

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL 364

Short Title: Shorter Separation for Retired ADAs and APDs. (Public)

Sponsors: Senators Alexander and Johnson (Primary Sponsors).

Referred to: Rules and Operations of the Senate

March 24, 2025

A BILL TO BE ENTITLED
AN ACT TO ALLOW RETIRED ASSISTANT DISTRICT ATTORNEYS AND RETIRED
ASSISTANT PUBLIC DEFENDERS TO RETURN TO WORK FOR THE STATE AFTER
A THIRTY-DAY SEPARATION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 135-1(20) reads as rewritten:

(20) "Retirement" under this Chapter, except as otherwise provided, means the commencement of monthly retirement benefits along with termination of employment and the complete separation from active service with no intent or agreement, express or implied, to return to service. A retirement allowance under the provisions of this Chapter may only be granted upon retirement of a member. In order for a member's retirement to become effective in any month, the member must perform no work for an employer, including part-time, temporary, substitute, or contractor work, at any time during the six months immediately following the effective date of ~~retirement~~retirement, except that in the case of a member who is a retired assistant district attorney or retired assistant public defender, the period of separation required is 30 days. A member who is a full-time faculty member of The University of North Carolina may effect a retirement allowance under this Chapter, notwithstanding the six-month requirement above, provided the member immediately enters the University's Phased Retirement Program for Tenured Faculty as that program existed on May 25, 2011. For purposes of this subdivision, all of the following shall not be considered service or work:

...."

SECTION 1.(b) G.S. 135-3(d) reads as rewritten:

"(d) If a beneficiary who retired on an early or service retirement allowance under this Chapter is reemployed by, or otherwise engaged to perform services for, an employer participating in the Retirement System on a part-time, temporary, interim, or on a fee for service basis, whether contractual or otherwise at any time during (i) the six months immediately following the effective date of ~~retirement~~retirement or, (ii) if the beneficiary is a retired assistant district attorney or retired assistant public defender, the 30 days immediately following the effective date of retirement, then the option of the following subdivisions that has the lesser financial impact on the member, as determined by the Retirement System, shall be applied:

...."

SECTION 1.(c) G.S. 135-106(b) reads as rewritten:



"(b) After the commencement of benefits under this section, the benefits payable under the terms of this section during the first 36 months of the long-term disability period shall be equal to sixty-five percent (65%) of 1/12th of the annual base rate of compensation last payable to the participant or beneficiary prior to the beginning of the short-term disability period as may be adjusted for percentage increases as provided under G.S. 135-108, plus sixty-five percent (65%) of 1/12th of the annual longevity payment to which the participant or beneficiary would be eligible, to a maximum of three thousand nine hundred dollars (\$3,900) per month reduced by any primary Social Security disability benefits to which the beneficiary may be entitled, effective as of the first of the month following the month of initial entitlement, and by monthly payments for Workers' Compensation to which the participant or beneficiary may be entitled. When primary Social Security disability benefits are increased by cost-of-living adjustments, the increased reduction shall be applied in the first month following the month in which the member becomes entitled to the increased Social Security benefit. The monthly benefit shall be further reduced by the amount of any monthly payments from the federal Department of Veterans Affairs, any other federal agency or any payments made under the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled on account of the same disability. Provided, in any event, the benefit payable shall be no less than ten dollars (\$10.00) a month. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of long-term disability benefits; provided such election shall not extend the first 36 consecutive calendar months of the long-term disability period. An election to receive any salary continuation for any part of any given day shall be in lieu of any long-term benefit payable for that day, provided further, any lump-sum payout for vacation leave shall be treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of any long-term benefit otherwise payable. Provided that, in any event, a beneficiary's benefit shall be reduced during the first 36 months of the long-term disability period by an amount, as determined by the Board of Trustees, equal to a primary Social Security retirement benefit to which the beneficiary might be entitled, effective as of the first of the month following the month of initial entitlement.

...

Notwithstanding the foregoing, the long-term disability benefit is payable so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the earliest date at which the beneficiary is eligible for an unreduced service retirement allowance from the Retirement System, at which time the beneficiary would receive a retirement allowance calculated on the basis of the beneficiary's average final compensation at the time of disability as adjusted to reflect compensation increases subsequent to the time of disability and the creditable service accumulated by the beneficiary, including creditable service while in receipt of benefits under the Plan. In the event the beneficiary has not been approved and is not in receipt of a primary Social Security disability benefit, the long-term disability benefit shall cease after the first 36 months of the long-term disability period. When such a long-term disability recipient begins receiving this unreduced service retirement allowance from the System, that recipient shall not be subject to the ~~six-month-applicable~~ waiting period set forth in G.S. 135-1(20). However, a beneficiary shall be entitled to a restoration of the long-term disability benefit in the event the Social Security Administration grants a retroactive approval for primary Social Security disability benefits with a benefit effective date within the first 36 months of the long-term disability period. In such event, the long-term disability benefit shall be restored retroactively to the date of cessation."

SECTION 2.(a) The State Treasurer shall seek a private letter ruling from the Internal Revenue Service to determine if Section 1 of this act jeopardizes the status of the Teachers' and State Employees' Retirement System.

SECTION 2.(b) If the Internal Revenue Service determines that Section 1 of this act jeopardizes the status of the Teachers' and State Employees' Retirement System of North Carolina under the Internal Revenue Code, then Section 1 of this act is repealed on the last day of the

1 month following the month of receipt of that determination by the State Treasurer. Upon receipt
2 of that determination, the State Treasurer shall notify the Revisor of Statutes of the determination
3 and the date of receipt. Within three business days of receipt of the determination, the State
4 Treasurer shall notify all employers of the repeal of Section 1 of this act and shall publicly notice
5 the receipt of this information on the Department of State Treasurer's website. Within three
6 business days of receipt of the notice from the State Treasurer, an employer shall notify all former
7 assistant district attorneys and former assistant public defenders reemployed by that employer of
8 the repeal of Section 1 of this act.

9 **SECTION 2.(c)** Notwithstanding any other provision of law to the contrary, in order
10 to pay costs associated with the administration of the provisions of this act, the Retirement
11 Systems Division of the Department of State Treasurer may increase receipts from the retirement
12 assets of the Teachers' and State Employees' Retirement System or pay costs associated with the
13 administration directly from the retirement assets.

14 **SECTION 3.** Effective July 1, 2025, there is appropriated from the General Fund to
15 the Department of State Treasurer the sum of one hundred thousand dollars (\$100,000) in
16 nonrecurring funds for the 2025-2026 fiscal year to be used to obtain the private letter ruling
17 required under Section 2 of this act.

18 **SECTION 4.** Except as otherwise provided, this act is effective January 1, 2027.