

## **IC 36-8-6**

### **Chapter 6. 1925 Police Pension Fund**

#### **IC 36-8-6-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The addition of section 20 of this chapter by P.L.223-1986 applies only to fund members who die after March 10, 1986.
- (2) The amendments made to section 8 of this chapter by P.L.171-1990 apply to all benefits paid after March 15, 1990.
- (3) The amendments made to section 9.8 of this chapter by P.L.28-2008 apply only to benefits payable with respect to a member of the 1925 police pension fund who dies after June 30, 2008.

*As added by P.L.220-2011, SEC.668.*

#### **IC 36-8-6-1**

##### **Application of chapter**

Sec. 1. (a) This chapter applies to pension benefits for members of police departments hired before May 1, 1977, in second and third class cities, and in towns that have established a board of metropolitan police commissioners.

(b) A police officer with twenty (20) years of service is covered by this chapter and not by IC 36-8-8 if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 (repealed September 1, 1981); and
- (3) is rehired after April 30, 1977, by the same employer.

(c) A police officer is covered by this chapter and not by IC 36-8-8 if he:

- (1) was hired before May 1, 1977;
- (2) did not convert under IC 19-1-17.8-7 (repealed September 1, 1981);
- (3) was rehired after April 30, 1977, but before February 1, 1979; and
- (4) was made, before February 1, 1979, a member of a 1925 fund.

(d) A police matron is covered by this chapter and not by IC 5-10.3 or IC 36-8-8 if she:

- (1) was hired before May 1, 1977;
- (2) is a member of a police department in a second or third class city; and
- (3) is employed as a police matron on March 31, 1996.

*As added by Acts 1981, P.L.309, SEC.55. Amended by Acts 1981, P.L.44, SEC.57; P.L.3-1990, SEC.129; P.L.236-1996, SEC.1.*

#### **IC 36-8-6-1.5**

##### **Qualification of 1925 fund under Internal Revenue Code; benefit limitations**

Sec. 1.5. (a) As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent not inconsistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

(b) The 1925 fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code, as applicable to the 1925 fund. In order to meet those requirements, the 1925 fund is subject to the following provisions, notwithstanding any other provision of this chapter:

(1) The local board shall distribute the corpus and income of the 1925 fund to members and their beneficiaries in accordance with this chapter.

(2) No part of the corpus or income of the 1925 fund may be used or diverted to any purpose other than the exclusive benefit of the members and their beneficiaries.

(3) Forfeitures arising from severance of employment, death, or for any other reason may not be applied to increase the benefits any member would otherwise receive under this chapter.

(4) If the 1925 fund is terminated, or if all contributions to the 1925 fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the 1925 fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the 1925 fund is subject to the following provisions:

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

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

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

(6) The local board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of members or beneficiaries;

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

(7) Benefits paid under this chapter may not exceed the

maximum benefit specified by Section 415 of the Internal Revenue Code.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

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

(c) Notwithstanding any other provision of this chapter, and solely for the purposes of the benefits provided under this chapter, the benefit limitations of Section 415 of the Internal Revenue Code shall be determined by applying the provisions of Section 415(b)(10) of the Internal Revenue Code, as amended by the Technical and Miscellaneous Revenue Act of 1988. This section constitutes an election under Section 415(b)(10)(C) of the Internal Revenue Code to have Section 415(b) of the Internal Revenue Code, other than Section 415(b)(2)(G) of the Internal Revenue Code, applied without regard to Section 415(b)(2)(F) of the Internal Revenue Code (before its repeal on June 7, 2001, by P.L.107-16) to anyone who did not first become a participant before January 1, 1990.

*As added by P.L.55-1989, SEC.48. Amended by P.L.4-1990, SEC.15; P.L.42-2011, SEC.81.*

#### **IC 36-8-6-1.7**

##### **"Americans with Disabilities Act"**

Sec. 1.7. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

*As added by P.L.4-1992, SEC.32.*

#### **IC 36-8-6-1.9**

##### **Administration of fund**

Sec. 1.9. The 1925 fund shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by the Act.

*As added by P.L.4-1992, SEC.33.*

#### **IC 36-8-6-2**

##### **Creation of fund; management by board of trustees; selection and compensation of trustees**

Sec. 2. (a) A police pension fund to be known as the 1925 fund is established in each municipality described in section 1(a) of this chapter.

(b) The 1925 fund shall be managed by a board of trustees (referred to as the "local board" in this chapter) having at least seven (7) but not more than nine (9) trustees, as follows:

(1) The municipal executive, the municipal fiscal officer, and the police chief, who are ex officio voting members of the local board.

(2) One (1) retired member of the police department.

(3) At least three (3) but not more than five (5) active members

of the police department.

However, in cities where there are not sufficient members of the police department to appoint a local board consisting of at least five (5) trustees, the local board may be composed of three (3) trustees, those being the executive, the fiscal officer, and the police chief.

(c) The trustees under subsections (b)(2) and (b)(3) shall be elected at a meeting of the members of the police department at the central police station on the second Monday in February of each year. The trustees are elected for terms of three (3) years, succeeding those trustees whose terms of office expire on that date. The trustees hold their offices until their successors are elected and qualified.

(d) If a vacancy occurs on the local board among those trustees elected by the police department, the police department shall, within a reasonable time, hold a special meeting upon the call of the municipal executive and elect a successor for the remainder of the trustee's term.

(e) A majority of all the trustees constitutes a quorum for the transaction of business.

(f) The trustees receive no pay for their services and shall be paid only their necessary expenses. However, the trustees, the secretary, and each member of the police department selected by the local board shall be paid their necessary traveling expenses from the 1925 fund when acting upon matters pertaining to the fund.

(g) The local board may make all necessary bylaws for:

- (1) meetings of the trustees;
- (2) the manner of their election, including the counting and canvassing of the votes;
- (3) the collection of all money and other property due or belonging to the 1925 fund;
- (4) all matters connected with the care, preservation, and disbursement of the fund; and
- (5) all other matters connected with the proper execution of this chapter.

*As added by Acts 1981, P.L.309, SEC.55. Amended by Acts 1981, P.L.44, SEC.58; P.L.236-1996, SEC.2; P.L.173-2003, SEC.32.*

### **IC 36-8-6-3**

#### **Board of trustees; officers; duties**

Sec. 3. (a) The municipal executive is president of the local board, the municipal fiscal officer is its treasurer, and the local board shall select one (1) of its members secretary. The secretary shall be paid out of the 1925 fund a sum for the secretary's services as fixed by the local board.

(b) The president shall preside over all meetings of the local board, call special meetings of the police department of the city, and preside over the annual and called meetings of the department concerning the 1925 fund.

(c) The treasurer:

- (1) has custody of all money and securities due or belonging to the 1925 fund and shall collect the principal and interest on

them;

(2) is liable on the treasurer's bond as an officer for the municipality for the faithful accounting of all money and securities belonging to the fund that come into the treasurer's hands;

(3) shall keep a separate account showing at all times the true condition of the fund; and

(4) shall, upon the expiration of the treasurer's term of office, account to the local board for all money and securities coming into the treasurer's hands, including the proceeds of them, and turn over to the treasurer's successor all money and securities belonging to the fund remaining in the treasurer's hands.

(d) The secretary shall:

(1) keep a true account of the proceedings of the local board and of the police department of the municipality when acting upon matters relating to the 1925 fund;

(2) keep a correct statement of the accounts of each member with the fund;

(3) collect and turn over to the treasurer of the local board all money belonging to the fund;

(4) give the local board a monthly account of the secretary's acts and services as secretary; and

(5) turn over to the secretary's successor all books and papers pertaining to the office.

(e) The secretary shall, in the manner prescribed by IC 5-4-1, execute a bond conditioned upon the faithful discharge of the secretary's duties.

(f) The secretary and treasurer shall make complete and accurate reports of their trusts to the local board on the first Monday in February of each year, copies of which shall be filed with the municipal clerk. The books of the secretary and treasurer must be open at all times to examination by members of the local board.

(g) Each member of the police department shall turn over to the secretary of the local board, within thirty (30) days after receiving it, all money and securities belonging to the 1925 fund that come into the secretary's hands.

*As added by Acts 1981, P.L.309, SEC.55. Amended by Acts 1981, P.L.47, SEC.24; P.L.173-2003, SEC.33.*

#### **IC 36-8-6-4**

##### **Derivation of funds; salary assessments**

Sec. 4. (a) The 1925 fund is derived from the following sources:

(1) From money or other property that is given to the local board for the use of the fund. The local board may take by gift, grant, devise, or bequest of any money, chose in action, personal property, or real property, or an interest in it. The local board shall take the property in the name of the local board and may hold, assign, transfer, or sell it.

(2) From money, fees, and awards that are paid or given to the police department of the municipality or to a member of the

department because of service or duty performed by the department or a member. This includes fines imposed by the safety board against a member of the department, as well as the proceeds from the sale of lost, stolen, and confiscated property recovered or taken into possession by members of the police department in the performance of their duties and sold at a public sale in accordance with law.

(3) From an assessment made during the period of his employment or for thirty-two (32) years, whichever is shorter, on the salary of each member whom the local board has accepted and designated as a beneficiary of the 1925 fund, an amount equal to six percent (6%) of the salary of a first class patrolman. However, the employer may pay all or a part of the assessment for the member.

(b) The secretary of the local board shall prepare a roll of each of the assessments and place opposite the name of every member of the police department the amount of the assessment against him. The treasurer of the local board shall retain out of the salary paid to the member each month the amount of the assessment, other than any amount paid on behalf of the member, and credit it to the 1925 fund. Except to the extent the assessment is paid on behalf of the member, every person becoming a member of the police department is liable for the payment of the assessments and is conclusively considered to agree to pay it and have it deducted from his salary as required in this section.

*As added by Acts 1981, P.L.309, SEC.55. Amended by Acts 1981, P.L.182, SEC.3; P.L.312-1989, SEC.1.*

### **IC 36-8-6-5**

#### **Insufficient funds; payment of deficiency by municipality; tax levy**

Sec. 5. (a) If the local board determines that the total amount of money available for a year will be insufficient to pay the benefits, pensions, and retirement allowances the local board is obligated to pay under this chapter, the local board shall, before the date on which the budget of the municipality is adopted, prepare an itemized estimate in the form prescribed by the state board of accounts of the amount of money that will be received into and disbursed from the 1925 fund during the next fiscal year. The estimated receipts consist of the items enumerated in section 4(a) of this chapter. The estimated disbursements consist of an estimate of the amount of money that will be needed by the local board during the next fiscal year to defray the expenses and obligations incurred and that will be incurred by the local board in making the payments prescribed by this chapter to retired members, to members who are eligible to and expect to retire during the ensuing fiscal year, and to the dependents of deceased members.

(b) The local board may provide in its annual budget and pay all necessary expenses of operating the 1925 fund, including the payment of all costs of litigation and attorney fees arising in connection with the fund, as well as the payment of benefits and

pensions, including the payments described in section 5.5 of this chapter. Notwithstanding any other law, neither the municipal legislative body, the county board of tax adjustment, nor the department of local government finance may reduce an item of expenditure.

(c) At the time when the estimates are prepared and submitted, the local board shall also prepare and submit a certified statement showing:

(1) the name, age, and date of retirement of each retired member and the monthly and yearly amount of the payment to which the retired member is entitled;

(2) the name and age of each member who is eligible to and expects to retire during the next fiscal year, the date on which the member expects to retire, and the monthly and yearly amount of the payment that the member will be entitled to receive; and

(3) the name and age of each dependent, the date on which the dependent became a dependent, the date on which the dependent will cease to be a dependent by reason of attaining the age at which dependents cease to be dependents, and the monthly and yearly amount of the payment to which the dependent is entitled.

(d) The total receipts shall be deducted from the total expenditures stated in the itemized estimate and the amount of the excess of the estimated expenditures over the estimated receipts shall be paid by the municipality in the same manner as other expenses of the municipality are paid. A tax levy shall be made annually for this purpose, as provided in subsection (e). The estimates submitted shall be prepared and filed in the same manner and form and at the same time that estimates of other municipal offices and departments are prepared and filed.

(e) The municipal legislative body shall levy an annual tax in the amount and at the rate that are necessary to produce the revenue to pay that part of the police pensions that the municipality is obligated to pay. All money derived from the levy is for the exclusive use of the police pensions and benefits, including the payments described in section 5.5 of this chapter. The amounts in the estimated disbursements, if found to be correct and in conformity with the data submitted in the certified statement, are a binding obligation upon the municipality. The legislative body shall make a levy for them that will yield an amount equal to the estimated disbursements, less the amount of the estimated receipts. Notwithstanding any other law, neither the county board of tax adjustment nor the department of local government finance may reduce the levy.

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.90-2002, SEC.487; P.L.224-2007, SEC.123; P.L.146-2008, SEC.776; P.L.182-2009(ss), SEC.427.*

### **IC 36-8-6-5.5**

#### **Use of certain amounts in 1925 fund**

Sec. 5.5. (a) This section applies to a balance in the 1925 fund that:

- (1) accrued from property taxes;
- (2) is not necessary to meet the pension, disability, and survivor benefit payment obligations of the 1925 fund because of amendments to IC 5-10.3-11-4.7 in 2008; and
- (3) is determined under subsection (c).

(b) A local board may authorize the use of money in the 1925 fund to pay any or all of the following:

- (1) The costs of health insurance or other health benefits provided to members, survivors, and beneficiaries of the 1925 fund.
- (2) The municipality's employer contributions under IC 36-8-8-6.
- (3) The contributions paid by the municipality for a member under IC 36-8-8-8(a).

(c) The maximum amount that may be used under subsection (b) is equal to the sum of:

- (1) the unencumbered balance of the 1925 fund on December 31, 2008; plus
- (2) the amount of property taxes:
  - (A) imposed for an assessment date before January 16, 2008, for the benefit of the 1925 fund; and
  - (B) deposited in the 1925 fund after December 31, 2008.

*As added by P.L.182-2009(ss), SEC.428.*

#### **IC 36-8-6-6**

##### **Investment of funds**

Sec. 6. (a) The local board shall determine how much of the 1925 fund may be safely invested and how much should be retained for the needs of the fund. The investment shall be made:

- (1) in interest bearing bonds of the United States, the state, or an Indiana municipal corporation. The bonds shall be deposited with and must remain in the custody of the treasurer of the board, who shall collect the interest due as it becomes due; or
- (2) under IC 5-13-9.

(b) Investments under this section are subject to section 1.5 of this chapter.

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.55-1989, SEC.49; P.L.35-1999, SEC.8.*

#### **IC 36-8-6-7**

##### **Repealed**

*(Repealed by P.L.363-1983, SEC.4.)*

#### **IC 36-8-6-8**

##### **Disability retirement; benefits; procedure for determination of disability and reinstatement; period of disability credited**

Sec. 8. (a) For a member who became disabled before July 1, 2000, the 1925 fund shall be used to pay a pension in a sum



determined by the local board, but not exceeding:

- (1) for a disability or disease occurring before July 1, 1982, fifty percent (50%); and
- (2) for a disability or disease occurring after June 30, 1982, fifty-five percent (55%);

of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability that renders the patrolman unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(b) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is:

(A) the direct result of:

- (i) a personal injury that occurs while the fund member is on duty;
- (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or
- (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
- (iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering

reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

- (1) that is not described in subsection (b)(1); and
- (2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

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

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

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

- (1) the amount of the first full monthly pension received by that person; or
- (2) fifty-five percent (55%) of the salary of a first class patrolman;

whichever is greater.

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

(h) A fund member who is receiving disability benefits under subsection (a) or (c) shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(i) A fund member who is receiving disability benefits under subsection (b) is entitled to:

(1) receive a disability benefit for the remainder of the fund member's life; and

(2) have the amount of the disability benefit computed under section 9 of this chapter when the fund member becomes fifty-five (55) years of age.

*As added by Acts 1981, P.L.309, SEC.55. Amended by Acts 1981, P.L.182, SEC.4; Acts 1982, P.L.213, SEC.1; P.L.311-1989, SEC.2; P.L.171-1990, SEC.1; P.L.4-1992, SEC.34; P.L.118-2000, SEC.4; P.L.185-2002, SEC.5; P.L.62-2006, SEC.2.*

#### **IC 36-8-6-8.1**

##### **Determination whether disability in line of duty**

Sec. 8.1. (a) If a local board determines that a fund member has a temporary or a permanent disability, the local board shall also make a recommendation to the board of trustees of the Indiana public retirement system (referred to in this section as "the system board") concerning whether the disability is:

(1) a disability in the line of duty (as described in section 8(b)(1) of this chapter); or

(2) a disability not in the line of duty (a disability other than a disability described in section 8(b)(1) of this chapter).

The local board shall forward its recommendation to the system board.

(b) The system board shall review the local board's recommendation not later than forty-five (45) days after receiving the recommendation and shall then issue an initial determination of whether the disability is in the line of duty or not in the line of duty. The system board shall notify the local board, the safety board, and the fund member of its initial determination.

(c) The fund member, the safety board, or the local board may object in writing to the system board's initial determination under subsection (b) not later than fifteen (15) days after the initial determination is issued. If a written objection is not filed, the system board's initial determination becomes final. If a timely written objection is filed, the system board shall issue a final determination after a hearing. The final determination must be issued not later than one hundred eighty (180) days after the date of receipt of the local board's recommendation.

*As added by P.L.118-2000, SEC.5. Amended by P.L.6-2012, SEC.247.*

### **IC 36-8-6-9**

#### **Retirement benefits**

Sec. 9. (a) Benefits paid under this section are subject to section 1.5 of this chapter.

(b) The 1925 fund shall be used to provide a member of the police department who retires from active duty after twenty (20) or more years of active duty an annual pension equal to fifty percent (50%) of the salary of a first class patrolman in the police department, plus:

(1) for a member who retires before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of the first class patrolman's salary for each six (6) months of service;

of the retired member over twenty (20) years. However, the pension may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman. The pensions shall be computed on an annual basis but shall be paid in not less than twelve (12) equal monthly installments. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased.

(c) If a member voluntarily retires after twenty (20) or more years of service, the member is entitled to retirement and the pension, without reference to his physical condition at the time of application. However, he then relinquishes all rights to other benefits or pensions for temporary disability. After retirement the member is not required to render further services on the police department, is no longer subject to the rules of the department, and may not be deprived of other benefits under this chapter that may accrue to him or his dependents.

(d) To be retired based upon length of service, only the time served by the member on the regularly constituted police department may be computed. Time served by a member as a special police officer, a merchant police officer, or a private police officer may not be considered in computing length of service.

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.342-1985, SEC.2; P.L.55-1989, SEC.50; P.L.231-1997, SEC.1.*

### **IC 36-8-6-9.5**

#### **Reemployment after retirement**

Sec. 9.5. (a) Not less than thirty (30) days after a member retires from a police department covered by this chapter, the member may:

(1) be rehired by the same municipality that employed the member as a police officer for a position other than that of a full-time, fully paid police officer; and

(2) continue to receive the member's pension benefit under this chapter.

(b) This section may be implemented unless the local board receives from the Internal Revenue Service a determination that prohibits the implementation.

*As added by P.L.130-2008, SEC.4.*

**IC 36-8-6-9.6**

**Members dying other than in line of duty; monthly benefit**

Sec. 9.6. (a) This section applies to an active or retired member who dies other than in the line of duty (as defined in section 10.1 of this chapter).

(b) A payment shall be made to the surviving spouse of a deceased member in an amount fixed by ordinance, but at least an amount equal to the following:

(1) To the surviving spouse of a member who died before January 1, 1989, an amount equal to thirty percent (30%) of the monthly pay of a first class patrolman per month during the surviving spouse's life if the spouse did not remarry before September 1, 1983. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(2) Except as otherwise provided in this subdivision, to the surviving spouse of a member who dies after December 31, 1988, an amount per month, during the spouse's life, equal to the greater of:

(A) thirty percent (30%) of the monthly pay of a first class patrolman; or

(B) fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death.

However, if the deceased member was not entitled to a benefit because the member had not completed twenty (20) years of service, for purposes of computing the amount under clause (B), the member's benefit shall be considered to be fifty percent (50%) of the monthly salary of a first class patrolman. The amount provided in this subdivision is subject to adjustment as provided in subsection (e).

(c) Except as otherwise provided in this subsection, a payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longer. However, the total of benefits under this subsection added to the benefits under subsection (b) may not exceed the maximum benefits computed under section 9 of this chapter for pension payments to a member who retires from active service after twenty (20) years or more of active service. This maximum benefit

is equal to fifty percent (50%) of the salary of a first class patrolman in the police department plus, for a member who retired before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service of the retired member over twenty (20) years or, for a member who retires after December 31, 1985, plus one percent (1%) of the first class patrolman's salary for each six (6) months of service of the retired member over twenty (20) years. However, the maximum benefit may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman.

(d) Except as otherwise provided in this subsection, if a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection (c) but does leave a dependent parent or parents, an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month from the time of the member's death shall be paid to the dependent parent or parents during their dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. The board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the fund or other circumstances make this action necessary.

(e) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

*As added by P.L.118-2000, SEC.6.*

#### **IC 36-8-6-9.7**

##### **Members dying in line of duty before September 1, 1982; monthly benefit for surviving spouse, children, or parents**

Sec. 9.7. (a) This section applies to a member who died in the line of duty (as defined in section 10.1 of this chapter) before September 1, 1982.

(b) A payment shall be made to the surviving spouse of a deceased member in an amount fixed by ordinance, but at least an amount equal to thirty percent (30%) of the monthly pay of a first class patrolman per month during the surviving spouse's life if the spouse did not remarry before September 1, 1983. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(c) Except as otherwise provided in this subsection, a payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month to each child:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longer. However, the total of benefits under this subsection added to the benefits under subsection (b) may not exceed the maximum benefits computed under section 9 of this chapter for pension payments to a member who retires from active service after twenty (20) years or more of active service. This maximum benefit is equal to fifty percent (50%) of the salary of a first class patrolman in the police department plus, for a member who retired before January 1, 1986, two percent (2%) of the first class patrolman's salary for each year of service of the retired member over twenty (20) years or, for a member who retires after December 31, 1985, plus one percent (1%) of the first class patrolman's salary for each six (6) months of service of the retired member over twenty (20) years. However, the maximum benefit may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman.

(d) If a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection (c) but does leave a dependent parent or parents, an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month from the time of the member's death shall be paid to the dependent parent or parents during their dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. The board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the fund or other circumstances make this action necessary.

(e) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or
- (3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered

by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for the coverage under subdivision (1), (2), or (3).

*As added by P.L.118-2000, SEC.7. Amended by P.L.86-2003, SEC.2.*

### **IC 36-8-6-9.8**

#### **Funeral benefits**

Sec. 9.8. (a) Benefits paid under this section are subject to section 1.5 of this chapter.

(b) The 1925 fund shall be used to pay funeral benefits to the heirs or estate of an active or a retired member of the police department who has died from any cause, in an amount fixed by ordinance, but at least twelve thousand dollars (\$12,000).

*As added by P.L.200-1984, SEC.1. Amended by P.L.47-1988, SEC.2; P.L.55-1989, SEC.51; P.L.197-1993, SEC.2; P.L.169-1994, SEC.2; P.L.231-1997, SEC.2; P.L.40-1997, SEC.4; P.L.49-1998, SEC.2; P.L.118-2000, SEC.8; P.L.28-2008, SEC.1.*

### **IC 36-8-6-9.9**

#### **Repealed**

*(Repealed by P.L.200-1984, SEC.7.)*

### **IC 36-8-6-10**

#### **Repealed**

*(Repealed by P.L.50-1984, SEC.9.)*

### **IC 36-8-6-10.1**

#### **Members dying in line of duty after August 31, 1982; monthly benefit for surviving spouse, children, or parents**

Sec. 10.1. (a) This section applies to a member who dies in the line of duty after August 31, 1982.

(b) The surviving spouse is entitled to a monthly benefit, during the spouse's lifetime, equal to the benefit to which the member would have been entitled on the date of the member's death, but no less than fifty percent (50%) of the monthly wage received by a first class patrolman. If the surviving spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

(c) A payment shall also be made to each child of a deceased member less than eighteen (18) years of age, in an amount fixed by ordinance, but at least an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month to each child:

- (1) until the child becomes eighteen (18) years of age;
- (2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school



or is a full-time student at an accredited college or university; or  
(3) during the entire period of the child's physical or mental disability;

whichever period is longer.

(d) The surviving children of the deceased member who are eligible to receive a benefit under subsection (c) may receive an additional benefit in an amount fixed by ordinance, but the total additional benefit under this subsection to all the member's children may not exceed a total of thirty percent (30%) of the monthly wage received by a first class patrolman. However, this limitation does not apply to the children of a member who have a physical or mental disability.

(e) If a deceased member leaves no surviving spouse and no child who qualifies for benefits under subsection (c) but does leave a dependent parent or parents, an amount equal to twenty percent (20%) of the monthly pay of a first class patrolman per month from the time of the member's death shall be paid to the dependent parent or parents during their dependency. When both parents survive, the total amount is still twenty percent (20%), to be paid to them jointly. In all cases of payment to a dependent relative of a deceased member, the board is the final judge of the question of necessity and dependency and of the amount to be paid. The board may also reduce or terminate temporarily or permanently a payment to a dependent relative of a deceased member when it determines that the condition of the fund or other circumstances make this action necessary.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable under this section shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(g) For purposes of this section, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness caused by incident, accident, or violence that results from any action that the member in the member's capacity as a police officer:

(1) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; or

(2) performs in the course of controlling or reducing crime or enforcing the criminal law.

The term includes a death presumed incurred in the line of duty under IC 5-10-13.

(h) The unit of local government that employed the deceased member shall after December 31, 2003, offer to provide and pay for health insurance coverage for the member's surviving spouse and for each natural child, stepchild, or adopted child of the member:

(1) until the child becomes eighteen (18) years of age;

(2) until the child becomes twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; or

(3) during the entire period of the child's physical or mental disability;

whichever period is longest. If health insurance coverage is offered by the unit to active members, the health insurance provided to a surviving spouse and child under this subsection must be equal in coverage to that offered to active members. The offer to provide and pay for health insurance coverage shall remain open for as long as there is a surviving spouse or as long as a natural child, stepchild, or adopted child of the member is eligible for the coverage under subdivision (1), (2), or (3).

*As added by Acts 1982, P.L.214, SEC.1. Amended by P.L.364-1983, SEC.2; P.L.200-1984, SEC.2; P.L.196-1988, SEC.1; P.L.1-1989, SEC.70; P.L.1-1991, SEC.210; P.L.52-1993, SEC.3; P.L.40-1997, SEC.5; P.L.118-2000, SEC.9; P.L.62-2002, SEC.1; P.L.185-2002, SEC.6; P.L.86-2003, SEC.3; P.L.99-2007, SEC.215.*

### **IC 36-8-6-11**

#### **Members dismissed after 20 years' service; benefits**

Sec. 11. The 1925 fund shall be used to pay an amount, equal to the pensions provided by this chapter in the case of voluntary retirement after twenty (20) years' service, to a member of the police department who is dismissed for any reason after having been in actual service for twenty (20) years, including two percent (2%) additional for each full year of service in excess of twenty (20) years' service. However, a pension under this section may not exceed in any year an amount greater than seventy-four percent (74%) of the salary of a first class patrolman.

*As added by Acts 1981, P.L.309, SEC.55.*

### **IC 36-8-6-12**

#### **Reduction of benefits after first payment**

Sec. 12. The monthly pension payable to a member or survivor under this chapter may not be reduced below the amount of the first full monthly pension received by that person.

*As added by Acts 1981, P.L.309, SEC.55.*

### **IC 36-8-6-13**

#### **Disability retirees; orders, discipline, and duties; examination by police surgeon; transcripts, reports, records, and other material**

Sec. 13. (a) A member of the police department placed on the retired list, except those that have served on the department for twenty (20) years or more and have been retired for that reason, shall report for duty to the chief of police as is provided in the bylaws of the local board. A member is then subject to the orders and discipline of the chief and shall perform the duties that are required of him and for which, in the opinion of the police surgeon, he is fit, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. He shall be paid full salary for these duties.

(b) If a retired member refuses to obey orders or breaches discipline, the chief shall report the member at once to the safety board for action that is considered proper for the good of the service. A member is subject to punishment and dismissal in the same manner

as officers in active service. The pension to which the retired member is entitled ceases upon his expulsion, and the pension is subject to the action considered proper by the safety board.

(c) The police surgeon of the municipality shall examine members of the police department when:

- (1) the local board requests it;
- (2) a member requests it for the purpose of certifying his physical or mental condition to the local board; or
- (3) he considers it proper.

The surgeon shall then certify to the local board the true physical or mental condition of the person.

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

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

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.4-1992, SEC.35.*

#### **IC 36-8-6-14**

##### **Priority of claims on insufficient funds; procedure for making pension payments; exemption of payments from judicial process**

Sec. 14. (a) If there is not sufficient money to the credit of the 1925 fund to pay all claims against it in full, claims arising from the death of members of the department shall be paid in full first with as little delay as possible, after which an equal percentage shall be paid upon all other claims to the full extent of the money on hand, until the fund is replenished.

(b) All pensions shall be paid by the treasurer of the local board at his office at the same time and in the same installments as the members of the police department are paid.

(c) All pensions payable out of the 1925 fund are exempt from seizure or levy upon attachment, execution, supplemental process, and all other process, whether mesne or final. Except as provided in section 21 of this chapter, pensions are not subject to sale, assignment, or transfer by a beneficiary.

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.10-1993, SEC.14.*

#### **IC 36-8-6-15**

##### **Eligibility of employees for pension plan; age; medical examination**

Sec. 15. A pension may not be paid to an employee of the police department who at the time of his appointment was thirty-six (36) years of age or older, or who failed at that time to pass the medical examination required by the board. However, such a person is exempt from paying or contributing to the 1925 fund.

*As added by Acts 1981, P.L.309, SEC.55.*

#### **IC 36-8-6-16**

##### **Eligibility of persons employed when fund established**

Sec. 16. (a) Notwithstanding section 15 of this chapter, all employees of the police department at the time a municipality established a 1925 fund, regardless of their age at the time they became members of the department, became members of the 1925 fund and are entitled to all the benefits of it. They shall pay the assessments prescribed by and are subject to this chapter.

(b) A member of the police department who:

- (1) was in active service on March 9, 1935;
- (2) was a member of the 1925 fund;
- (3) passed the physical examination required by the local board;
- (4) had previous service in the police department; and
- (5) was thirty-six (36) years of age or older at the time of his reinstatement or reappointment;

is entitled to all of the benefits of the 1925 fund, with all of the years of active service with the police department counted in determining his eligibility for retirement.

*As added by Acts 1981, P.L.309, SEC.55.*

#### **IC 36-8-6-17**

##### **Discontinuance or reduction of benefits; failure to comply with requirements of local board; failure to report**

Sec. 17. If a person who has received a benefit from the 1925 fund fails to report for duty or for examination, or otherwise fails to comply with legal requirements imposed by the local board, the local board may, after notice to the person, discontinue or reduce future payments.

*As added by Acts 1981, P.L.309, SEC.55. Amended by P.L.224-1991, SEC.1.*

#### **IC 36-8-6-18**

##### **Pension funds governed by other laws**

Sec. 18. If a second or third class city maintains a police pension fund that pays a smaller amount to the beneficiary under prior statutes governing the pension fund, this chapter does not increase those amounts.

*As added by Acts 1981, P.L.309, SEC.55.*

#### **IC 36-8-6-19**

##### **Items excluded when computing benefits; liability for overpayment**

Sec. 19. (a) Remuneration or allowances for fringe benefits, incentive pay, holiday pay, insurance, clothing, automobiles, firearms, education, overtime, or compensatory time off may not be used in the computation of benefits under this chapter.

(b) If the remuneration or allowances described in subsection (a) were used to compute benefits for a recipient who began receiving benefits before May 2, 1977, this computation may continue only for that recipient and only during the eligibility period for benefits. The municipality and the official involved are not liable for making the overpayment, and a recipient is not required to repay the overpayment.

*As added by Acts 1981, P.L.309, SEC.55.*

**IC 36-8-6-20**

**Special lump sum death benefit in addition to other benefits**

Sec. 20. (a) As used in this section, "dies in the line of duty" has the meaning set forth in section 10.1 of this chapter.

(b) A special death benefit of seventy-five thousand dollars (\$75,000) for a fund member who dies in the line of duty before January 1, 1998, and one hundred fifty thousand dollars (\$150,000) for a fund member who dies in the line of duty after December 31, 1997, shall be paid in a lump sum by the Indiana public retirement system from the pension relief fund established under IC 5-10.3-11 to the following relative of a fund member who dies in the line of duty:

- (1) To the surviving spouse.
- (2) If there is no surviving spouse, to the surviving children (to be shared equally).
- (3) If there is no surviving spouse and there are no surviving children, to the parent or parents in equal shares.

(c) The benefit provided by this section is in addition to any other benefits provided under this chapter.

*As added by P.L.223-1986, SEC.1. Amended by P.L.225-1991, SEC.1; P.L.53-1993, SEC.2; P.L.49-1998, SEC.3; P.L.35-2012, SEC.110.*

**IC 36-8-6-21**

**Rollover to eligible retirement plan**

Sec. 21. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the 1925 fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

*As added by P.L.10-1993, SEC.15.*