

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 601

Short Title: Disability Income Plan Amend.

(Public)

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Sponsors: Senator Johnson.

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Referred to: Pensions and Retirement.

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March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DISABILITY INCOME PLAN OF NORTH CAROLINA TO PAY ATTORNEYS' FEES ON ACCOUNT OF SOCIAL SECURITY AWARDS, TO REPEAL THE BENEFIT REDUCTION ON ACCOUNT OF SOCIAL SECURITY COST-OF-LIVING ADJUSTMENTS, TO ESTABLISH DEADLINES FOR MAKING APPLICATION FOR BENEFITS AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-105 reads as rewritten:

**"§ 135-105. Short-term disability benefits.**

(a) Upon the application of a participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant, any ~~Any~~ participant who becomes disabled and is no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided the participant makes application for such benefit within 180 days after the onset of disability as determined under G.S. 135-104(a), after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; provided further that the participant's employer and attending physician shall certify that such participant is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately

1 preceding the date of disability and further, salary continuation used during the period  
2 as provided in G.S. 135-104 shall count toward the aforementioned one year  
3 requirement. The Board of Trustees may extend this 180-day filing requirement upon  
4 receipt of clear and convincing evidence that application was delayed through no fault  
5 of the disabled participant and was delayed due to the employer's miscalculation of the  
6 end of the 180-day filing period. However, in no instance shall the filing period be  
7 extended beyond an additional 180 days.

8 Notwithstanding the requirement that the incapacity was incurred at the time of  
9 active employment, any participant who becomes disabled while on an employer  
10 approved leave of absence and who is eligible for and in receipt of temporary total  
11 benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97  
12 of the General Statutes, will be eligible for all benefits provided under this Article.

13 (b) The benefits as provided for in subsection (a) of this section shall commence  
14 on the first day following the waiting period and shall be payable for a period of 365  
15 days as long as the participant continues to meet the definition of disability. However, a  
16 disabled participant may elect to receive any salary continuation as provided in G.S.  
17 135-104 in lieu of short-term disability benefits; provided further, such election shall  
18 not extend the 365 days duration of short-term payments. An election to receive any  
19 salary continuation for any part of a given day shall be in lieu of any short-term benefit  
20 otherwise payable for that day, provided further, any lump-sum payout for vacation  
21 leave shall be treated as if the beneficiary or participant had exhausted the leave and  
22 shall be in lieu of any short-term benefit otherwise payable.

23 (c) The monthly benefit as provided in subsection (a) of this section shall be  
24 equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last  
25 payable to the participant prior to the beginning of the short-term benefit period as may  
26 be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent  
27 (50%) of 1/12th of the annual longevity payment to which the participant would be  
28 eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by  
29 monthly payments for Workers' Compensation to which the participant may be entitled.  
30 Provided, that should a participant have earnings in an amount greater than the short-  
31 term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar  
32 basis by the amount that exceeds the short-term benefit.

33 (d) The provisions of this section shall be administered by the employer and  
34 further, the benefits during the first six months of the short-term disability period shall  
35 be the full responsibility of and paid by the employer; Provided, further, that upon the  
36 completion of the initial six months of the short-term disability period, the employer  
37 will continue to be responsible for the short-term benefits to the participant, however,  
38 such employer shall notify the Plan, at the conclusion of the short-term disability period  
39 or upon termination of short-term disability benefits, if earlier, of the amount of short-  
40 term benefits paid and the Plan shall reimburse the employer the amounts so paid.  
41 Provided, however, an employer who fails to request reimbursement within 180 days  
42 from the conclusion of the short-term disability period or upon termination of short-term  
43 disability benefits, if earlier, shall not be entitled to reimbursement from the Plan of the  
44 amounts so paid.

1 (e) During the short-term disability period, a beneficiary may return to service  
2 for trial rehabilitation for periods of not greater than 40 continuous days of service.  
3 Such return will not cause the beneficiary to become a participant and will not require a  
4 new waiting period or short-term disability period to commence unless a different  
5 incapacity occurs. The period of rehabilitative employment shall not extend the period  
6 of the short-term disability benefits.

7 (f) A participant or beneficiary of short-term disability benefits or his legal  
8 representative or any person deemed by the Board of Trustees to represent the  
9 participant or beneficiary, or the employer of the participant or beneficiary, may request  
10 the Board of Trustees to have the Medical Board make a determination of eligibility for  
11 the short-term disability benefits as provided in this section or to make a preliminary  
12 determination of eligibility for the long-term disability benefits as provided in G.S. 135-  
13 106. A preliminary determination of eligibility for long-term disability benefits shall  
14 not preclude the requirement that the Medical Board make a determination of eligibility  
15 for long-term disability benefits.

16 (g) Upon the application of a beneficiary or participant or of his legal  
17 representative or any person deemed by the Board of Trustees to represent the  
18 beneficiary or participant, the ~~The~~ Board of Trustees may extend the short-term  
19 disability benefits of a beneficiary or participant beyond the benefit period of 365 days  
20 for an additional period of not more than 365 days; provided the Medical Board  
21 determines that the beneficiary's or participant's disability is temporary and likely to end  
22 within the extended period of short-term disability ~~benefits~~ benefits; provided further,  
23 the beneficiary or participant makes application for such benefit within 180 days after  
24 the short-term disability period ceases, after salary continuation payments cease, or after  
25 monthly payments for Workers' Compensation cease, whichever is later. The Board of  
26 Trustees may extend this 180-day filing requirement upon receipt of clear and  
27 convincing evidence that application was delayed through no fault of the disabled  
28 beneficiary or participant and was delayed due to the employers' miscalculation of the  
29 end of the 180-day filing period. However, in no instance shall the filing period be  
30 extended beyond an additional 180 days. During the extended period of short-term  
31 disability benefits, payment of benefits shall be made by the Plan directly to the  
32 beneficiary."

33 Sec. 2. G.S. 135-106 reads as rewritten:

34 "**§ 135-106. Long-term disability benefits.**

35 (a) Upon the application of a beneficiary or participant or of his legal  
36 representative or any person deemed by the Board of Trustees to represent the  
37 participant or beneficiary, any beneficiary or participant who has had five or more years  
38 of membership service may receive long-term disability benefits from the Plan upon  
39 approval by the Board of Trustees, commencing on the first day succeeding the  
40 conclusion of the short-term disability period provided for in G.S. 135-105, provided  
41 the beneficiary or participant makes application for such benefit within 180 days after  
42 the short-term disability period ceases, after salary continuation payments cease, or after  
43 monthly payments for Workers' Compensation cease, whichever is later; Provided, that  
44 the beneficiary or participant withdraws from active service by terminating employment

1 as a teacher or State employee; Provided, that the Medical Board shall certify that such  
2 beneficiary or participant is mentally or physically incapacitated for the further  
3 performance of duty, that such incapacity was incurred at the time of active employment  
4 and has been continuous thereafter, that such incapacity is likely to be permanent;  
5 Provided further that the Medical Board shall not certify any beneficiary or participant  
6 as disabled who is in receipt of any payments on account of the same incapacity which  
7 existed when the beneficiary first established membership in the Retirement System.  
8 The Board of Trustees may extend this 180-day filing requirement upon receipt of clear  
9 and convincing evidence that application was delayed through no fault of the disabled  
10 beneficiary or participant and was delayed due to the employers' miscalculation of the  
11 end of the 180-day filing period. However, in no instance shall the filing period be  
12 extended beyond an additional 180 days.

13 The Board of Trustees may require each beneficiary who becomes eligible to receive  
14 a long-term disability benefit to have an annual medical review or examination for the  
15 first five years and thereafter once every three years after the commencement of benefits  
16 under this section. However, the Board of Trustees may require more frequent  
17 examinations and upon the advice of the Medical Board shall determine which cases  
18 require such examination. Should any beneficiary refuse to submit to any examination  
19 required by this subsection or by the Medical Board, his long-term disability benefit  
20 shall be suspended until he submits to an examination, and should his refusal last for  
21 one year, his benefit may be terminated by the Board of Trustees. If the Medical Board  
22 finds that a beneficiary is no longer mentally or physically incapacitated for the further  
23 performance of duty, the Medical Board shall so certify this finding to the Board of  
24 Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability  
25 benefits effective on the last day of the month in which the Medical Board certifies that  
26 the beneficiary is no longer disabled.

27 As to the requirement of five years of membership service, any participant or  
28 beneficiary who does not have five years of membership service within the 96 calendar  
29 months prior to conclusion of the short-term disability period or cessation of salary  
30 continuation payments, whichever is later, shall not be eligible for long-term disability  
31 benefits.

32 Notwithstanding the requirement that the incapacity was incurred at the time of  
33 active employment, any participant who becomes disabled while on an employer  
34 approved leave of absence and who is eligible for and in receipt of temporary total  
35 benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97  
36 of the General Statutes, will be eligible for all benefits provided under this Article.

37 (b) After the commencement of benefits under this section, the benefits payable  
38 under the terms of this section shall be equal to sixty-five percent (65%) of 1/12th of the  
39 annual base rate of compensation last payable to the participant or beneficiary prior to  
40 the beginning of the short-term disability period as may be adjusted for percentage  
41 increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the  
42 annual longevity payment to which the participant or beneficiary would be eligible, to a  
43 maximum of three thousand nine hundred dollars (\$3,900) per month reduced by any  
44 primary Social Security disability benefits and by monthly payments for Workers'

1 Compensation to which the participant or beneficiary may be entitled, but the benefits  
2 payable shall be no less than ten dollars (\$10.00) a month. However, a disabled  
3 participant may elect to receive any salary continuation as provided in G.S. 135-104 in  
4 lieu of long-term disability benefits; provided such election shall not extend the first 36  
5 consecutive calendar months of the long-term disability period. An election to receive  
6 any salary continuation for any part of any given day shall be in lieu of any long-term  
7 benefit payable for that day, provided further, any lump-sum payout for vacation leave  
8 shall be treated as if the beneficiary or participant had exhausted the leave and shall be  
9 in lieu of any long-term benefit otherwise payable. Notwithstanding the foregoing,  
10 upon the completion of four years from the conclusion of the waiting period as provided  
11 in G.S. 135-104, the beneficiary's benefit shall be reduced by an amount, as determined  
12 by the Board of Trustees, equal to a primary Social Security disability benefit to which  
13 the beneficiary might be entitled had the beneficiary been awarded Social Security  
14 disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced  
15 by an amount, as determined by the Board of Trustees, equal to a primary Social  
16 Security retirement benefit to which the beneficiary might be entitled.

17 Notwithstanding the foregoing, a participant or beneficiary who has been approved  
18 for long-term disability benefits shall not receive a reduction of the monthly long-term  
19 disability benefit during the first 36 months of the long-term disability period by the  
20 monthly primary Social Security disability benefit to which the participant or  
21 beneficiary may be entitled, if any, until the participant or beneficiary has received, after  
22 the effective date of the long-term disability period, Social Security disability benefits  
23 equal to the amount of attorney fees, as authorized by the Social Security  
24 Administration, incurred by the participant or beneficiary in obtaining Social Security  
25 disability benefits. Provided, however, a beneficiary in receipt of long-term disability  
26 benefits who receives a retroactive award or a delayed payment of Social Security  
27 disability benefits for a prior period of time during which the beneficiary received long-  
28 term disability benefits without a reduction for Social Security disability benefits, the  
29 beneficiary shall be considered overpaid by the amount of long-term disability benefits  
30 that would not have been paid had the Social Security disability benefits not been  
31 delayed. Provided, however, any such overpayment of long-term disability benefits  
32 shall be reduced by the amount of any attorney fees, as authorized by the Social  
33 Security Administration, incurred by the beneficiary in obtaining the Social Security  
34 disability benefits. Provided further, credit for attorney fees shall not exceed the sum of  
35 four thousand dollars (\$4,000).

36 Notwithstanding the foregoing, the long-term disability benefit is payable so long as  
37 the beneficiary is disabled until the earliest date at which the beneficiary is eligible for  
38 an unreduced service retirement allowance from the Retirement System, at which time  
39 the beneficiary would receive a retirement allowance calculated on the basis of the  
40 beneficiary's average final compensation at the time of disability as adjusted to reflect  
41 compensation increases subsequent to the time of disability and the creditable service  
42 accumulated by the beneficiary, including creditable service while in receipt of benefits  
43 under the Plan.

1 (c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability  
2 benefits who has earnings during the long-term disability period shall have his long-  
3 term disability benefit reduced when the sum of the net long-term disability benefit and  
4 the earnings equals one hundred percent (100%) of monthly compensation adjusted as  
5 provided under G.S. 135-108. The net long-term benefit shall mean the long-term  
6 benefit amount payable as calculated under (b) above, after the reduction for Social  
7 Security benefits and Workers' Compensation benefits to which the beneficiary might  
8 be entitled. The net long-term disability benefit shall be reduced dollar-for-dollar for  
9 the amount of earnings in excess of the one hundred percent (100%) monthly limit.  
10 Any beneficiary exceeding the earnings limitations shall notify the Plan by the fifth of  
11 the month succeeding the month in which the earnings were received of the amount of  
12 earnings in excess of the limitations herein provided. Failure to report excess earnings  
13 may result in a suspension or termination of benefits as determined by the Board of  
14 Trustees.

15 (d) Notwithstanding the foregoing, a participant or beneficiary who has applied  
16 for and been approved by the Medical Board for long-term disability benefits may make  
17 an irrevocable election, within 90 days from the date of notification of such approval,  
18 and prior to receipt of any long-term disability benefit payments, to forfeit all pending  
19 and accrued rights to the long-term disability benefit including any ancillary benefits  
20 and retire on an early service retirement allowance or receive a return of accumulated  
21 contributions from the Retirement System."

22 Sec. 3. G.S. 135-108 reads as rewritten:

23 "**§ 135-108. Post disability benefit adjustments.**

24 The compensation upon which the short-term or long-term disability benefit is  
25 calculated under the provisions of G.S. 135-105(c) or G.S. 135-106(b) may be  
26 increased by any percentage across-the-board salary increase granted to employees of  
27 the State by the General Assembly and the benefits payable to beneficiaries shall be  
28 recalculated based upon the increased ~~compensation, compensation, reduced by any~~  
29 ~~percentage increase in Social Security benefits granted by the Social Security Administration~~  
30 ~~times the amount used in the reduction of benefits for primary Social Security disability or~~  
31 ~~retirement benefit as provided in G.S. 135-106(b).~~ The provisions of this section shall be  
32 subject to future acts of the General Assembly."

33 Sec. 4. In applying the provisions of G.S. 135-105(a) or (g) as amended by  
34 this act to any person who was eligible for short-term or extended short-term disability  
35 benefits under G.S. 135-105 but did not make timely application, the filing period may  
36 be extended until 180 days after the effective date of this act, and in applying the  
37 provisions of G.S. 135-105(d) as amended by this act to any employer who was eligible  
38 for reimbursement of short-term disability benefits paid under G.S. 135-105 but did not  
39 make timely application, the filing period may be extended until 180 days after the  
40 effective date of this act. The provisions of G.S. 135-106 as amended by this act shall  
41 apply to all persons with outstanding overpayments of benefits and to all persons who  
42 have unresolved petitions filed with the Office of Administrative Hearings concerning  
43 the reduction of the long-term disability benefit by the amount of the social security  
44 disability benefit the person is entitled to receive.

1           Sec. 5. This act is effective upon ratification.