

FIRES

CHAPTER 187

H. B. No. 646

(Johnston, Stockman, Brown, Wheeler,
(Saugstad, Lowe, Bye)

ALTERNATE FIREMEN'S RELIEF ASSOCIATION PLAN

AN ACT

To provide for an alternate firemen's relief association plan whereby firemen can participate in a disability pension and retirement pension program, and the surviving dependents of a deceased fireman can receive pension payments and authorizing a tax levy.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Alternate Firemen's Relief Association Plan; Election of Plan To Be Used.) The provisions of this Act shall be an alternate firemen's retirement and disability plan which may be implemented in lieu of the plan provided for in chapter 18-05 of the North Dakota Revised Code of 1943, as amended. Within sixty days after the effective date of this Act, a vote shall be taken among the members of each firemen's relief association now in existence within the state to determine whether the association shall adopt the plan authorized by this Act or retain the plan established in chapter 18-05 of the North Dakota Revised Code of 1943, as amended; however, if the members of the association vote to adopt the plan authorized by this Act such plan shall not become operative until the city government of the community in which the fire department is located has approved the plan.

§ 2. Operation of Association.) The relief association shall be organized, operated and maintained in accordance with its articles of incorporation and its bylaws by firemen who are members of the fire department. It may regulate and manage its own affairs and for that purpose has such corporate powers as are necessary and useful, subject to the regulations and restrictions of the laws of this state pertaining to corporations.

§ 3. Who Deemed Firemen.) For purposes of this Act, the term "fireman" shall mean any person, who is regularly entered on the payroll of the department serving on active duty and engaged in the hazards of fire fighting, but does not include a probationary or a substitute fireman or any person employed irregularly by the fire department.

§ 4. Accrued Rights Not Destroyed By This Plan: Transfer of Funds; Records.) Any fireman who is a member of the relief association which has been established under chapter 18-05 at the effective date of this Act, may continue as a member of the association created by this Act if the department of which he is a member has elected to come under the provisions of this Act, and any member of the relief association established under chapter 18-05 receiving pensions or benefits or widow and/or children receiving pensions or benefits shall continue to receive such pensions or benefits as are prescribed and being paid under existing association bylaws on the effective date of this Act, and any fireman who is a member of an association maintained under chapter 18-05, and who shall become eligible for full pension under such association's bylaws shall not be penalized by any conditions of this Act. Whenever a department votes to come under the provisions of this Act, any and all funds or accounts and all other records and property maintained by any relief association being discontinued shall be transferred to the relief association being established under this Act.

§ 5. Application for Membership.) When any fireman hereafter employed desires to become a member of the relief association provided by this Act, he shall make written application therefor within ninety days after the date he is entered on the payroll of the department. The application shall be made on a form supplied by the association, and shall be accompanied by the certificate of a physician as required by the association's bylaws. The application and certificate shall be filed with the secretary of the association, with required fees, and thereafter the board of examiners of the association shall make an investigation and file its report thereof with the secretary. The association shall act upon an application within ninety days from the date it is filed with the secretary.

§ 6. Association May Deny Membership to Mentally, Physically Unsound.) The association may deny any applicant membership who is not physically and mentally sound. Additional requirements for entrance age, entrance fees and annual dues may be prescribed in the bylaws of the association.

§ 7. Officers.) The officers of the association shall be a president, and a vice president, both of whom shall be elected from among members of the board of trustees, a secretary-treasurer, a board of trustees and a finance committee. All such officers shall be elected in the manner and for the terms prescribed in its articles of incorporation and bylaws. The board of trustees shall manage the affairs of the association. The secretary-treasurer shall furnish a corporate bond to the association for the faithful performance of his duties

in an amount to be determined by the association. The premium on the bond shall be paid by the association. The secretary-treasurer may be paid a salary not to exceed two dollars per member annually.

§ 8. Report of Receipts and Expenditures Regarding State Funds To Be Filed With State and City Auditor.) Prior to February first of each year, the secretary-treasurer shall prepare an itemized report of all receipts and expenditures of state funds for the preceding year. One certified copy thereof shall be filed with the city auditor and one with the state auditor. Neither the city nor the state shall pay any money to the relief association until such copy is filed.

§ 9. Apportioning Insurance Tax Received by Municipality.) The amount received under section 18-0406 by the municipal treasurer in a municipality having a paid fire department and a duly organized and incorporated firemen's relief association shall, except as hereafter provided, be apportioned as follows: one-half thereof shall be placed in a fund to be disbursed by the governing body of the municipality in maintaining the fire department, and one-half thereof shall be paid to the secretary-treasurer of the firemen's relief association. In addition, thereto, the governing body of the municipality may in its discretion pay all or any portion of the amount normally disbursed in maintaining the fire department to the secretary-treasurer of the firemen's relief association if its financial condition shall make such disposition necessary or advisable.

§ 10. City Shall Make Additional Levy.) At the time the tax levies for the support of the city are made, and in addition thereto, the governing body of any city with a population of thirty-eight thousand or more, according to the latest federal census figure, which shall have adopted this plan, shall levy a tax of one one-hundredth mill on all taxable property within the city, for each active member of the fire department relief association at the time the levy is made. This tax shall be levied notwithstanding the city maximum annual tax levy for all purposes as limited by statute. This tax is in addition to the tax levy as so limited.

At the time the tax levies for the support of the city are made, and in addition thereto, the governing body of any city with a population of thirty-eight thousand or less, according to the latest federal census figure, which shall have adopted this plan, shall levy a tax of two one-hundredths mill on all taxable property within the city, for each active member of the fire department relief association at the time the levy is made. This tax shall be levied notwithstanding the city maximum annual tax levy for all purposes as limited by statute. This tax is in addition to the tax levy as so limited.

§ 11. Proceeds From Levy To Be Forwarded to Association.) Each year in which the levy provided for in section 10 of this Act is made, immediately after April 1 and September 1 the proceeds of the levy, together with any interest and penalties collected thereon, shall be forwarded by the county treasurer to the city treasurer, and after certification by the city auditor, the city treasurer shall pay over such amounts to the secretary-treasurer of the firemen's relief association.

§ 12. Firemen to Contribute to Association Fund.) The officer in charge of the finances of the city shall deduct from the salary of each fireman participating in the plan provided in this Act an amount to be determined by the bylaws of the fireman's relief association but which shall be not less than five percent of the monthly salary of a first class fireman, until such firemen have completed thirty years service with the department at which time the amount deducted shall be decreased to a lesser amount to be prescribed by the bylaws of the relief association, but which shall be not less than two and one-half percent of the monthly salary of a first class fireman. This amount shall be paid to the secretary-treasurer of the relief association monthly and shall be credited by the association to each fireman individually in the state fund. All moneys paid into city pension funds prior to the effective date of this Act by firemen participating in the plan provided for in this Act shall be paid to the secretary-treasurer of the association and shall be credited by the association to the individual member in the state fund.

§ 13. Association State Fund and Association General Fund.) The moneys received by the association are to be kept in an "association state fund" or in an "association general fund". The moneys received from the state, city, or employee's salary contribution shall be deposited in the "association state fund" and may be expended only for the purposes named in section 14. All other moneys shall be deposited in the "association general fund" and may be expended for other purposes related to the general principles for which this Act is established. The relief association shall manage and control all funds that come into its possession. Moneys in these funds may be invested in bonds of the United States of America, bonds of the state of North Dakota or any other state, in certificates of indebtedness of the state of North Dakota, in any bonds or certificates of indebtedness of any political subdivision of the state of North Dakota which constitute the general obligations of the issuing tax authority, or the Bank of North Dakota or any other bank or savings and loan association which is insured by the United States of America.

§ 14. Disbursement of Moneys From Association State Fund.) The amounts paid into the relief association by the

state, city, and employee's salary contribution and set aside in the "association state fund" shall be appropriated and disbursed only for:

1. The payment of disability or service pensions to members of the association;
2. Pensions to widows and children or orphans of members or retired members;
3. The payment of the salary of the secretary-treasurer and the premiums on his bond;
4. Funeral payments;
5. Cost of the state audit;
6. Essential postage; and
7. Actuarial study.

§ 15. Service Pensions: Qualifications.)

1. A monthly service pension shall be paid to members of the association with the following qualifications:

Years of service	Years of age at retirement	Percent of first class fireman's monthly salary on January 1 during year the pension is paid
20	50	40%
21	51	42%
22	52	44%
23	53	46%
24	54	48%
25	55	50%
26	56	52%
27	57	54%
28	58	56%
29	59	58%
30	60	60%

2. All members must serve twenty years before they shall be eligible for a service pension; however, any member who has twenty years of service and who has not attained the age of fifty years, shall have the right to retire from the department without forfeiting his right to a service pension. Such person shall, upon application, be placed on the deferred pension roll of the association, and after he has reached the age of fifty years, the association shall, upon application therefor, pay his service pension from the date he attains eligibility at a rate of forty percent of the monthly salary of a first class fireman as determined on January 1 of the year in which the pension is paid. A member having thirty years service can be placed upon the deferred pension roll until he reaches the age of sixty years, at which time he shall be allowed the maximum payment provided for in the schedule in subsection 1 of this

section. Any person making such application thereby waives all other rights, claims or demands against the association for any cause that may have arisen from, or that may be attributable to, his service on the fire department.

§ 16. Disability Pensions: Qualifications.) Any member of the relief association who is unable because of physical or mental disability, to perform the duties of a fireman shall receive monthly a disability pension equal to fifty percent of the monthly salary of a first class fireman on January 1 of the year that the pension is being paid, unless such member is eligible for a larger service pension in which case he shall draw an amount equal to his service pension. No member shall receive a disability pension unless he is disabled for a period of at least seven consecutive days, at which time he shall be paid from the time of disability.

§ 17. Pensions to Widows and Children of Deceased Members.) When a service pensioner, disability pensioner, deferred pensioner, or an active member of a relief association dies leaving:

1. A widow to whom he was married while an active member of the association; or
2. A child or children who were living while the deceased was on the payroll of the fire department, or who were born within nine months after said decedent was withdrawn from the payroll of said fire department; or
3. Both such widow and such children;

then such widow and children shall be entitled to a monthly pension as follows:

- (1) If the deceased leaves only a widow, a pension in the sum of forty percent of a first class fireman's monthly salary on January 1 during year the pension is paid to her during her natural life or until she remarries;
- (2) If the deceased leaves both a widow and children, a monthly pension to the widow in the sum of forty percent of a first class fireman's monthly salary on January 1 during year the pension is paid, for the rest of her natural life or until she remarries, and to the parent or guardian of any children under the age of eighteen years of age there shall be paid monthly twenty percent of a first class fireman's monthly salary to be divided equally among such children;
- (3) If the deceased leaves only children, a monthly pension shall be paid to the guardian of such child or children for such child or children in the sum of sixty percent of a first class fireman's monthly salary on January 1 during the year the pension is paid, to be divided equally

among such children, provided however, that if there is only one surviving child, he shall receive a sum equal to forty percent of a first class fireman's monthly salary. All pensions to child or children shall terminate when the child or children reaches the age of eighteen years.

§ 18. Proportional Decrease in Benefits if Funds Not Sufficient.) If the balances of the funds in a city of fifty thousand or more shall decrease to \$250,000; in a city with a population of over forty thousand but less than fifty thousand shall decrease to \$100,000; in a city with a population of thirty-eight thousand or less shall decrease to \$50,000, the benefit provided for in sections 15, 16, and 17 of this Act shall be proportionately decreased, but in no case shall they be decreased more than twenty percent at any one time. When the balances return to the above figures then the benefits shall again be paid as prescribed in sections 15, 16 and 17.

§ 19. Fund Based Upon Actuarial Tables.) The pension fund shall be based upon actuarial tables and the association shall have the authority to engage an actuary for studies of the plan when such a practice is deemed necessary by the association.

§ 20. Members Withdrawing From Association: Members in Military Service.) Any member who withdraws from employment in the department or who ceases to be a member of the association, shall be entitled to a return of fifty percent of his contributions paid to the association, without interest. Any benefits already received by such person shall be deducted from the fifty percent which would ordinarily be returned to him. Any applicant for a service pension who subsequent to his entry into the service of such fire department, has served in the military forces of the United States, shall not have the period of such military service deducted in the computation of the period of service herein provided for, but such military service shall be construed and counted as a part and portion of his active duty in said fire department, provided however, that credit for such military service shall not exceed five years. Any such member, who was a full-time regular fireman at the time of his entry into the armed services and who seeks credit for such service, shall, upon his return to employment in the fire department, pay into the pension fund for each year of military service the same amount of money as he would have contributed from his salary had he been in the continuous employment of the department.

§ 21. Money Received Under Pension Not Subject to Legal Process: Assignments.) Payments made or to be made by a firemen's relief association to any member of the pension roll shall not be subject to judgment, garnishment, execution,

or other legal process. Persons entitled to such payments shall not have the right to assign the same, and the association shall have no authority to recognize any assignment or to pay over any sum which has been assigned.

§ 22. State Examiner to Examine Books of Relief Association: Report of Unauthorized Spending to Governor: Duty of Governor.) The state examiner, annually shall examine the books and accounts of the secretary-treasurer of each firemen's relief association receiving funds under the provisions of this Act. If he finds that the money, or any part of it, has been or is being expended for unauthorized purposes, he shall report the facts to the governor. Thereupon, the governor shall direct the state auditor to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it shall be made to appear to the state examiner, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand. Each firemen's relief association shall pay into the state treasury fees for such annual examinations at the same rate as fixed by section 6-0121 of the North Dakota Revised Code of 1943 for the examination of the books and accounts of city auditors and city treasurers.

§ 23. Funeral Benefits.) The bylaws of the association shall provide for funeral benefits for its active or retired members not to exceed the sum of \$500 for each funeral.

§ 24. Construction.) This Act shall not be construed as abridging, repealing, or amending the laws of this state relating to volunteer firemen of this state.

§ 25. Effect of Invalidity of Part of This Act.) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Act, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

Approved March 21, 1959.

CHAPTER 188

H. B. No. 667

(Trom, Guy, Idso, Lindberg)

SALE OF CERTAIN FIRE EXTINGUISHERS PROHIBITED

AN ACT

Prohibiting the sale, distribution and possession of fire extinguishers containing toxic or poisonous vaporizing liquids, providing a penalty, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Prohibiting Sale, Distribution and Possession of Fire Extinguishers Containing Certain Toxic and Poisonous Vaporizing Liquids.) No person, partnership or corporation shall sell, distribute or purchase any fire extinguisher, if the extinguisher contains any of the following liquids:

Carbon tetrachloride CCl_4

Chlorobromomethane CH_2BrC_1

Azeotropic chlormethane CM_7

Bromochlorodifluoromethane CBrC_1F_2

Dibromodifluoromethane CBr_2F_2

1,2-Dibromo-2-chloro-1, 1,2-tribluoroethane

$\text{CBr}_2\text{CBrClF}$

1,2-Dibromo-2, 2-difluoroethane $\text{CH}_2\text{BrCBrF}_2$

Methyl bromide CH_3Br

Ethylene dibromide $\text{CH}_2\text{BrCH}_2\text{Br}$

1,2-Dibromotetrafluoroethane $\text{CBrF}_2\text{CBrF}_2$

Hydrogen bromide HBr

Methylene bromide CH_2Br_2

Bromodifluoromethane CHBrF_2

Bromotrifluoromethane CBrF_3

Dichlorodifluoromethane CCl_2F_2

or any other toxic or poisonous vaporizing liquid.

§ 2. Penalty.) Any person violating the provisions of this Act shall be punishable by a fine not to exceed one hundred dollars, or not to exceed thirty days in jail, or by both such fine and imprisonment.

§ 3. Emergency.) An emergency is hereby declared to exist and this Act shall take effect and be in force from and after its passage and approval.

Approved March 17, 1959.

CHAPTER 189

H. B. No. 744
(Neukircher, Fitch, Loewen)

REPORTING FIRE LOSSES

AN ACT

To amend and reenact section 18-0105 of the 1957 Supplement to the North Dakota Revised Code of 1943, providing for the reporting of fire losses to the state fire marshal by insurers authorized to transact fire insurance business in the state of North Dakota.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 18-0105 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

18-0105. Insurance Companies to Report Fire Losses to State Fire Marshal.) Each insurer authorized to transact fire insurance business in this state is hereby required to report to the state fire marshal, either directly or through an approved agency, fire losses on property insured in the company, giving the name of the insured, the date of the fire, the amount of loss, the loss paid, the character of the property destroyed or damaged, and the supposed cause of the fire. Provided, however, the commissioner may waive the reporting of such losses which are deemed unimportant because of the small amount involved to the end that a saving in time and expense will result. This report shall be mailed to the state fire marshal as soon as possible after notice of loss is received by the company. This report shall be in addition to, and not in lieu of, any report the company may be required to make by any law of this state to the commissioner of insurance.

Approved March 4, 1959.

CHAPTER 190

H. B. No. 655
(Brown and Johnston)

RURAL FIRE PROTECTION DISTRICTS, ANNEXATION
OF CITIES AND VILLAGES

AN ACT

To amend and reenact section 18-1001 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to territory to be annexed and petition, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 18-1001 of the 1957 Supplement to the North Dakota Revised Code of 1943, is hereby amended and reenacted to read as follows:

18-1001. Territory To Be Annexed; Petition.) Whenever sixty percent of the freeholders residing in any rural territory, equivalent in area to one township or more, elects to form, organize, establish, equip, and maintain a rural fire protection district, they shall signify such intention by presenting to the county auditor of the county or counties in which such territory is situated, a petition setting forth the desires and purposes of such petitioners. Such petition shall contain the full names and postoffice addresses of such petitioners; the suggested name of the proposed district, the area in square miles to be included therein, and a complete description according to government survey, wherever possible, of the boundaries of the real properties intended to be embraced in the proposed rural fire protection district. The petitioners shall also present to the county auditor a plat or map showing the suggested boundaries of the proposed district, and shall deposit with the county auditor a sum sufficient to defray the expense of publishing the notices required by sections two and three of this Act. Provided further that any city or village located within the area, whether such city or village has a fire department or not, may be included in the rural fire district if sixty percent or more of the electors residing therein sign such petition.

§ 2. **Emergency.)** This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1959.

CHAPTER 191

H. B. No. 654
(Brown and Johnston)

RURAL FIRE PROTECTION DISTRICT ANNEXATION, REPEAL

AN ACT

To repeal subdivisions a and b of subsection 1 of section 18-1011 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to territory to be annexed, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Repeal.) Subdivisions a and b of subsection 1 of section 18-1011 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby repealed.

§ 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1959.