

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1669

Short Title: Improve Disability Income Plan.

(Public)

Sponsors: Representatives Russell; and Hurley.

Referred to: Pensions and Retirement, if favorable, Appropriations.

May 28, 1998

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LAW GOVERNING THE DISABILITY INCOME PLAN
2 OF NORTH CAROLINA TO REQUIRE THAT THE DETERMINATION OF
3 DISABILITY BE MADE BY THE PLAN'S MEDICAL BOARD AND TO MAKE
4 CERTAIN OTHER CHANGES.
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6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 135-102(d) reads as rewritten:

8 "(d) The Department of State Treasurer and the Board of Trustees shall designate a
9 one or more Medical Board-Boards to be composed of not fewer than three nor more than
10 five-10 physicians not eligible for benefits under the Plan. physicians. It shall be the
11 responsibility of the participant to provide, at no cost to the Plan, medical documentation
12 of his or her disability sufficient to determine his or her eligibility for benefits under the
13 Plan. In disputed cases, other Other-physicians, medical clinics, institutions or agencies
14 may be employed to conduct such medical examinations and tests necessary to provide
15 the Medical Board with clinical evidence as may be needed to determine eligibility for
16 benefits under the Plan. Physicians retained upon the recommendation of the Medical
17 Board to examine and report on disability applicants and/or reexaminations of disability
18 beneficiaries shall be paid fees commensurate with the usual, customary, and reasonable
19 charges, as determined by the Medical Board, for such tests, examinations, procedures,
20 and reports as the Medical Board might request. The Medical Board shall investigate the

1 results of medical examinations, clinical evidence, all essential statements and
2 certifications by and on behalf of applicants for benefits and shall report in writing to the
3 Board of Trustees the conclusions and recommendations upon all matters referred to it."

4 Section 2. G.S. 135-103 is amended by adding a new subsection to read:

5 "(c) A person receiving benefits who returns to contributing membership service in
6 the Teachers' and State Employees' Retirement System or the Optional Retirement
7 Program shall not become an eligible participant, as defined in subsection (a) of this
8 section, and such person shall not be eligible for additional disability benefits on account
9 of becoming disabled for the further performance of the subsequent State employment,
10 while receiving benefits under this Article."

11 Section 3. G.S. 135-105 reads as rewritten:

12 **"§ 135-105. Short-term disability benefits.**

13 (a) Upon the application of a participant or of his or her legal representative or any
14 person deemed by the Board of Trustees to represent the participant, Any any participant
15 who becomes disabled and is no longer able to perform his usual occupation may, after at
16 least 365 calendar days succeeding his date of initial employment as a teacher or
17 employee and at least one year of contributing membership service, receive a benefit
18 commencing on the first day succeeding the waiting period; provided the participant
19 makes application for such benefit within 90 days after the onset of disability as
20 determined under G.S. 135-104(a), after salary continuation payments cease, or after
21 monthly payments for workers' compensation cease, whichever is later; provided further
22 that the participant's employer and attending physician-Medical Board shall certify that such
23 participant is mentally or physically incapacitated for the further performance of duty,
24 that such incapacity was incurred at the time of active employment and has been
25 continuous thereafter; but the Medical Board shall not certify any participant as disabled
26 who is in receipt of any payments on account of the same incapacity which existed when
27 the participant first established membership in the Retirement System. provided further
28 that the-The requirement for one year of contributing membership service must have been
29 earned within 36 calendar months immediately preceding the date of disability and
30 further, salary continuation used during the period as provided in G.S. 135-104 shall
31 count toward the aforementioned one year requirement. The Board of Trustees may
32 extend the 90-day filing requirement upon receipt of clear and convincing evidence that
33 the application was delayed due to the employer's miscalculation of the end of the 90-day
34 filing period. However, in no instance shall the filing period be extended beyond an
35 additional 90 days.

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

41 (b) The benefits as provided for in subsection (a) of this section shall commence
42 on the first day following the waiting period and shall be payable for a period of 365 days
43 as long as the participant continues to meet the definition of disability. However, a

1 disabled participant may elect to receive any salary continuation as provided in G.S. 135-
2 104 in lieu of short-term disability benefits; provided further, such election shall not
3 extend the 365 days duration of short-term payments. An election to receive any salary
4 continuation for any part of a given day shall be in lieu of any short-term benefit
5 otherwise payable for that day, provided further, any lump-sum payout for vacation leave
6 shall be treated as if the beneficiary or participant had exhausted the leave and shall be in
7 lieu of any short-term benefit otherwise payable.

8 (c) (See note) The monthly benefit as provided in subsection (a) of this section
9 shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation
10 last payable to the participant prior to the beginning of the short-term benefit period as
11 may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty
12 percent (50%) of 1/12th of the annual longevity payment to which the participant would
13 be eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by
14 monthly payments for Workers' Compensation to which the participant may be entitled.
15 The monthly benefit shall be further reduced by the amount of any payments from the
16 federal Veterans Administration, any other federal agency, or any payments made under
17 the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled
18 on account of the same disability. Provided, that should a participant have earnings in an
19 amount greater than the short-term benefit, the amount of the short-term benefit shall be
20 reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

21 (d) The provisions of this section shall be administered by the employer and
22 further, the benefits during the first six months of the short-term disability period shall be
23 the full responsibility of and paid by the employer; Provided, further, that upon the
24 completion of the initial six months of the short-term disability period, the employer will
25 continue to be responsible for the short-term benefits to the participant, however, such
26 employer shall notify the Plan, at the conclusion of the short-term disability period or
27 upon termination of short-term disability benefits, if earlier, of the amount of short-term
28 benefits paid and the Plan shall reimburse the employer the amounts so paid.

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

35 (f) A participant or beneficiary of short-term disability benefits or his legal
36 representative or any person deemed by the Board of Trustees to represent the participant
37 or beneficiary, or the employer of the participant or beneficiary, may request the Board of
38 Trustees to have the Medical Board make a determination of eligibility for the short-term
39 disability benefits as provided in this section or to make a preliminary determination of
40 eligibility for the long-term disability benefits as provided in G.S. 135-106. A
41 preliminary determination of eligibility for long-term disability benefits shall not
42 preclude the requirement that the Medical Board make a determination of eligibility for
43 long-term disability benefits.

1 (g) Upon the application of a beneficiary or participant or his or her legal
2 representative or any person deemed by the Board of Trustees to represent the beneficiary
3 or participant. The the Board of Trustees may extend the short-term disability benefits of
4 a beneficiary or participant beyond the benefit period of 365 days for an additional period
5 of not more than 365 days; provided the Medical Board determines that the beneficiary's
6 or participant's disability is temporary and likely to end within the extended period of
7 short-term disability benefits. benefits; provided further, the beneficiary or participant
8 makes application for such benefit within 90 days after the short-term disability period
9 ceases, after salary continuation payments cease, or after monthly payments for workers'
10 compensation cease, whichever is later. The Board of Trustees may extend this 90-day
11 filing requirement upon receipt of clear and convincing evidence that the application was
12 delayed due to the employer's miscalculation of the end of the 90-day filing period.
13 However, in no instance shall the filing period be extended beyond an additional 90 days.
14 During the extended period of short-term disability benefits, payment of benefits shall be
15 made by the Plan directly to the beneficiary."

16 Section 4. G.S. 135-111 reads as rewritten:

17 "**§ 135-111. Applicability of other pension laws.**

18 Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled
19 "Exemption from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection
20 against fraud"; and G.S. 135-17, entitled 'Facility of payment' shall be applicable to this
21 Article and to benefits paid pursuant to the provisions of this Article."

22 Section 5. Article 6 of Chapter 135 is amended by adding a new section to
23 read:

24 "**§ 135-115. Protection against fraud.**

25 A participant, beneficiary, physician, or any other person who shall knowingly make
26 any false statement or shall falsify or permit to be falsified any record or records,
27 including medical, in an attempt to defraud the Plan shall be guilty of a Class 1
28 misdemeanor. Should any false statement or falsified record or records result in a
29 beneficiary receiving more than he or she would have been entitled to receive had the
30 records been correct, such overpayment of benefits may be offset against any short-term
31 or long-term benefit, any retirement allowance, return of contributions, or any other right
32 accruing under this Chapter to the same person, the person's estate, or designated
33 beneficiary. The Board of Trustees may contract with such private investigators as it
34 deems necessary to investigate reports of abuse or fraud. Private investigators shall be
35 paid fees commensurate with the usual, customary, and reasonable charges for such
36 investigations, as determined by the Board of Trustees."

37 Section 6. This act becomes effective October 1, 1998, and applies to
38 disability applications filed on or after that date.