Article 6.

Disability Income Plan of North Carolina.

§ 135-100. Short title and purpose.

(a) This Article shall be known and may be cited as the "Disability Income Plan of North Carolina".

(b) The purpose of this Article is to provide equitable replacement income for eligible teachers and employees who become temporarily or permanently disabled for the performance of their duty prior to retirement, and to encourage disabled teachers and employees who are able to work to seek gainful employment after a reasonable period of rehabilitation, and to provide for the accrual of retirement and ancillary benefits to the date the eligible teacher or employee meets the requirements for retirement under the provisions of this Chapter. (1987, c. 738, s. 29(q).)

§ 135-101. Definitions.

The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Base rate of compensation" shall mean the regular monthly rate of compensation not including pay for shift premiums, overtime, or other types of extraordinary pay; in all cases of doubt, the Board of Trustees shall determine what is "base rate of compensation".

(2) "Beneficiary" shall mean any person in receipt of a disability allowance or other benefit as provided in this Article.

(3) "Benefits" shall mean the monthly disability income payments made pursuant to the provisions of this Article. In the event of death on or after the first day of a month, or in the event the short-term disability benefit ends on or after the first day of a month where the beneficiary is eligible and applies for an early service or a service retirement allowance the first of the following month, the monthly benefit shall not be prorated and shall equal the benefits paid in the previous month.

(4) "Board of Trustees" shall mean the Board of Trustees of the Teachers' and State Employees' Retirement System as provided in G.S. 135-6.

(5) "Compensation" shall mean any compensation as the term is defined in G.S. 135-1(7a).

(6) "Disability" or "Disabled" shall mean the mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury.

(7) "Earnings" shall mean all income for personal services rendered or otherwise receivable, including, but not limited to, salaries and wages, fees, commissions, royalties, awards and other similar items and self-employment; in all cases of doubt, the Board of Trustees shall determine what are "earnings".

(8) "Employee" shall mean any employee as the term is defined in G.S. 135-1(10).

(9) "Employer" shall mean any employer as the term is defined in G.S. 135-1(11).

(10) "Medical Board" shall mean the board of physicians as provided in G.S. 135-102(d).

(11) "Member" shall mean any member as the term is defined in G.S. 135-1(13).

(12) "Membership service" shall mean any service as defined in G.S. 135-1(14).
(13) "Participant" shall mean any teacher or employee eligible to participate in the Plan as provided in G.S. 135-103.
(14) "Plan" shall mean the Disability Income Plan of North Carolina as provided in this Article.
(15) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of Article 1 of this Chapter.
(16) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in G.S. 135-2.
(17) "Service" shall mean service as a teacher or employee as defined in G.S. 135-1(10) or G.S. 135-1(25).
(18) "State" shall mean the State of North Carolina.
(19) "Teacher" shall mean any teacher as the term is defined in G.S. 135-1(25).
(20) "Trial Rehabilitation" shall mean a return to service in any capacity, if the return occurs within the waiting period as provided in G.S. 135-104; shall mean a return to service in the same capacity that existed prior to the disability if the return occurs within the short-term disability period as provided in G.S. 135-105; and shall mean a return to service in any capacity and in any position provided the salary earned is equal to or greater than the salary upon which the long-term disability benefit is based immediately preceding the return to service, if the return occurs within the long-term disability period as provided in G.S. 135-106.
(21) "Workers' Compensation" shall mean any disability income benefits provided under the North Carolina Workers' Compensation Act, excluding any payments for a permanent partial disability rating. (1987, c. 738, s. 29(q); 1989, c. 717, ss. 7, 8; 1991 (Reg. Sess., 1992), c. 779, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(s); 2003-284, s. 30.20(j); 2004-78, s. 1; 2006-74, ss. 1, 2.)

§ 135-102. Administration.

(a) The provisions of this Article shall be administered by the Department of State Treasurer and the Board of Trustees of the Teachers' and State Employees' Retirement System, except where otherwise provided, and all expenses in connection with the administration of the Plan, except for expenses incurred by and properly charged to the employer, shall be charged against and paid from the trust fund as created and provided in this Article.

(b) The Plan shall have the power and privileges of a corporation and under the name of Disability Income Plan of North Carolina shall all of its business be transacted, all of its funds invested and all of its cash, securities and other property be held.

(c) The Department of State Treasurer and the Board of Trustees shall have the full power and authority to adopt rules for the administration of the Plan not inconsistent with the provisions of this Article. The Department of State Treasurer and the Board of Trustees may appoint those agents, contractors, and employees as they deem advisable to carry out the terms and conditions of the Plan.

(d) The Department of State Treasurer and the Board of Trustees shall designate a Medical Board to be composed of not fewer than three nor more than five physicians not eligible for benefits under the Plan. Other physicians, medical clinics, institutions or agencies may be employed to conduct such medical examinations and tests necessary to provide the Medical Board

with clinical evidence as may be needed to determine eligibility for benefits under the Plan. The Medical Board shall investigate the results of medical examinations, clinical evidence, all essential statements and certifications by and on behalf of applicants for benefits and shall report in writing to the Board of Trustees the conclusions and recommendations upon all matters referred to [it], except as otherwise provided in this Chapter.

(e) The Department of State Treasurer and the Board of Trustees may provide the benefits according to the terms and conditions of the Plan as provided in this Article either by purchasing a contract or contracts with any insurance company licensed to do business in this State or by establishing a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1986. (1987, c. 738, s. 29(q); 2023-89, s. 3.1; 2023-105, s. 3.3.)

§ 135-103. Eligible participants.

(a) The eligible participants of the Disability Income Plan shall consist of:

(1) All teachers and employees in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program on January 1, 1988.

(2) All persons who become teachers and employees or re-enter service as teachers or employees and are in service and members of the Teachers' and State Employees' Retirement System or participants of the Optional Retirement Program after January 1, 1988.

(b) The participation of any person in the Disability Income Plan shall cease upon:

(1) The termination of the participant's employment as a teacher or State employee, or

(2) The participant's retirement under the provisions of the Teachers' and State Employees' Retirement System or the Optional Retirement Program, or

(3) The participant's becoming a beneficiary under the Plan, or

(4) The participant's death. (1987, c. 738, s. 29(q); 2014-97, s. 8.)

§ 135-104. Salary continuation.

(a) A participant shall receive no benefits from the Plan for a period of 60 continuous calendar days from the onset of disability determined as the last actual day of service, the day of the disabling event if the disabling event occurred on a day other than a normal workday, or the day succeeding at least 365 calendar days after service as a teacher or employee, whichever is later. These 60 continuous calendar days may be considered the waiting period before benefits are payable from the Plan. During this waiting period, a participant may be paid such continuation of salary as provided by an employer through the use of sick leave, vacation leave or any other salary continuation. Any such continuation of salary as provided by an employer shall not include any period a participant or beneficiary is in receipt of Workers' Compensation benefits.

(b) During the waiting period a participant may return to service for trial rehabilitation for periods of not greater than five continuous days of service. Such return to service will not cause a new waiting period to begin but shall extend the waiting period by the number of days of service. (1987, c. 738, s. 29(q); 1989, c. 717, s. 9; 1991 (Reg. Sess., 1992), c. 779, s. 2.)

§ 135-105. Short-term disability benefits.

(a) Any participant who becomes disabled and is no longer able to perform his or her usual occupation may receive a benefit commencing on the first day succeeding the waiting period provided all of the following conditions are met:

(1) Application for the benefit occurs at least 365 calendar days succeeding the participant's date of initial employment as a teacher or employee.

(2) The participant has at least one year of contributing membership service earned within 36 calendar months immediately preceding the date of disability. Salary continuation used during the period as provided in G.S. 135-104 shall count toward this one-year requirement.

(3) Application for the benefit occurs no later than 365 days following the first day of the waiting period.

(4) The participant's employer and physician certify that the participant is mentally or physically incapacitated for the further performance of duty.

(5) The participant's incapacity was incurred at the time of active employment and has been continuous thereafter.

As to the requirement that a participant applying for short term disability benefits have at least one year of contributing membership service within the 36 calendar months immediately preceding the date of disability, a participant who would have qualified for a benefit under this section but for service in the uniformed services shall not be denied a benefit under this section because of that interruption for military service provided all other requirements of this section are met.

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

(b) The benefits as provided for in subsection (a) of this section shall commence on the first day following the waiting period and shall be payable for a period of 365 days as long as the participant continues to meet the definition of disability. However, a disabled participant may elect to receive any salary continuation as provided in G.S. 135-104 in lieu of short-term disability benefits; provided further, such election shall not extend the 365 days duration of short-term payments. An election to receive any salary continuation for any part of a given day shall be in lieu of any short-term benefit otherwise 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 short-term benefit otherwise payable.

(c) The monthly benefit as provided in subsection (a) of this section shall be equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last payable to the participant prior to the beginning of the short-term benefit period as may be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent (50%) of 1/12th of the annual longevity payment to which the participant would be eligible, to a maximum of three thousand dollars ($3,000) per month reduced by monthly payments for Workers' Compensation to which the participant may be entitled. The monthly benefit shall be further reduced by the amount of any payments from the federal Veterans Administration, 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, that should a participant have earnings in an amount greater than the

short-term benefit, the amount of the short-term benefit shall be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term benefit.

(d) For short-term disability benefits that begin before July 1, 2019, the provisions of this section shall be administered by the employer and benefits during the initial six months of the short-term disability period shall be the full responsibility of and paid by the employer.

For short-term disability benefits that began before July 1, 2019, upon completion of the initial six months of the short-term disability period, the employer will continue to be responsible for the short-term benefits to the participant, however, the employer shall notify the Plan, at the conclusion of the short-term disability period, or upon termination of short-term disability benefits, if earlier, of the amount of short-term benefits and the State Health Insurance premiums paid by the employer and the Plan shall reimburse the employer the amounts paid. The Plan shall not reimburse any employer for amounts related to notifications made on or after January 1, 2024.

(d1) For short-term disability benefits that begin on and after July 1, 2019, the provisions of this section shall be administered by the employer. The benefits during the first 12 months of the short-term disability period, including benefits from a preliminary determination of eligibility for long-term disability under subsection (f) of this section, shall be the full responsibility of and paid by the employer.

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

(f) A participant or beneficiary of short-term disability benefits or his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, or the employer of the participant or beneficiary, may request the Board of Trustees to have the Retirement Systems Division of the Department of State Treasurer make a determination of eligibility for the short-term disability benefits as provided in this section or to make a preliminary determination of eligibility for the long-term disability benefits as provided in G.S. 135-106. A preliminary determination of eligibility for long-term disability benefits shall not preclude the requirement that the Medical Board make a determination of eligibility for long-term disability benefits.

(g) The Board of Trustees may extend the short-term disability benefits of a beneficiary beyond the benefit period of 365 days for an extended period of not more than 365 days. The extended period shall commence on the first day succeeding the conclusion of the first 365-day short-term disability period, provided the beneficiary or participant makes an application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; and provided the Retirement Systems Division of the Department of State Treasurer determines that the beneficiary's disability is temporary and likely to end within the extended period of short-term disability benefits. During the extended period of short-term disability benefits, payment of benefits shall be made by the Plan directly to the beneficiary. This extended period of short-term disability benefits shall be treated in the same manner as long-term disability payments in G.S. 135-106(b) for the purposes of G.S. 135-108. (1987, c. 738, s. 29(q); 1989, c. 717, s. 10; 1989 (Reg. Sess., 1990), c. 1032, s. 1; 1991 (Reg. Sess., 1992), c. 779, s. 3; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(t); 2003-284, s. 30.20(k); 2004-78, s. 2; 2007-325, s. 1; 2013-288, s. 6; 2018-52, s. 10(a); 2018-85, s. 1; 2023-89, s. 3.2; 2023-105, ss. 2.1, 3.4, 3.5, 4.1.)

§ 135-106. Long-term disability benefits.

(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or 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, and that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

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

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to becoming disabled or upon cessation of continuous salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

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

(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.

After 36 months of long-term disability, no further benefits are payable under the terms of this section unless the member has been approved and is in receipt of primary Social Security disability benefits. In that case the benefits payable 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 the 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, for payments from any other federal agency, or for 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.

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 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.

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

(c1) During the long-term disability period, a beneficiary may return to service for trial rehabilitation for periods of not greater than 36 months of continuous service. Such return will not cause the beneficiary to become a participant and will not require a new waiting period or short-term disability period to commence regardless of whether the beneficiary is unable to continue in service due to the same incapacity or a different incapacity.

A beneficiary who, during a period of trial rehabilitation, is unable to continue in service may be entitled to a restoration of the long-term disability benefit provided that the Medical Board certifies that the beneficiary is disabled in accordance with the laws in effect at the time of the Board's original approval for long-term disability benefits, either due to the same or a different incapacity, notwithstanding the requirement the incapacity has been continuous. In the event that the Medical Board determines that the long-term disability benefit should be restored, the restored benefit should be calculated in accordance with G.S. 135-106(b); should include any post-disability benefit adjustments as provided by G.S. 135-108; and shall continue as long as the beneficiary remains disabled until the beneficiary has received a total of 36 long-term disability payments. Continuation of long-term disability benefit payments beyond 36 total payments shall be dependent upon approval for primary Social Security disability benefits as required by G.S. 135-106(b).

A beneficiary who returns to service for a period of trial rehabilitation and who has continued in service for greater than 36 continuous months shall again become a participant, and any

subsequent incapacity shall be treated as a new incapacity causing a new waiting period to begin. Such a beneficiary may be entitled to additional long-term disability benefits on account of the new incapacity provided the beneficiary meets all other requirements notwithstanding the requirement of five years of membership service within the 96 calendar months prior to becoming disabled or the cessation of continuous salary continuation payments.

(d) Notwithstanding the foregoing, a participant or beneficiary who has applied for and been approved by the Medical Board for long-term disability benefits may make an irrevocable election, within 90 days from the date of notification of such approval, and prior to receipt of any long-term disability benefit payments, to forfeit all pending and accrued rights to the long-term disability benefit including any ancillary benefits and retire on an early service retirement allowance, effective with the first day of the month following the end of the short-term period, or receive a return of accumulated contributions from the Retirement System.

(e) Notwithstanding any provision of this section to the contrary, for any beneficiary or participant with at least five years of membership service as of July 31, 2007, who has not withdrawn contributions for such service from the Retirement System, the provisions of this section that were in effect on July 31, 2007, shall apply. (1987, c. 738, s. 29(q); 1989, c. 717, s. 11; 1989 (Reg. Sess., 1990), c. 1032, s. 2; 1991 (Reg. Sess., 1992), c. 779, s. 4; 1993 (Reg. Sess., 1994), c. 769, s. 7.30(u); 2003-284, s. 30.20(l); 2004-78, ss. 3, 4; 2005-91, s. 6.1; 2005-276, s. 29.30B(a), (b); 2006-74, ss. 3, 4(a), (b); 2007-325, s. 2; 2010-72, s. 7; 2011-294, s. 6; 2012-178, s. 5; 2013-288, s. 7; 2013-405, s. 2; 2014-88, s. 3(i); 2015-67, s. 2; 2022-14, s. 5.1.)

§ 135-107. Optional Retirement Program.

(a) Any participant of the Optional Retirement Program who becomes a beneficiary under the Plan shall be eligible to receive long-term disability benefits so long as the beneficiary is disabled and is in receipt of a primary Social Security disability benefit until the time the beneficiary would first qualify for an unreduced service retirement benefit had the beneficiary elected to be a member of the Teachers' and State Employees' Retirement System, and shall receive no service accruals as otherwise provided members of the Retirement System under the provisions of G.S. 135-4(y). In the event a beneficiary who was a participant in the Optional Retirement Program 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. 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.

(b) If a participant of the Optional Retirement Program owes an overpayment to the Disability Income Plan at the time the beneficiary would first qualify for an unreduced retirement benefit had the member elected to be a member of the Teachers' and State Employees' Retirement System, then the participant shall pay the total overpayment amount due to the Disability Income Plan. If the participant fails to pay the total amount of the overpayment due to the Disability Income Plan within six months after the earliest age at which the member could retire on an unreduced retirement allowance, then the participant shall not be allowed to enroll in a new year of coverage under the North Carolina State Health Plan for Teachers and State Employees until one of the following occurs:

(1) The Disability Income Plan receives from the participant payment in full of the total overpayment due.
(2) The participant has made payment arrangements approved by the Executive Director of the Retirement Systems Division. (1987, c. 738, s. 29(q); 2007-325, s. 3; 2021-75, s. 6.1(a); 2024-9, s. 1(j).)

§ 135-108. Post disability benefit adjustments.

The compensation upon which the short-term or long-term disability benefit is calculated under the provisions of G.S. 135-105(c) or G.S. 135-106(b) may be increased by any permanent across-the-board salary increase granted to employees of the State by the General Assembly and the benefits payable to beneficiaries shall be recalculated based upon the increased compensation, reduced by any percentage increase in Social Security benefits granted by the Social Security Administration times the amount used in the reduction of benefits for primary Social Security disability or retirement benefit as provided in G.S. 135-106(b). The provisions of this section shall be subject to future acts of the General Assembly. (1987, c. 738, s. 29(q); 2001-424, s. 32.32A.)

§ 135-109. Reports of earnings.

The Department of State Treasurer and Board of Trustees may require each beneficiary to annually provide a statement of the beneficiary's income received as compensation for services, including fees, commissions, or similar items, income received from business, and benefits received from the Social Security Administration, the federal Veterans Administration, any other federal agency, under the North Carolina Workers' Compensation Act, or under the provisions of G.S. 127A-108. The benefit payable to a beneficiary who does not or refuses to provide the information requested within 120 days after such request may be suspended until the information so requested is provided, and should such refusal or failure to provide such information continue for 180 days after such request the right of a beneficiary to a benefit under the Article may be terminated. (1987, c. 738, s. 29(q); 2003-359, s. 23; 2016-108, s. 8.)

§ 135-110. Funding and management of funds.

(a) It is the intent of the General Assembly that a trust fund be created that provides an irrevocable source of funding to be used, to the extent the fund's assets are sufficient, only for disability benefits to participants and beneficiaries. Accordingly, the following provisions apply to that trust fund:

(1) A trust fund, the Disability Income Plan of North Carolina Trust Fund, is hereby created to which all receipts, transfers, appropriations, contributions, investment earnings and other income belonging to the Plan shall be deposited, and from which all benefits and expenses against the Plan shall be disbursed. The Board of Trustees shall be the trustee of the Fund.
(2) Employer and non-employer contributions to the Disability Income Plan of North Carolina Trust Fund and earnings on those contributions are irrevocable. The assets of the Fund are dedicated to providing benefits to participants and beneficiaries in accordance with the Plan's benefit terms. The assets of the Fund are not subject to the claims of creditors of the employers and non-employers making contributions to the Fund, are not subject to the claims of any creditors of the Fund's trustees and administrators, and are not subject to the claims of participants and beneficiaries.

(3) Disability Income Plan of North Carolina Trust Fund assets may be used for reasonable expenses to administer benefits provided by the Fund as approved by the Board of Trustees.

(b) The Board of Trustees shall on the basis of such economic and demographic assumptions duly adopted, determine and adopt a uniform percentage of compensation as is defined in Article 1 of this Chapter which would be sufficient to fund the benefits payable under this Article on a term cost method basis as recommended by an actuary engaged by the Board of Trustees. Such uniform percentage of compensation shall not be inconsistent with acts of the General Assembly as may be thereafter adopted.

(c) Each employer shall contribute monthly to the Plan an amount determined by applying the uniform percentage of compensation adopted by the Board of Trustees multiplied by the compensation of teachers and employees reportable to the Retirement System or the Optional Retirement Program. Such monthly contribution shall be paid by the employer from the same source of funds from which the compensation of teachers and employees are paid.

(d) The State Treasurer shall be the custodian of the funds and shall invest the assets of the fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. (1987, c. 738, s. 29(q); 2017-129, s. 2(o).)

§ 135-111. Applicability of other pension laws.

Subject to the provisions of this Article, the provisions of G.S. 135-9, entitled "Exemption from taxes, garnishment, attachment, etc."; G.S. 135-10, entitled "Protection against fraud"; G.S. 135-10.1, entitled "Failure to Respond"; and G.S. 135-17, entitled "Facility of payment" shall be applicable to this Article and to benefits paid pursuant to the provisions of this Article. (1987, c. 738, s. 29(q); 2005-91, s. 7; 2012-185, s. 3(b); 2013-288, s. 8.)

§ 135-111.1. Improper receipt of decedent's Disability Income Plan allowance.

A person is guilty of a Class 1 misdemeanor if the person, with the intent to defraud, receives money as a result of cashing, depositing, or receiving a direct deposit of a decedent's Disability Income Plan allowance and the person (i) knows that he or she is not entitled to the decedent's Disability Income Plan allowance, (ii) receives the benefit at least two months after the date of the beneficiary's death, and (iii) does not attempt to inform this Retirement System of the beneficiary's death. (2013-288, s. 9(a).)

§ 135-112. Transition provisions.

(a) Any participant in service as of the date of ratification of this Article and who becomes disabled after one year of membership service will be eligible for all benefits provided under this Article notwithstanding the requirement of five years' membership service to receive the long-term benefit; provided, however, any beneficiary who receives benefits as a result of this transition provision before completing five years of membership service shall receive lifetime benefits in lieu of service accruals under the Retirement System as otherwise provided in G.S. 135-4(y).

(b) All benefit recipients under the former Disability Salary Continuation Plan provided for in G.S. 135-34 and the rules adopted thereto shall become beneficiaries under this Plan under the same provisions and conditions including the benefit amounts payable as were provided under the former Disability Salary Continuation Plan. Any benefit recipient under the former Disability Salary Continuation Plan who returns to service on or after January 1, 1988, who subsequently becomes disabled due to the same disabling condition within 90 days after restoration to service

shall not become a participant of the Disability Income Plan but shall be entitled to a restoration of the disability benefit under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan, and shall be entitled to make application for disability retirement benefits under the Retirement System under the same provisions and conditions as were provided members whose service terminated prior to January 1, 1988.

(c) Any person who retired on a disability retirement allowance from the Teachers' and State Employees' Retirement System prior to the effective date of this Article shall be entitled to apply for and receive any benefits that would have otherwise been provided under the Disability Salary Continuation Plan provided for in G.S. 135-34 and shall become beneficiaries under this Plan, under the same provisions and conditions, including the benefit amounts payable, as were provided under the former Disability Salary Continuation Plan. (1987, c. 738, s. 29(q); 1989, c. 717, s. 12.)

§ 135-113. Reservation of power to change.

The benefits provided in this Article as applicable to a participant who is not a beneficiary under the provisions of this Article shall not be considered as a part of an employment contract, either written or implied, and the General Assembly reserves the right at any time and from time to time to modify, amend in whole or in part or repeal the provisions of this Article. (1987, c. 738, s. 29(q).)

§ 135-114. Reciprocity of membership service with the Legislative Retirement System and the Consolidated Judicial Retirement System.

Only for the purpose of determining eligibility for benefits accruing under this Article, membership service standing to the credit of a member of the Legislative Retirement System or the Consolidated Judicial Retirement System shall be added to the membership service standing to the credit of a member of the Teachers' and State Employees' Retirement System. However, in the event that a participant or beneficiary is a retired member of the Legislative Retirement System or the Consolidated Judicial Retirement System whose retirement benefit was suspended upon entrance into membership in the Teachers' and State Employees' Retirement System, such membership service standing to the credit of the retired member prior to retirement shall be likewise counted. Membership service under this section shall not be counted twice for the same period of time. (1993 (Reg. Sess., 1994), c. 769, s. 7.30(q).)

§ 135-115: Reserved for future codification purposes.

§ 135-116: Reserved for future codification purposes.

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