more, if every affected relief association requires only a five-year service vesting requirement, as a member of two or more relief associations otherwise qualified. The member must have one year or more of service credit in each relief association. The prorated service pension must be based on the service pension amount in effect for the relief association on the date on which active volunteer firefighting services covered by that relief association terminate. To receive a service pension under this subdivision, the firefighter must become a member of the second or succeeding association and must give notice of membership to the prior association within two years of the date of termination of active service with the prior association. The notice must be attested to by the second or subsequent association secretary.

History: 1979 c 201 s 12; 1980 c 607 art 15 s 11; 1981 c 224 s 208,209,274; 1982 c 421 s 3; 1982 c 460 s 8; 1982 c 465 s 7,8; 1983 c 219 s 6; 1983 c 286 s 21; 1983 c 289 s 114 subd 1; 1984 c 547 s 15; 1984 c 655 art 1 s 92; 1985 c 261 s 8-10; 1Sp1985 c 7 s 35; 1987 c 372 art 1 s 22; 1988 c 668 s 9; 1988 c 709 art 7 s 2,3; 1989 c 319 art 10 s 3-6; 1990 c 570 art 14 s 1; 1993 c 244 art 1 s 1-3; art 3 s 1; 1996 c 438 art 8 s 4; 1997 c 203 art 6 s 92; 1997 c 241 art 6 s 1; art 10 s 5; 2000 c 461 art 15 s 5-9; 2002 c 392 art 13 s 1; 1Sp2003 c 12 art 12 s 1; 2004 c 267 art 14 s 1,2; 2005 c 164 s 29; 1Sp2005 c 7 s 28; 1Sp2005 c 8 art 9 s 10-12; 2006 c 271 art 13 s 3

NOTE: The deferred service pension interest crediting procedure of subdivision 7, paragraph (c), clause (3), expires on December 31, 2008. Laws 2004, chapter 267, article 14, section 5, paragraph (d).

424A.021 CREDIT FOR BREAK IN SERVICE TO PROVIDE UNIFORMED SERVICE.

Subdivision 1. Authorization. Subject to restrictions stated in this section, a volunteer firefighter who is absent from firefighting service due to service in the uniformed services, as defined in United States Code, title 38, section 4303(13), may obtain service credit if the relief association is a defined benefit plan or an allocation of any fire state aid, any municipal contributions, and any investment return received by the relief association if the relief association is a defined contribution plan for the period of the uniformed service, not to exceed five years, unless a longer period is required under United States Code, title 38, section 4312.

Subd. 2. Limitations. (a) To be eligible for service credit or an investment return allocation under this section, the volunteer firefighter must return to firefighting service with coverage by the same relief association or by the successor to that relief association upon discharge from service in the uniformed service within the time frame required in United States Code, title 38, section 4312(e).

(b) Service credit or an investment return allocation is not authorized if the firefighter separates from uniformed service with a dishonorable or bad conduct discharge or under other than honorable conditions.

(c) Service credit or an investment return allocation is not authorized if the firefighter fails to provide notice to the fire department that the individual is leaving to provide service

in the uniformed service, unless it is not feasible to provide that notice due to the emergency nature of the situation.

History: *1Sp2005 c 8 art 9 s 13*

424A.03 UNIFORMITY OF VOLUNTEER FIREFIGHTER SERVICE PENSION AND RETIREMENT BENEFITS.

Subdivision 1. **Limitation on nonuniformity of pensions.** Every partially salaried and partially volunteer firefighters' relief association shall provide service pensions to volunteer firefighter members based on the years of service of the members not on the compensation paid to the members for firefighting services. Each relief association shall provide service pensions to salaried members as set forth in chapter 424 and applicable special laws.

Subd. 2. **Penalties for violations.** Any municipality which has a fire department to which a relief association which violates the provisions of subdivision 1 is directly associated or which contracts with an independent nonprofit firefighting corporation of which a relief association which violates the provisions of subdivision 1 is a subsidiary shall not be included in the apportionment of fire state aid by the commissioner of commerce to the applicable county auditor pursuant to section 69.021, subdivision 6, and shall not be included in the apportionment of fire state aid by the county auditor to the various municipalities pursuant to section 69.021, subdivision 7.

Subd. 3. **Exception to application of limitation and penalty.** The limitation provided for in subdivision 1 shall not apply to any relief association which prior to January 1, 1957, had established a definite service pension formula for members of the partially salaried and partially volunteer firefighters' relief association who are regularly employed firefighters.

History: *1979 c 201 s 13; 1983 c 219 s 7; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

424A.04 VOLUNTEER RELIEF ASSOCIATIONS; BOARD OF TRUSTEES.

Subdivision 1. **Membership.** (a) A relief association that is directly associated with a municipal fire department must be managed by a board of trustees consisting of nine members. Six trustees must be elected from the membership of the relief association and three trustees must be drawn from the officials of the municipalities served by the fire department to which the relief association is directly associated. The bylaws of a relief association which provides a monthly benefit service pension may provide that one of the six trustees elected from the relief association membership may be a retired member receiving a monthly pension who is elected by the membership of the relief association. The three municipal trustees must be one elected municipal official and one elected or appointed municipal official who are designated as municipal representatives by the municipal governing board annually and the chief of the municipal fire department.

(b) A relief association that is a subsidiary of an independent nonprofit firefighting corporation must be managed by a board of trustees consisting of nine members. Six trustees must be elected from the membership of the relief association, two trustees must be drawn from the officials of the municipalities served by the fire department to which the relief association is directly associated, and one trustee shall be the fire chief serving with the independent nonprofit firefighting corporation. The bylaws of a relief association may provide that one of the six trustees elected from the relief association membership may be a retired member receiving a monthly pension who is elected by the membership of the relief association. The two municipal trustees must be elected or appointed municipal officials, selected as follows:

(1) if only one municipality contracts with the independent nonprofit firefighting corporation, the municipal trustees must be two officials of the contracting municipality who are designated annually by the governing body of the municipality; or

(2) if two or more municipalities contract with the independent nonprofit corporation, the municipal trustees must be one official from each of the two largest municipalities in pop-

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ulation who are designated annually by the governing bodies of the applicable municipalities.

(c) The municipal trustees for a relief association that is directly associated with a fire department operated as or by a joint powers entity must be designated annually by the joint powers board. The municipal trustees for a relief association that is directly associated with a fire department service area township must be designated by the township board.

(d) If a relief association lacks the municipal board members provided for in paragraph (a), (b), or (c) because the fire department is not located in or associated with an organized municipality, joint powers entity, or township; the municipal board members must be appointed from the fire department service area by the board of commissioners of the applicable county.

(e) The term of these appointed municipal board members is one year or until the person's successor is qualified, whichever is later.

(f) A municipal trustee under paragraph (a), (b), (c), or (d) has all the rights and duties accorded to any other trustee, except the right to be an officer of the relief association board of trustees.

(g) A board must have at least three officers, who are a president, a secretary and a treasurer. These officers must be elected from among the elected trustees by either the full board of trustees or by the membership, as specified in the bylaws. In no event may any trustee hold more than one officer position at any one time. The terms of the elected trustees and of the officers of the board must be specified in the bylaws of the relief association, but may not exceed three years. If the term of the elected trustees exceeds one year, the election of the various trustees elected from the membership must be staggered on as equal a basis as is practicable.

Subd. 2. Fiduciary duty. The board of trustees shall undertake their activities consistent with chapter 356A.

Subd. 3. Conditions on relief association consultants. (a) If a volunteer firefighter relief association hires or contracts with a consultant to provide legal or financial advice, the association shall obtain and the consultant shall provide a copy of the consultant's certificate of insurance.

(b) A consultant is any person who is employed under contract to provide legal or financial advice and who is or who represents to the volunteer firefighter relief association that the person is:

- (1) an actuary;
- (2) a licensed public accountant or a certified public accountant;
- (3) an attorney;
- (4) an investment advisor or manager, or an investment counselor;
- (5) an investment advisor or manager selection consultant;
- (6) a pension benefit design advisor or consultant; or
- (7) any other financial consultant.

History: 1979 c 201 s 14; 1980 c 607 art 15 s 12; 1981 c 224 s 210; 1983 c 219 s 8; 1989 c 319 art 8 s 27; 2000 c 461 art 15 s 10; 1Sp2001 c 10 art 16 s 1; 1Sp2005 c 8 art 9 s 14

424A.05 RELIEF ASSOCIATION SPECIAL FUND.

Subdivision 1. Establishment of special fund. Every relief association shall establish and maintain a special fund within the relief association.

Subd. 2. Special fund assets and revenues. The special fund shall be credited with all fire state aid moneys received pursuant to sections 69.011 to 69.051, all taxes levied by or other revenues received from the municipality pursuant to sections 69.771 to 69.776 or any applicable special law requiring municipal support for the relief association, any moneys or property donated, given, granted or devised by any person which is specified for use for the

support of the special fund and any interest earned upon the assets of the special fund. The treasurer of the relief association shall be the custodian of the assets of the special fund and shall be the recipient on behalf of the special fund of all revenues payable to the special fund. The treasurer shall maintain adequate records documenting any transaction involving the assets or the revenues of the special fund. These records and the bylaws of the relief association shall be public and shall be open for inspection by any member of the relief association, any officer or employee of the state or the municipality, or any member of the public, at reasonable times and places.

Subd. 3. **Authorized disbursements from the special fund.** (a) Disbursements from the special fund are not permitted to be made for any purpose other than one of the following:

(1) for the payment of service pensions to retired members of the relief association if authorized and paid under law and the bylaws governing the relief association;

(2) for the payment of temporary or permanent disability benefits to disabled members of the relief association if authorized and paid pursuant to law and specified in amount in the bylaws governing the relief association;

(3) for the payment of survivor benefits to surviving spouses and surviving children, or if none, to designated beneficiaries, of deceased members of the relief association, and if survivors and if no designated beneficiary, for the payment of a death benefit to the estate of the deceased active firefighter, if authorized by and paid pursuant to law and specified in amount in the bylaws governing the relief association;

(4) for the payment of any funeral benefits to the surviving spouse, or if no surviving spouse, the estate, of the deceased member of the relief association if authorized by law and specified in amount in the bylaws governing the relief association;

(5) for the payment of the fees, dues and assessments to the Minnesota State Fire Department Association, to the Minnesota Area Relief Association Coalition, and to the state Volunteer Firefighters Benefit Association in order to entitle relief association members to membership in and the benefits of these associations or organizations; and

(6) for the payment of administrative expenses of the relief association as authorized under section 69.80.

(b) For purposes of this chapter, a designated beneficiary must be a natural person.

Subd. 4. **Investments of assets of the special fund.** The assets of the special fund shall be invested only in securities authorized by section 69.775.

History: 1979 c 201 s 15; 1981 c 224 s 211; 1981 c 224 s 274; 1983 c 219 s 9; 2000 c 461 art 15 s 11; 2006 c 271 art 13 s 4

424A.06 RELIEF ASSOCIATION GENERAL FUND.

Subdivision 1. **Establishment of general fund.** Any volunteer firefighters' relief association may establish and maintain a general fund within the relief association.

Subd. 2. **General fund assets and revenues.** To the general fund, if established, shall be credited all moneys received from dues, fines, initiation fees, entertainment revenues and any moneys or property donated, given, granted or devised by any person, for unspecified uses. The treasurer of the relief association shall be the custodian of the assets of the general fund and shall be the recipient on behalf of the general fund of all revenues payable to the general fund. The treasurer shall maintain adequate records documenting any transaction involving the assets or the revenues of the general fund. These records shall be open for inspection by any member of the relief association at reasonable times and places.

Subd. 3. **Authorized disbursements from the general fund.** Disbursements from the general fund may be made for any purpose authorized by either the articles of incorporation or bylaws of the relief association.

Subd. 4. **Investment of assets of the general fund.** The assets of the general fund may be invested in any securities authorized by the bylaws of the relief association and may be certified for investment by the State Board of Investment in fixed income pools or in a sepa-

rately managed account at the discretion of the State Board of Investment as provided in section 11A.14.

History: 1979 c 201 s 16; 1980 c 509 s 163; 1993 c 300 s 13

424A.07 NONPROFIT FIREFIGHTING CORPORATIONS; ESTABLISHMENT OF RELIEF ASSOCIATIONS.

Prior to paying any service pensions or retirement benefits pursuant to section 424A.02 or becoming entitled to receive any amounts of fire state aid upon transmittal from a contracting municipality pursuant to section 69.031, subdivision 5, a nonprofit firefighting corporation shall establish a relief association governed by this chapter.

History: 1979 c 201 s 17; 1981 c 224 s 274

424A.08 MUNICIPALITY WITHOUT RELIEF ASSOCIATION; AUTHORIZED DISBURSEMENTS.

Any qualified municipality which is entitled to receive fire state aid but which has no volunteer firefighters' relief association directly associated with its fire department shall deposit the fire state aid in a special account in the municipal treasury. Disbursement from the special account shall not be made for any purpose except:

(1) payment of the fees, dues and assessments to the Minnesota State Fire Department Association and to the state Volunteer Firefighters' Benefit Association in order to entitle its firefighters to membership in and the benefits of these state associations;

(2) payment of the cost of purchasing and maintaining needed equipment for the fire department; and

(3) payment of the cost for construction, acquisition, repair and maintenance of buildings or other premises to house the fire department.

History: 1979 c 201 s 18; 1983 c 219 s 10

424A.09 APPLICATION TO CERTAIN RELIEF ASSOCIATIONS.

This chapter supersedes any special law applicable to any municipal volunteer firefighters' relief association or independent nonprofit firefighting corporation specifically authorizing the relief association or nonprofit firefighting corporation to exceed the service pension limitations contained in Minnesota Statutes 1978, sections 69.06 and 69.691. Any relief association which amended its bylaws to provide for a full pro rata service pension amount at the specified retirement age with 15 years service credit or 75 percent of the pro rata service pension amount at the specified retirement age with ten years of service under Minnesota Statutes 1978, section 69.06, may continue to provide the specified service pension amounts at the applicable years of credited service to any member who has credit for at least ten or 15 years, whichever is the applicable minimum service period specified in the bylaws governing the relief association, on or before December 31, 1979.

History: 1979 c 201 s 19; 1981 c 224 s 274; 2002 c 392 art 1 s 6

424A.10 STATE SUPPLEMENTAL BENEFIT; VOLUNTEER FIREFIGHTERS.

Subdivision 1. **Definitions.** For purposes of this section:

(1) "qualified recipient" means an individual who receives a lump sum distribution of pension or retirement benefits from a firefighters' relief association for service performed as a volunteer firefighter;

(2) "survivor of a deceased active or deferred volunteer firefighter" means the legally married spouse of a deceased volunteer firefighter, or, if none, the surviving minor child or minor children of a deceased volunteer firefighter;

(3) "active volunteer firefighter" means a person who regularly renders fire suppression service for a municipal fire department or an independent nonprofit firefighting corporation, who has met the statutory and other requirements for relief association membership, and who has been a fully qualified member of the relief association for at least one month; and

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(4) "deferred volunteer firefighter" means a former active volunteer firefighter who terminated active firefighting service, has sufficient service credit from the applicable relief association to be entitled to a service pension, but has not applied for or has not received the service pension.

Subd. 2. Payment of supplemental benefit. (a) Upon the payment by a firefighters' relief association of a lump sum distribution to a qualified recipient, the association must pay a supplemental benefit to the qualified recipient. Notwithstanding any law to the contrary, the relief association may pay the supplemental benefit out of its special fund. The amount of this benefit equals ten percent of the regular lump sum distribution that is paid on the basis of service as a volunteer firefighter. In no case may the amount of the supplemental benefit exceed \$1,000.

(b) Upon the payment by a relief association of a lump sum survivor benefit or funeral benefit to a survivor of a deceased active volunteer firefighter or of a deceased deferred volunteer firefighter, the association may pay a supplemental survivor benefit to the survivor of the deceased active or deferred volunteer firefighter from the special fund of the relief association if its articles of incorporation or bylaws so provide. The amount of the supplemental survivor benefit is 20 percent of the survivor benefit or funeral benefit, but not to exceed \$2,000.

Subd. 3. State reimbursement. (a) By February 15 of each year, the treasurer of the relief association shall apply to the commissioner of revenue for state reimbursement of the amount of supplemental benefits paid under subdivision 2 during the preceding calendar year. By March 15 the commissioner shall reimburse the relief association for the amount of the supplemental benefits paid to qualified recipients.

(b) The commissioner of revenue shall prescribe the form of and supporting information that must be supplied as part of the application for state reimbursement.

(c) The reimbursement payment must be deposited in the special fund of the relief association.

(d) A sum sufficient to make the payments is appropriated from the general fund to the commissioner of revenue.

Subd. 4. In lieu of income tax exclusion. (a) The supplemental benefit provided by this section is in lieu of the state income tax exclusion for lump sum distributions of retirement benefits paid to volunteer firefighters.

(b) If the law is modified to exclude or exempt volunteer firefighters' lump sum distributions from state income taxation, the supplemental benefits under this section may no longer be paid beginning with the first calendar year in which the exclusion or exemption is effective. This subdivision does not apply to exemption of all or part of a lump sum distribution under section 290.032 or 290.0802.

Subd. 5. Retroactive reimbursement in certain instances. A supplemental survivor or funeral benefit may be paid by a relief association for the death of an active volunteer firefighter or of a deferred volunteer firefighter that occurred on or after August 1, 2005, if the relief association articles of incorporation or bylaws so provide for a supplemental survivor benefit and for retroactivity.

History: 1988 c 719 art 19 s 22; 1989 c 319 art 10 s 7; 1993 c 307 art 9 s 1; 2006 c 271 art 13 s 5