TITLE 72
WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 14
FIREMEN'S RETIREMENT FUND

72-1401. PURPOSE OF CHAPTER. The retirement, with continuance of pay for themselves, provision for dependents, and pay during temporary disability, and the encouragement of long service in fire fighting service, of paid firefighters becoming aged or disabled in the service of the state or any of its cities or fire districts, is hereby declared to be a public purpose of joint concern to the state and each of its cities and fire districts in the protection and conservation of property and lives and essential to the maintenance of competent and efficient personnel in fire service.

The provisions of chapter 14, title 72, Idaho Code, are applicable only to those paid firefighters who were employed as paid firefighters prior to October 1, 1980. If any person employed as a paid firefighter prior to October 1, 1980, should leave such employment prior to his establishing eligibility to benefits under any provision of chapter 14, title 72, Idaho Code, except as provided by sections 44-109(6), 72-1445, and 72-1444, Idaho Code, and such firefighter is again employed as a paid firefighter, he shall not be eligible to participate in the retirement system authorized by chapter 14, title 72, Idaho Code, but shall be eligible to participate in the public employee retirement system, as provided in chapter 13, title 59, Idaho Code.

[72-1401, added 1945, ch. 76, sec. 1, p. 112; am. 1980, ch. 50, sec. 2, p. 81; am. 1990, ch. 231, sec. 70, p. 648.]

72-1402. CONSTRUCTION. The provisions of this chapter shall be liberally construed, with the object of promotion of justice and the welfare of the persons subject to its provisions.

[(72-1402) 1945, ch. 76, sec. 20, p. 112; am. 1980, ch. 50, sec. 17, p. 87; 1990, redesignated, ch. 231, sec. 71, p. 648.]

72-1403. DEFINITIONS. The following are definitions of terms used in this chapter:

(A) The words "paid fireman" are synonymous with "paid firefighter," and mean any individual, male or female, excluding office secretaries employed after July 1, 1967, who is on the payroll of any city or fire district in the state of Idaho prior to October 1, 1980, and who devotes his or her principal time of employment to the care, operation, maintenance or the requirements of a regularly constituted fire department of such city or fire district in the state of Idaho.

(B) "Industrial commission" means the commission as authorized and created under the provisions of chapter 5, title 72, Idaho Code.

(C) "Workers' compensation law" means the workers' compensation law as authorized and created under title 72, Idaho Code.

(D) "Twenty-five (25) years active service": an individual whose principal means of livelihood for the period of twenty-five (25) years has been through employment by a city or fire district in the state of Idaho in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for twenty-five (25) years or more.

(E) "Five (5) years continuous service": an individual who has been employed by a regularly constituted fire department in a city or fire district in the state of Idaho for a period of five (5) years continuously, without having engaged in any other gainful occupation as his principal gainful occupation and has had "five (5) years continuous service" with a paid fire department of a city or fire district in the state of Idaho.

(F) "Public employee retirement account" as used herein, means the public employee retirement account created by chapter 13, title 59, Idaho Code, and the "director" thereof, as used herein, means the executive director or manager of the public employee retirement system.

(G) The meaning of the term "incapacitated in a degree which prohibits efficient service" means that degree of mental or physical disability which prohibits the efficient performance of the duties of a paid firefighter.

(H) "Years active service": service rendered by an individual whose principal means of livelihood for the prescribed period of years has been through employment by a city or fire district in the state of Idaho, in a regularly constituted fire department of a city or fire district, and has actually been carried on the payroll of an Idaho fire department for the prescribed period of years. All years of active service as herein defined before the establishment of the firefighters' retirement fund may count only toward the prescribed period of years for retirement as set out in sections 72-1446, 72-1464, 72-1465 and 72-1435, Idaho Code. Before any year's service since February 28, 1945, may count toward the prescribed period of years, contributions must have been deducted from his or her wage or salary and remitted as set out in sections 72-1431 and 72-1432, Idaho Code, for that year.

(I) "Accumulated contributions" mean the sum of all amounts contributed by a firefighter to the retirement fund, pursuant to the provisions of chapter 14, title 72, Idaho Code, together with regular interest credited thereon.

(J) "Regular interest" means interest at the rate set from time to time by the board pursuant to section 59-1302(26), Idaho Code.

[(72-1403) 1945, ch. 76, sec. 2, p. 112; am. 1963, ch. 125, sec. 1, p. 358; am. 1967, ch. 17, sec. 1, p. 33; am. 1976, ch. 273, sec. 1, p. 922; am. 1978, ch. 331, sec. 1, p. 851; am. 1980, ch. 50, sec. 3, p. 82; 1990, am. and redesignated, ch. 231, sec. 72, p. 648; am. 1991, ch. 26, sec. 1, p. 49; am. 1993, ch. 350, sec. 9, p. 1304.]

72-1404. AVERAGE FINAL COMPENSATION. "Average final compensation" shall mean the average of the highest annual compensation received by the individual paid firefighter in this state, as defined in subsection (A) of section 72-1403, Idaho Code, during a period of five (5) consecutive years of service, as defined in subsection (H) of section 72-1403, Idaho Code, immediately preceding his or her retirement or leaving service. If said firefighter has less than five (5) years of service, then "average final compensation" shall mean the annual average compensation received by him or her during the total years of service.

[(72-1404) 1976, ch. 273, sec. 22, p. 941; 1990, am. and redesignated, ch. 231, sec. 73, p. 649.]

72-1405. POWERS AND DUTIES OF PUBLIC EMPLOYEE RETIREMENT BOARD. The public employee retirement system board shall have power to make rules and

regulations for the administration of this chapter, to prescribe forms and require registration, to delegate its authority to act in specific instances to its deputies and employees, and to incur expenses in connection with the management, administration and enforcement of this chapter, which expenses shall be paid out of the public employee retirement account.

[(72-1405) 1945, ch. 76, sec. 15, p. 112; am. 1980, ch. 50, sec. 14, p. 86; 1990, am. and redesignated 72-1405, ch. 231, sec. 74, p. 650.]

72-1406. ADMINISTRATION OF PROVISIONS OF CHAPTER. The provisions of this chapter shall be administered by the public employee retirement system board without liability on the part of the state, or of any of its officers, beyond the moneys in the public employee retirement account for the purposes of chapter 14, title 72, Idaho Code, and the moneys accruing thereto. It shall be the duty of the board to administer the account and conduct the business thereof, and the board is hereby vested with full authority over the account, and may do any and all things which are necessary or convenient in the administration thereof as provided or as consistent with the provisions of this chapter and the general laws of the state.

[(72-1406) 1945, ch. 76, sec. 5, p. 112; am. 1980, ch. 50, sec. 5, p. 83; 1990, redesignated, ch. 231, sec. 75, p. 650.]

72-1407. POWER OF BOARD TO SUE AND BE SUED. The public employee retirement system board shall, in its official name, have power to sue and be sued in all matters arising out of the administration, management and enforcement of this chapter. The venue of all actions in which the board is a party shall be Ada County, Idaho.

[(72-1407) 1945, ch. 76, sec. 6, p. 112; am. 1980, ch. 50, sec. 6, p. 83; 1990, redesignated, ch. 231, sec. 76, p. 650.]

72-1408. POWER OF BOARD TO ENGAGE EMPLOYEES. The public employee retirement system board shall have power to engage all needful assistants, experts, accountants, clerks, and other employees which may be found necessary by it, in carrying out the provisions of this chapter, the same to be paid out of the public employee retirement account.

[(72-1408) 1945, ch. 76, sec. 7, p. 112; am. 1980, ch. 50, sec. 7, p. 84; 1990, redesignated, ch. 231, sec. 77, p. 650.]

72-1409. EMPLOYMENT OF ATTORNEYS AND AGENTS. The public employee retirement system board and its director are hereby given power and authority to employ attorneys and agents in the administration of this chapter, its conservation and protection.

[(72-1409) 1945, ch. 76, sec. 25, p. 112; am. 1980, ch. 50, sec. 20, p. 87; 1990, redesignated, ch. 231, sec. 78, p. 651.]

72-1410. RISKS AUTHORIZED TO BE INSURED -- PAYMENT OF PREMIUMS. In event the public employee retirement system board shall determine that there are risks arising under the terms of this chapter which may be made the subject of insurance against loss to the public employee retirement account, the board is hereby authorized, at its discretion, to insure such

risks; in event of such insurance, the premiums therefor shall be paid from the public employee retirement account as other claims are paid: provided, that such insurance shall not in any event be insurance of any individual but exclusively insurance of the public employee retirement account itself against loss.

[(72-1410) 1945, ch. 76, sec. 22, p. 112; am. 1980, ch. 50, sec. 18, p. 87; 1990, redesignated, ch. 231, sec. 79, p. 651.]

72-1411. LIABILITY OF BOARD. The public employee retirement system board shall not, nor shall any person employed by it, be personally liable in its private capacity for or on account of any act performed or entered into in an official capacity in good faith and without intent to defraud, in connection with the administration of the provisions of chapter 14, title 72, Idaho Code.

[(72-1411) 1945, ch. 76, sec. 8, p. 112; am. 1980, ch. 50, sec. 8, p. 84; 1990, redesignated, ch. 231, sec. 80, p. 651.]

72-1421. FUNDS -- HOW USED. All moneys coming into the public employee retirement account under the provisions of this chapter are hereby continuously appropriated for the objects and purposes of this chapter and the uses and purposes set forth in this chapter, and to pay all costs and expenses to be incurred and the costs of administration thereof by the public employee retirement system as herein provided.

[(72-1421) 1945, ch. 76, sec. 4, p. 112; am. 1980, ch. 50, sec. 4, p. 83; 1990, am. and redesignated, ch. 231, sec. 81, p. 651.]

72-1422. BENEFITS EXEMPT FROM EXECUTION -- NOT ASSIGNABLE. No benefits or payments payable under the provisions of this chapter shall be subject to execution, nor assignable, nor shall the same be hypothecated or in any manner encumbered, except as ordered by a court to be transferred to an alternate payee in an approved domestic retirement order, as provided in sections 59-1319 and 59-1320, Idaho Code.

[(72-1422) 1945, ch. 76, sec. 17, p. 112; am. 1980, ch. 50, sec. 15, p. 86; 1990, redesignated, ch. 231, sec. 82, p. 651; am. 2006, ch. 19, sec. 2, p. 73.]

72-1423. FILING OF CLAIMS -- PROCEDURE -- JURISDICTION OF INDUSTRIAL COMMISSION. All claims against the public employee retirement account shall be filed with the public employee retirement system board. Any appeal from a decision of the board shall be filed with the industrial commission in as nearly as practicable the same manner that claims under the Workers' Compensation Law of the state of Idaho are filed, and the said industrial commission is hereby given jurisdiction to entertain and pass upon said claims, allow or deny claims and make awards, and the provisions of the Workers' Compensation Law of the state of Idaho relative to process, hearings and appeals are hereby made applicable to the provisions of this chapter, and said industrial commission is hereby given power and authority to make rules and regulations governing procedure in relation to said claims appealed from the public employee retirement system board.

[72-1423, added 1945, ch. 76, sec. 24, p. 112; am. 1980, ch. 50, sec. 19, p. 87; am. 1993, ch. 350, sec. 10, p. 1305.]

72-1424. PRESENTATION OF FALSE CLAIM PENALIZED. Any person making a false claim for allowance of benefits or payment of money under this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punished as provided by law.

[(72-1424) 1945, ch. 76, sec. 28, p. 112; am. 1980, ch. 50, sec. 22, p. 88; 1990, redesignated, ch. 231, sec. 83, p. 652]

72-1425. WORKERS' COMPENSATION LAW NOT REPEALED. No provision contained in this chapter shall be deemed to operate as either a repeal or modification of any provision of the Workers' Compensation Law of this state, except as hereinafter specifically set forth.

[(72-1425) 1945, ch. 76, sec. 10, p. 112; am. 1980, ch. 50, sec. 9, p. 84; 1990, redesignated, ch. 231, sec. 84, p. 652; am. 1993, ch. 350, sec. 11, p. 1306.]

72-1426. RECORDS TO BE PUBLIC RECORDS. The records of the industrial commission, insofar as they relate to the administration, management, and enforcement of this chapter, shall constitute public records.

[(72-1426) 1945, ch. 76, sec. 18, p. 112; am. 1980, ch. 50, sec. 16, p. 86; 1990, redesignated, ch. 231, sec. 85, p. 652.]

72-1429E. SURVIVING CHILD. A person qualifies as a surviving child of a firefighter if he or she is dependent on the firefighter at the time of the firefighter's death and meets either of the following requirements:

(a) At the time of the firefighter's death, the person is under the age of eighteen (18) years and, had the firefighter been eligible for social security benefits, would be entitled to child insurance benefits under the federal social security act by the firefighter's death; or

(b) Qualifies and has been filed for as a dependent under the age of eighteen (18) years on the firefighter's most recent internal revenue service income tax forms.

[72-1429E, added 1990, ch. 249, sec. 11, p. 713.]

72-1431. CONTRIBUTION FROM FIREFIGHTERS -- MANNER OF COLLECTION. Beginning October 1, 1978, there is hereby levied upon and shall be paid to the public employee retirement system board, in addition to other provisions of payment to the board, a contribution from each paid firefighter establishing the right to benefits under the provisions of chapter 14, title 72, Idaho Code, as follows:

(a) For a paid firefighter who selected Option I, as provided in section 72-1434, Idaho Code, the contribution shall be equal to eleven and forty-five one hundredths percent (11.45%) of the average paid firefighter's salary or wage in the state;

(b) For a paid firefighter who selected Option II, as provided in section 72-1434, Idaho Code, the contribution shall be equal to eleven and forty-five one hundredths percent (11.45%) of his individual salary or wage.

The contribution shall be collected by the employer by deducting the amount of the contribution from the firefighter's wages or salary as and when paid. The contribution shall be remitted to the retirement board by the city or fire district employing the paid firefighter no later than five (5) days after each pay date. The average paid salary or wage or the individual firefighter's salary or wage, shall be calculated annually no later than the first day of September by the director, in the manner prescribed in section 72-1432, Idaho Code. The director shall notify each city and fire district of the amount of the contribution to be collected based on the average paid salary or wage or individual firefighter's salary or wage, as applicable, for all pay periods commencing on or after the first day of October.

[(72-1431) 1945, ch. 76, sec. 11, p. 112; am. 1957, ch. 185, sec. 1, p. 363; am. 1963, ch. 125, sec. 2, p. 358; am. 1973, ch. 105, sec. 1, p. 179; am. 1976, ch. 273, sec. 3 p. 924; am. 1978, ch. 331, sec. 3, p. 853; am. 1980, ch. 50, sec. 10, p. 84; 1990, am. and redesignated, ch. 231, sec. 86, p. 652; am. 2004, ch. 295, sec. 1, p. 825.]

72-1432. PENSION FUND CONTRIBUTIONS BY CITIES AND FIRE DISTRICTS -- REMITTANCES. Beginning October 1, 1978, it shall also be the duty of the cities and fire districts of this state employing paid firefighters who are establishing the right to benefits under the provisions of chapter 14, title 72, Idaho Code, and of the boards and officers having authority therein, to cause to be remitted to the public employee retirement system board, as an incident to and part of the current expenses of such cities and fire districts, a sum equivalent to the total contribution rate and tax percentage paid into the Idaho public employee retirement system and the social security act on other public employees plus one percent (1%) thereafter of the average paid firefighter's salary or wage in the state of Idaho, or the salary or wage of each individual firefighter, to be computed according to the classification of each firefighter under Option I or Option II as defined under section 72-1434, Idaho Code, for each paid firefighter employed by said cities or fire districts. The average paid salary or wage or individual firefighter's salary or wage shall be measured and determined by the actual salary or wage earned during the twelve (12) month period beginning July 1 and ending June 30 immediately preceding September 1. Sums shall be remitted no later than five (5) days after each pay date as provided for remittances for individual firefighters as set forth in section 72-1431, Idaho Code. When a city or fire district is annexed by another city or fire district, the requirement of an annexed city or fire district to pay pursuant to this section shall transfer to the annexing city or fire district. The annexing city or fire district shall have the duty to cause to be remitted to the public employee retirement system board, as an incident to and part of the current expenses of such cities and fire districts, an amount as determined by the provisions of this section.

[(72-1432) 1945, ch. 76, sec. 12, p. 112; am. 1957, ch. 185, sec. 2, p. 363; am. 1963, ch. 125, sec. 3, p. 358; am. 1973, ch. 105, sec. 2, p. 179; am. 1976, ch. 273, sec. 4, p. 925; am. 1977, ch. 96, sec. 1, p. 201; am. 1978, ch. 331, sec. 4, p. 854; am. 1980, ch. 50, sec. 11, p. 85; 1990, am. and redesignated, ch. 231, sec. 87, p. 653; am. 2000, ch. 13, sec. 4, p. 29; am. 2004, ch. 295, sec. 2, p. 825; am. 2018, ch. 178, sec. 1, p. 392.]

72-1433. FAILURE OF CITY OR FIRE DISTRICT TO MAKE PAYMENT -- EFFECT. In event any city or fire district of this state shall fail to contribute to the public employee retirement system board for any cause whatever, the provisions of this chapter shall apply to and be available for the payment of benefits to firefighters employed by such municipality or subdivision if the contribution required of such city or fire district shall have been, in fact, paid from any source whatever. In the event that any city or fire district shall eliminate its paid fire department, the city or fire district shall continue to make its contribution prescribed by section 72-1432, Idaho Code, necessary to fund the payment of benefits vested in any paid firefighter, or then being paid to any retired firefighter or beneficiary, of such city or fire district.

[(72-1433) 1945, ch. 76, sec. 13, p. 112; am. 1976, ch. 273, sec. 5, p. 926; am. 1980, ch. 50, sec. 12, p. 85; 1990, am. and redesignated, ch. 231, sec. 88, p. 653.]

72-1434. OPTIONAL PENSION AMOUNTS -- OPTION I AND OPTION II. Prior to July 1, 1976, but not thereafter, any paid firefighter in this state, as defined in subsection (A) of section 72-1403, Idaho Code, may elect to receive his or her retirement benefits in accordance with the provisions of Option I or Option II as hereinafter set forth. Except as otherwise provided in this chapter, in the event a firefighter fails to elect an option prior to July 1, 1976, then his or her pension benefits shall be paid to him under the provisions as set forth in Option I. Selection of option shall be nominated by written designation duly executed and filed with the public employee retirement system board. Any paid firefighter employed in the state by a city or fire district, on or after July 1, 1976, shall be employed under the provisions as set forth in Option II; provided however, that any paid firefighter employed on or after July 1, 1976, who has consistently been treated as an Option I firefighter for contribution purposes may, prior to retirement, make an election to select either Option I or Option II; provided further, that any such paid firefighter who selects Option II shall, prior to retirement, pay any additional required employee contributions and the firefighter's employer shall pay any additional required employer contributions, as determined by the board.

(1) OPTION I -- On or after July 1, 1976, any employed paid firefighter, as defined in subsection (A) of section 72-1403, Idaho Code, electing this option or failing to nominate an option, after payment of the contribution, as set forth in section 72-1431, Idaho Code, and after completion of years active service, as defined in subsection (H) of section 72-1403, Idaho Code, may at his or her option retire, and in the event of such retirement said firefighter shall be paid from the public employee retirement account a monthly sum during the remainder of his life equal to the percentage of the average paid firefighter's salary or wage in this state, as defined in section 72-1431, Idaho Code, and that said firefighter is entitled to under the provisions of this chapter, which said monthly sum shall vary annually, according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

(2) OPTION II -- On or after October 1, 1979, any paid firefighter, as defined in subsection (A) of section 72-1403, Idaho Code, who elected Option II, or who was employed after July 1, 1976, after payment of the contribution, as set forth in section 72-1431, Idaho Code, and after completion of years active service, as defined in section 72-1403(H), Idaho Code, may at

his or her option retire, and in the event of such retirement he or she shall be paid from the public employee retirement account a monthly sum during the remainder of his or her life equal to the percentage of said firefighter's average monthly salary or wage, as defined in section 72-1431, Idaho Code, that said firefighter is entitled to under the provisions as set forth in this chapter, based on his or her "average final compensation," as defined in section 72-1404, Idaho Code, which said monthly sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

[(72-1434) 1976, ch. 273, sec. 21, p. 940; am. 1980, ch. 50, sec. 35, p. 99; 1990, am. and redesignated, ch. 231, sec. 89; p. 653; am. 2001, ch. 327, sec. 1, p. 1153.]

72-1435. VOLUNTARY RETIREMENT -- YEARS OF SERVICE DETERMINE PENSION BENEFIT. (1) Any Option I firefighter, as provided in section 72-1434, Idaho Code, who has had the contributions remitted as provided in sections 72-1431 and 72-1432, Idaho Code, for the same number of years as he claims for service as a paid firefighter in Idaho, may at his option retire, and upon retirement shall be paid from the public employee retirement account a monthly sum during the remainder of his life equal to:

(a) after twenty (20) years of service and contributions, forty percent (40%) of the average paid firefighter's salary or wage; or

(b) after twenty-one (21) years of service and contributions, forty-five percent (45%) of the average paid firefighter's salary or wage; or

(c) after twenty-two (22) years of service and contributions, fifty percent (50%) of the average paid firefighter's salary or wage; or

(d) after twenty-three (23) years of service and contributions, fifty-five percent (55%) of the average paid firefighter's salary or wage; or

(e) after twenty-four (24) years of service and contributions, sixty percent (60%) of the average paid firefighter's salary or wage; or

(f) after twenty-five (25) years of service and contributions, sixty-five percent (65%) of the average paid firefighter's salary or wage.

All benefit payments to Option I firefighters shall be based on the average paid firefighter's salary or wage in this state as defined in section 72-1431, Idaho Code. Option I monthly benefit payments shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

(2) Any Option II firefighter, as provided in section 72-1434, Idaho Code, who has had the contributions remitted as provided in sections 72-1431 and 72-1432, Idaho Code, for the same number of years as he claims for service as a paid firefighter in Idaho, may at his option retire, and upon retirement shall be paid from the public employee retirement account a monthly sum during the remainder of his life equal to:

(a) after twenty (20) years of service and contributions, forty percent (40%) of his average salary or wage; or

(b) after twenty-one (21) years of service and contributions, forty-five percent (45%) of his average salary or wage; or

(c) after twenty-two (22) years of service and contributions, fifty percent (50%) of his average salary or wage; or

(d) after twenty-three (23) years of service and contributions, fifty-five percent (55%) of his average salary or wage; or

(e) after twenty-four (24) years of service and contributions, sixty percent (60%) of his average salary or wage; or

(f) after twenty-five (25) years of service and contributions, sixty-five percent (65%) of his average salary or wage.

All benefit payments to Option II firefighters shall be based on his average final compensation as defined in section 72-1404, Idaho Code. Option II monthly benefit payments shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code.

[(72-1435) 1980, ch. 50, sec. 32, p. 95; am. 1990, ch. 211, sec. 5, p. 475; 1990, am. and redesignated, ch. 231, sec. 90, p. 654.]

72-1441. DATE OF PAYMENT. All claims for benefits originating under Option II from and after October 1, 1979 shall be payable as provided in section 72-1434 through section 72-1451, Idaho Code. All claims for benefits being paid or originating prior to October 1, 1979 shall be payable as provided in section 72-1447, Idaho Code, so long as such claims or benefits are entitled to be paid, as that section existed prior to July 1, 1976; provided, however, that any firefighter incapacitated in the performance of duty prior to the effective date of any claims under this chapter shall be entitled to benefits under Option II, if said firefighter and his or her employer have been contributing the required contributions under sections 72-1431 and 72-1432, Idaho Code.

[(72-1441) I.C., sec. 72-1429R, as added by 1963, ch. 125, sec. 21, p. 358; am. 1976, ch. 273, sec. 12, p. 934; am. 1980, ch. 50, sec. 30, p. 95; 1990, am. and redesignated, ch. 231, sec. 91, p. 655.]

72-1442. PENSION PAYMENT -- MAXIMUM. (1) No paid firefighter, retiring under the provisions of chapter 14, title 72, Idaho Code, shall receive more than one hundred percent (100%) of the firefighter's average compensation for the three (3) consecutive years which produce the greatest aggregate compensation, which said monthly sum shall vary annually according to the determination of the "cost of living adjustment" as set forth in section 72-1471, Idaho Code.

(2) As the amount, terms and conditions of benefits under this chapter may be revised from time to time, the application of such revisions shall be prospective only and not retrospective or retroactive unless otherwise provided by law.

[(72-1442) I.C., sec. 72-1431, as added by 1973, ch. 105, sec. 15, p. 179; am. 1976, ch. 273, sec. 20, p. 940; am. 1980, ch. 50, sec. 34, p. 99; 1990, am. and redesignated, ch. 231, sec. 92, p. 656; am. 2000, ch. 13, sec. 5, p. 30.]

72-1443. ACCRUED PENSION PAYMENT -- FIREFIGHTERS DISCONTINUING SERVICE PRIOR TO VOLUNTARY RETIREMENT. A paid firefighter, irrespective of date of hire, who has at least five (5) years of continuous service as defined in section 72-1403, subsections (E) and (H), Idaho Code, and who discontinues service with the city or fire district prior to meeting voluntary retirement or disability requirements, and who has not withdrawn his contributions as provided in section 72-1445, Idaho Code, shall be eligible, only after reaching sixty (60) years of age, to receive a monthly service retirement benefit equal to two percent (2%) of his average monthly salary, as defined in section 72-1431, Idaho Code, for each year of credited service, adjusted

by the cost of living adjustment as provided under section 72-1471, Idaho Code.

[(72-1443) 1978, ch. 331, sec. 6, p. 855; am. 1980, ch. 50, sec. 31, p. 95; 1990, am. and redesignated, ch. 231, sec. 93, p. 656.]

72-1444. REFUND TO FIREFIGHTER TERMINATING EMPLOYMENT -- REPAYMENT ON REEMPLOYMENT -- CONVERSION OF CONTRIBUTIONS -- PURCHASE OF SERVICE CREDITS. (1) If the employment of a paid firefighter, irrespective of date of hire, as defined in this chapter, is terminated for any reason prior to the completion of twenty (20) years of service, and he cannot qualify for benefits under any other provision of this chapter, he shall be entitled to receive at the time of said termination one hundred percent (100%) of his accumulated contributions. If such firefighter is subsequently reemployed as a paid firefighter with duties which involve or are incidental to fire-fighting, he may reinstate his previous credited service by repaying to the retirement fund the full amount of his accumulated contributions provided such repayment includes payment of interest as determined by the board.

(2) In lieu of withdrawing his accumulated contributions as provided in subsection (1) of this section, a paid firefighter may elect to convert his accumulated contributions to an equivalent benefit entitlement under the provisions of chapter 13, title 59, Idaho Code, as if such contributions had been made by the firefighter at the contribution rate of a paid firefighter under the provisions of chapter 13, title 59, Idaho Code; this conversion will normally result in a higher "years of service" factor than the firefighter actually served under the provisions of chapter 14, title 72, Idaho Code. It is legislative intent that this is precisely the effect to be achieved.

(3) No paid firefighter may elect to proceed under the provisions of subsection (2) until he has been personally interviewed and advised by the director of the public employee retirement system, or his designee, on the choices available. The firefighter may be accompanied during such interview by any person of his choice.

(4) Paid firefighters who did not participate as a member of the system between January 1, 1978, and December 31, 1981, because of termination from employment due to reductions in work force may purchase service credits for all or part of that period. The cost of such service credit shall be the full actuarial cost as determined by the board and shall be paid in full prior to the effective date of retirement. The employer may elect, but is not required, to participate in purchasing service credit under this section. In no event shall the retirement system be liable for payment of any such costs. Terminations from employment due to a reduction in work force are limited to terminations that resulted from the elimination of a position due to budgetary constraints.

[(72-1444) I.C., sec. 72-1429Q, as added by 1963, ch. 125, sec. 20, p. 358; am. 1972, ch. 43, sec. 1, p. 66; am. 1980, ch. 50, sec. 29, p. 94; 1990, am. and redesignated, ch. 231, sec. 94, p. 656; am. 1991, ch. 26, sec. 2, p. 50; am. 2000, ch. 322, sec. 1, p. 1089.]

72-1445. PENSION PAYMENT -- RETIREMENT OF FIREFIGHTER INCAPACITATED IN THE PERFORMANCE OF DUTY. (1) Any paid firefighter incapacitated by injury in the performance of duty, or by illness attributable wholly or partially to service as a paid firefighter, shall be retired so long as such

disability shall continue in a degree which prevents efficient service, limited to a maximum of two (2) years, and during such disability shall be paid from the public employee retirement account the monthly retirement sum to which he would be entitled if he elected to retire, but in no event less than a monthly sum equal to: (a) sixty-five per cent (65%) of the average paid firefighter's salary or wage in this state if the incapacitated firefighter is an Option I firefighter; or, (b) sixty-five per cent (65%) of the said firefighter's average monthly salary or wage, based on his average final compensation, if the incapacitated firefighter is an Option II firefighter. The monthly sum shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.

Upon application of a firefighter or his or her department head for a service disability retirement, and prior to said retirement, a medical examination of said firefighter shall be given by a medical committee consisting of a physician named by the public employee retirement system board, a physician named by the firefighter claiming benefits, and a third physician designated by the first two (2) physicians so named. If the medical committee, by a majority opinion certifies in writing, that: (1) the firefighter is physically incapacitated for the efficient performance of the duties as a paid firefighter, as defined under the provisions of subsection (G), section 72-1403, Idaho Code, in the service of the city or fire district, (2) such incapacity is likely to be permanent, (3) the member should be retired, and (4) there is medical evidence of probative value including reports of clinical findings (such as the individual's medical history, physical status examinations), laboratory findings, diagnosis and treatment prescribed and response to such treatment, the public employee retirement system board may approve such application for retirement as provided herein.

If the disabled firefighter is still retired at the conclusion of the two (2) year period, the public employee retirement system board shall determine whether the disability renders the disabled firefighter totally incapacitated. "Totally incapacitated" as used in this section means the inability to perform work in any remunerative employment. It is not necessary for a person to be absolutely helpless or entirely unable to do anything worthy of compensation to be considered totally incapacitated. If the person is so incapacitated that substantially all the avenues of gainful employment are reasonably closed to him, his condition is within the meaning of "totally incapacitated." In evaluating whether a person is totally incapacitated, the medical factor of permanent impairment and nonmedical factors such as age, sex, education, economic and social environment, and training and usable skills shall be considered. If the disabled firefighter is totally incapacitated, then payments shall continue at the rate prescribed in this section during the period of total incapacity. A medical committee may be summoned to determine total incapacity as provided above.

(2) If the disabled firefighter is less than totally incapacitated at the end of the two (2) year period, but has a disability which reduces his presumed ability to engage in gainful activity, payments shall be made to the disabled firefighter during the period of his disability as hereinafter provided. The board shall determine the percentage of disability suffered by the disabled firefighter as compared to the whole man. A medical committee, comprised as prescribed in this section, may be summoned to determine the percentage of disability suffered by the disabled firefighter. The disabled firefighter shall receive a disability benefit equal to the percentage that his disability bears to a totally incapacitated person.

(3) The public employee retirement system board shall provide and maintain disability benefits for all paid firefighters. Their benefits shall be as follows:

(a) For those paid firefighters who were hired for the first time between October 1, 1980, and July 1, 1993, the benefits provided shall be at least equal to those provided to an Option II firefighter. The benefits shall be maintained only until a paid firefighter is eligible for disability retirement under the provisions of chapter 13, title 59, Idaho Code. The costs for such benefits shall be paid from the appropriation made in section 59-1394(1)(b), Idaho Code.

(b) For those paid firefighters hired after July 1, 1993, the benefits and eligibility therefor shall be as provided in chapter 13, title 59, Idaho Code.

[(72-1445) I.C., sec. 72-1430H, as added by 1976, ch. 170, sec. 1, p. 622; am. 1976, ch. 273, sec. 8, p. 930; am. 1979, ch. 146, sec. 2, p. 447; am. 1980, ch. 50, sec. 33, p. 97; am. 1990, ch. 211, sec. 6, p. 477; 1990, am. and redesignated, ch. 231, sec. 95, p. 657; am. 1993, ch. 178, sec. 2, p. 458.]

72-1446. PENSION PAYMENT -- RETIREMENT OF INCAPACITATED FIREFIGHTERS FOR NONSERVICE. (1) Any paid firefighter with not less than five (5) years' active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter who shall become totally incapacitated by reason of a personal injury or disease occurring as the result of causes arising outside the course of his employment by the city or fire district, shall, so long as he remains totally incapacitated be paid a monthly sum equal to: (a) two per cent (2%) of the average paid firefighter's salary or wage, as defined in section 72-1431, Idaho Code, in this state for each year's active service, if the incapacitated firefighter is an Option I firefighter; or, (b) a monthly sum equal to two per cent (2%) of the said firefighter's average monthly salary or wage, as defined in section 72-1431, Idaho Code, for each year's active service based on his average final compensation, as defined in section 72-1404, Idaho Code, if the incapacitated firefighter is an Option II firefighter. "Totally incapacitated" as used in this section means the inability to perform work in any remunerative employment. It is not necessary for a person to be absolutely helpless or entirely unable to do anything worthy of compensation to be considered totally incapacitated. If the person is so incapacitated that substantially all the avenues of gainful employment are reasonably closed to him, his condition is within the meaning of "totally incapacitated." In evaluating whether a person is totally incapacitated, the medical factor of permanent impairment and nonmedical factors such as age, sex, education, economic and social environment, and training and usable skills shall be considered.

(2) In the event said firefighter has twenty-one (21) or more years' service, and has otherwise met the requirements of section 72-1435, Idaho Code, if applicable, the monthly sum shall be the same amount as would be payable in the case of voluntary retirement.

(3) The monthly benefits provided for in this section shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.

(4) Upon application of a firefighter or his or her department head for a nonservice disability retirement, and prior to said retirement, a medical examination of said firefighter shall be given by a medical committee, con-

sisting of a physician named by the public employee retirement system board, a physician named by the firefighter claiming benefits, and a third physician designated by the first two (2) physicians so named. If the medical committee, by a majority opinion certifies in writing, that the firefighter is mentally or physically totally incapacitated the board may approve such application for retirement as provided herein.

(5) All paid firefighters who are receiving nonservice disability benefits shall be subject to the provisions of sections 72-1451 and 72-1452, Idaho Code.

[(72-1446) I.C., sec. 72-1429F, as added by 1963, ch. 125, sec. 9, p. 358; am. 1967, ch. 17, sec. 4, p. 33; am. 1973, ch. 105, sec. 3, p. 179; am. 1976, ch. 273, sec. 7, p. 929; am. 1979, ch. 146, sec. 1, p. 446; am. 1980, ch. 50, sec. 24, p. 90; am. 1990, ch. 211, sec. 1, p. 472; 1990, am. and redesignated, ch. 231, sec. 96, p. 658.]

72-1447. PAYMENT OF PENSIONS -- AMOUNT TO BE PAID -- PARTIES ENTITLED THERETO. Any firefighter, spouse, child or children of a firefighter entitled to compensation under the Workers' Compensation Law, shall draw benefits under this chapter only to the extent that the benefits under this chapter exceed those to which he or she shall be entitled under the Workers' Compensation Law of Idaho. In no case, however, will a firefighter's regular retirement benefit be equal to more than one hundred per cent (100%) of the firefighter's average compensation for the three (3) consecutive years of employment which produce the greatest aggregate compensation. If the benefit is calculated to exceed one hundred per cent (100%) of the firefighter's average compensation, the firefighter shall be eligible for and may choose either:

(1) An annual service retirement allowance equal to the firefighter's average annual compensation for the three (3) consecutive years of employment which produced the greatest aggregate compensation; or

(2) A separation benefit.

[(72-1447) 1945, ch. 76, sec. 14, p. 112; am. 1947, ch. 159, sec. 1, p. 409; am. 1949, ch. 152, sec. 1, p. 327; am. 1957, ch. 185, sec. 3, p. 363; am. 1970, ch. 121, sec. 1, p. 292; am. 1976, ch. 273, sec. 6, p. 926; am. 1980, ch. 50, sec. 13, p. 86; 1990, am. and redesignated, ch. 231, sec. 97, p. 659; am. 1990, ch. 249, sec. 10, p. 713; am. 1993, ch. 350, sec. 12, p. 1306.]

72-1451. DISABILITY -- REEXAMINATION -- RETURN TO SERVICE. Irrespective of the date of retirement, at least once each year during the first five (5) years following the retirement of a firefighter with a disability retirement pension and in any three (3) year period thereafter, the public employee retirement system board may, or upon the disabled firefighter's application shall, require the disabled firefighter to undergo a medical examination, to be made by or under the direction of a physician designated by the board, at the place of residence of said disabled firefighter or other place mutually agreed upon. Should any disabled firefighter refuse to submit to such medical examination in any period, his or her disability retirement may be discontinued by the board and should such refusal continue for one (1) year all his or her rights in and to his or her disability retirement pension shall be revoked by the board. If upon such medical examination of said disabled firefighter, the said physician reports to the board that said

disabled firefighter is physically able and capable of resuming employment in the classification held by him or her at the time of his or her retirement, he or she shall be restored to active service in the employment of the city or fire district and payment of his or her disability retirement shall cease, provided the report of the physician is concurred in by the board. A disabled firefighter so restored to active service shall from the date of his or her return to service become a member of the retirement system, thereafter in the same manner as prior to his or her disability retirement. Any service credited to him or her at the time of his or her disability retirement shall be restored to full force and effect. He or she shall be given credit for the period he or she was receiving service disability pension, provided under section 72-1445, Idaho Code; he or she shall not be given service credit for the period he or she was receiving a nonservice disability pension, provided under section 72-1446, Idaho Code. When a disabled firefighter on a disability retirement engages in work activities commensurate with the physical demands that were required in his or her classification as a firefighter, the work performed may demonstrate that said firefighter has the ability to be restored as a firefighter in the employ of the city or fire district. However, the circumstances under which the work was performed generally must be considered. Where said disabled firefighter has to discontinue his or her work after a short time because of his or her impairment, his or her work activities would not demonstrate ability to resume his or her employment as a firefighter. The findings of the adequacy of the said firefighter's performance of work activities must be concurred in by the board. If said firefighter has a disability which is amenable to corrective treatment that could be expected to restore his or her efficient performance of duties of a paid firefighter, as defined in section 72-1403(G), Idaho Code, he or she would be considered disabled, provided he or she is undergoing the treatment prescribed by the medical committee, as set forth in section 72-1445, Idaho Code.

However, nothing in this section shall be construed to require a firefighter who in good faith relies on or is treated by prayer through spiritual means alone by a duly accredited practitioner of a well-recognized church to undergo any medical or surgical treatment, nor shall he or his dependents be deprived of any benefits hereunder to which he would have been entitled if medical or surgical treatment were employed.

[(72-1451) 1976, ch. 273, sec. 24, p. 942; am. 1980, ch. 50, sec. 37, p. 100; 1990, am. and redesignated, ch. 231, sec. 98, p. 660; am. 1990, ch. 249, sec. 17, p. 717.]

72-1452. REVIEW OF DISABILITY. Upon application of a firefighter receiving a disability benefit, irrespective of the date of retirement, whether service or nonservice connected, or upon the board's own motion, the disability shall be reviewed by the board to determine whether a change of condition has occurred which would justify increasing or decreasing the disability benefit. The board may make such order as is appropriate. Such review shall only occur once every three (3) years after the date of the first disability payment.

[(72-1452) 1979, ch. 146, sec. 5, p. 451; am. 1980, ch. 50, sec. 38, p. 101; 1990, am. and redesignated, ch. 231, sec. 99, p. 661.]

72-1461. DEATH BENEFITS -- SPOUSE AND THE SURVIVING CHILD OR CHILDREN OF FIREFIGHTER KILLED IN PERFORMANCE OF DUTY. (1) In the event a paid firefighter is killed or sustains injury from which death results, while in the performance of duty and leaves surviving a spouse or a spouse with the firefighter's surviving child or children, the spouse, during his or her lifetime, shall be paid from the public employee retirement account the same pension the deceased firefighter would have been entitled to had the deceased firefighter retired as of the date of death, but in no event less than a monthly sum equal to: (a) sixty-five percent (65%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) sixty-five percent (65%) of the deceased firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. If the surviving spouse should die, the full retirement pay shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to be paid from the public employee retirement account the same pension the deceased firefighter would have been entitled to had the deceased firefighter retired as of the date of death, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code, until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.

(2) The monthly benefits provided for in this section shall vary annually according to the cost of living adjustment as set forth in section 72-1471, Idaho Code.

(3) Those benefits payable under the provisions of subsection (1) of this section, or under the provisions of section 72-1445, Idaho Code, which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.

(4) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

[(72-1461) 72-1429H, added 1963, ch. 125, sec. 11, p. 358; am. 1973, ch. 105, sec. 4, p. 179; am. 1980, ch. 50, sec. 25, p. 91; am. 1990, ch. 211, sec. 2, p. 473; 1990, am. and redesignated, ch. 231, sec. 100, p. 661; am. 1990, ch. 249, sec. 12, p. 714; am. 1991, ch. 27, sec. 1, p. 51; am. 1992, ch. 123, sec. 1, p. 402; am. 2006, ch. 19, sec. 3, p. 73; am. 2015, ch. 244, sec. 64, p. 1039.]

72-1462. DEATH BENEFITS -- SPOUSE OF RETIRED FIREFIGHTER. (1) In the event a paid firefighter, retired on retirement pay, shall die and leave surviving a spouse, but no minor children, such surviving spouse shall receive for life the retirement benefits to which the deceased firefighter was en-

titled, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code.

(2) Those benefits payable under the provisions of subsection (1) which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.

(3) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

[(72-1462) 72-1429I, as added by 1963, ch. 125, sec. 12, p. 358; am. 1973, ch. 105, sec. 5, p. 179; am. 1976, ch. 273, sec. 9, p. 931; am. 1980, ch. 50, sec. 26, p. 92; 1990, am. and redesignated, ch. 231, sec. 101, p. 662; am.1990, ch. 249, sec. 13, p. 715; am. 1991, ch. 27, sec. 2, p. 52; am. 1992, ch. 123, sec. 2, p. 403; am. 1992, ch. 281, sec. 1, p. 859; am. 2006, ch. 19, sec. 4, p. 74.]

72-1463. DEATH BENEFITS -- SURVIVING SPOUSE AND SURVIVING CHILD OR CHILDREN OF RETIRED FIREFIGHTER. (1) In the event a paid firefighter, retired on retirement pay, shall die and leave surviving a spouse, or a spouse and firefighter's surviving child or children, the spouse, during the spouse's lifetime shall be paid the retirement pay to which the deceased firefighter was eligible. If the surviving spouse dies the same retirement pay shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first. Should a paid firefighter, retired on retirement pay, die without leaving a surviving spouse, and leave surviving him or her a minor child or children, said child or children shall be entitled to receive the pension to which said firefighter was entitled until they marry or shall attain eighteen (18) years of age, whichever occurs first.

(2) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

[(72-1463) 72-1429J, as added by 1963, ch. 125, sec. 13, p. 358; 1990, redesignated, ch. 231, sec. 102, p. 662; am. 1990, ch. 249, sec. 14, p. 715; am. 1991, ch. 27, sec. 3, p. 52; am. 1992, ch. 123, sec. 3, p. 403; am. 1992, ch. 281, sec. 2, p. 860; am. 2006, ch. 19, sec. 5, p. 75.]

72-1464. DEATH BENEFITS -- SURVIVING SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER FIVE YEARS. (1) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, leaves surviving a spouse or a spouse with firefighter's surviving child or children, and who shall have completed less than twenty (20) years, but more than five (5) years of active service as defined in subsection (H) of section 72-1403, Idaho Code, as

a paid firefighter, said spouse, during the spouse's lifetime shall be paid from the account a monthly sum equal to: (a) two percent (2%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, for each year's active service, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) two percent (2%) of said firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, for each year's active service, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. The monthly sum for Option I benefits shall vary annually, according to the determination of the average paid firefighter's salary or wage in this state as set forth in section 72-1431, Idaho Code. If said surviving spouse dies, said monthly sum shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to receive said monthly sum until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.

(2) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, leaves surviving a spouse or a spouse with firefighter's surviving child or children, and who shall have completed less than twenty-five (25) years, but more than twenty (20) years of active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter, said spouse, during his or her lifetime shall be paid from the account a monthly sum equal to the sum the firefighter would have received under the provisions of section 72-1435, Idaho Code, had said firefighter retired as of the date of his or her death, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code, and for the purposes of this section, said firefighter shall be deemed to have retired as of the date of death. The monthly retirement sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code, and if said spouse dies said monthly sum shall be paid to the firefighter's surviving child or children until they reach the age of eighteen (18) years or shall marry, whichever occurs first, provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving surviving a child or children, said firefighter's surviving child or children shall be entitled to receive said monthly sum until they reach the age of eighteen (18) years or shall marry, whichever occurs first.

(3) Those benefits payable under the provisions of subsections (1) and (2) of this section which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.

(4) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

[(72-1464) 72-1429L, as added by 1963, ch. 125, sec. 15, p. 358; am. 1969, ch. 19, sec. 1, p. 38; am. 1973, ch. 105, sec. 6, p. 179; am. 1976, ch. 273, sec. 10, p. 932; am. 1980, ch. 50, sec. 27, p. 92; am. 1990, ch. 211, sec. 3, p. 474; 1990, am. and redesignated, ch. 231, sec. 103, p. 663; am. 1990, ch. 249, sec. 15, p. 715; am. 1991, ch. 27, sec. 4, p. 53; am. 1992, ch. 123, sec. 4, p. 404; am. 2006, ch. 19, sec. 6, p. 75.]

72-1465. DEATH BENEFITS -- SPOUSE AND CHILDREN OF FIREFIGHTER DYING FROM CAUSES UNCONNECTED WITH DUTIES BUT DURING SERVICE AFTER TWENTY-FIVE YEARS. (1) In the event a paid firefighter who shall have died from causes unconnected with said firefighter's official duties, but during the period of said firefighter's service, and left surviving a spouse or a spouse with the firefighter's surviving child or children, and who shall have completed twenty-five (25) years' active service as defined in subsection (H) of section 72-1403, Idaho Code, as a paid firefighter, said spouse, during his or her lifetime shall be paid from the account a monthly sum equal to: (a) sixty-five percent (65%) of the average paid firefighter's salary or wage in this state, if the deceased firefighter was an Option I firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code; or, (b) sixty-five percent (65%) of said firefighter's average monthly salary or wage, based on his average final compensation, if the deceased firefighter was an Option II firefighter, less any portion of the benefit transferred to an alternate payee as provided in sections 59-1319 and 59-1320, Idaho Code. The monthly sum shall vary annually according to the determination of the cost of living adjustment as set forth in section 72-1471, Idaho Code, and if he or she dies said monthly sum shall be paid to the firefighter's surviving child or children until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first; provided, however, that if said deceased firefighter shall have died without leaving a surviving spouse and leaving a child or children, said firefighter's surviving child or children shall be entitled to receive the pension which said firefighter was entitled until they shall reach the age of eighteen (18) years or shall marry, whichever occurs first.

(2) Those benefits payable under the provisions of subsection (1) which were ordered prior to July 1, 1978, shall continue under the provisions of this chapter in effect at the time such benefit payment was ordered.

(3) Eligibility for benefits of surviving spouses that was terminated on or after July 1, 1987, solely because of the spouse's remarriage is hereby reinstated effective July 1, 1992. Such spouses are entitled to have the benefits, including any cost of living allowances approved by the board effective on or after July 1, 1987, commence prospectively effective July 1, 1992, or upon their application to the retirement system, whichever is later.

[(72-1465) 72-1429M, as added by 1963, ch. 125, sec. 16, p. 358; am. 1973, ch. 105, sec. 7, p. 179; am. 1976, ch. 273, sec. 11, p. 933; am. 1980, ch. 50, sec. 28, p. 93; am. 1990, ch. 211, sec. 4, p. 475; 1990, am. and redesignated, ch. 231, sec. 104, p. 664; am. 1990, ch. 249, sec. 16, p. 717; am. 1991, ch. 27, sec. 5, p. 54; am. 1992, ch. 123, sec. 5, p. 405; am. 2006, ch. 19, sec. 7, p. 76.]

72-1471. COST OF LIVING ADJUSTMENT. In addition to the monthly sums provided for under this chapter, any retired firefighter or his or her

surviving spouse, child, or children drawing benefits shall be entitled to receive adjustments to such benefits, calculated on the percentage of increase or decrease in the average paid firefighter's salary or wage, in this state, as computed under the terms of section 72-1431, Idaho Code.

[(72-1471) 1976, ch. 273, sec. 23, p. 942; am. 1978, ch. 331, sec. 7, p. 855; am. 1980, ch. 50, sec. 36, p. 100; am. 1990, ch. 211, sec. 7, p. 478; 1990, am. and redesignated, ch. 231, sec. 105, p. 665.]

72-1472. SEPARABILITY. If any clause, section or provision of this chapter be found to be unconstitutional, the remainder of this chapter shall remain in full force and effect, notwithstanding such invalidity.

[(72-1472) 1945, ch. 76, sec. 27, p. 112; am. 1980, ch. 50, sec. 21, p. 88; 1990, redesignated, ch. 231, sec. 106, p. 665.]