

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 344

Short Title: Removal of War Exclusion.

(Public)

Sponsors: Senator Winner of Buncombe.

Referred to: Pensions and Retirement.

February 24, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REMOVE THE EXCLUSION FOR WAR-RELATED DISABILITIES
3 FROM THE DISABILITY INCOME PLAN.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 135-101 reads as rewritten:

6 **"§ 135-101. Definitions.**

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

- 9 (1) 'Base rate of compensation' shall mean the regular monthly rate of
10 compensation not including pay for shift premiums, overtime, or other
11 types of extraordinary pay; in all cases of doubt, the Board of Trustees
12 shall determine what is 'base rate of compensation'.
13 (2) 'Beneficiary' shall mean any person in receipt of a disability allowance
14 or other benefit as provided in this Article.
15 (3) 'Benefits' shall mean the monthly disability income payments made
16 pursuant to the provisions of this Article. In the event of death on or
17 after the first day of a month, or in the event the short-term disability
18 benefit ends on or after the first day of a month where the beneficiary
19 is eligible and applies for an early service or a service retirement
20 allowance the first of the following month, the monthly benefit shall
21 not be prorated and shall equal the benefits paid in the previous month.
22 (4) 'Board of Trustees' shall mean the Board of Trustees of the Teachers'
23 and State Employees' Retirement System as provided in G.S. 135-6.

- 1 (5) 'Compensation' shall mean any compensation as the term is defined in
2 G.S. 135-1(7a).
- 3 (6) 'Disability' or 'Disabled' shall mean the mental or physical incapacity
4 for the further performance of duty of a participant or beneficiary;
5 provided that such incapacity was not the result of war, ~~whether~~
6 ~~declared or not, armed or unarmed military or paramilitary conflict,~~ terrorist
7 activity, active participation in a riot, committing or attempting to
8 commit a felony, or intentionally self-inflicted injury.
- 9 (7) 'Earnings' shall mean all income for personal services rendered or
10 otherwise receivable, including, but not limited to, salaries and wages,
11 fees, commissions, royalties, awards and other similar items and self-
12 employment; in all cases of doubt, the Board of Trustees shall
13 determine what are 'earnings'.
- 14 (8) 'Employee' shall mean any employee as the term is defined in G.S.
15 135-1(10).
- 16 (9) 'Employer' shall mean any employer as the term is defined in G.S. 135-
17 1(11).
- 18 (10) 'Medical Board' shall mean the board of physicians as provided in G.S.
19 135-102(d).
- 20 (11) 'Member' shall mean any member as the term is defined in G.S. 135-
21 1(13).
- 22 (12) 'Membership service' shall mean any service as defined in G.S. 135-
23 1(14).
- 24 (13) 'Participant' shall mean any teacher or employee eligible to participate
25 in the Plan as provided in G.S. 135-103.
- 26 (14) 'Plan' shall mean the Disability Income Plan of North Carolina as
27 provided in this Article.
- 28 (15) 'Retirement' shall mean the withdrawal from active service with a
29 retirement allowance granted under the provisions of Article 1 of this
30 Chapter.
- 31 (16) 'Retirement System' shall mean the Teachers' and State Employees'
32 Retirement System of North Carolina as defined in G.S. 135-2.
- 33 (17) 'Service' shall mean service as a teacher or employee as defined in G.S.
34 135-1(10) or G.S. 135-1(25).
- 35 (18) 'State' shall mean the State of North Carolina.
- 36 (19) 'Teacher' shall mean any teacher as the term is defined in G.S. 135-
37 1(25).
- 38 (20) 'Trial Rehabilitation' shall mean a return to service in any capacity, if
39 the return occurs within the waiting period as provided in G.S. 135-
40 104 and shall mean a return to service in the same capacity that existed
41 prior to the disability if the return occurs within the short-term
42 disability period as provided in G.S. 135-105.

1 (21) 'Workers' Compensation' shall mean any disability income benefits
2 provided under the North Carolina Workers' Compensation Act,
3 excluding any payments for a permanent partial disability rating."

4 Sec. 2. G.S. 135-105 reads as rewritten:

5 **"§ 135-105. Short-term disability benefits.**

6 (a) Any participant who becomes disabled and is no longer able to perform his
7 usual occupation may, after at least 365 calendar days succeeding his date of initial
8 employment as a teacher or employee and at least one year of contributing membership
9 service, receive a benefit commencing on the first day succeeding the waiting period;
10 provided that the participant's employer and attending physician shall certify that such
11 participant is mentally or physically incapacitated for the further performance of duty,
12 that such incapacity was incurred at the time of active employment and has been
13 continuous thereafter; provided further that the requirement for one year of contributing
14 membership service must have been earned within 36 calendar months immediately
15 preceding the date of disability and further, salary continuation used during the period
16 as provided in G.S. 135-104 shall count toward the aforementioned one year
17 requirement.

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

23 (b) The benefits as provided for in subsection (a) of this section shall commence
24 on the first day following the waiting period and shall be payable for a period of 365
25 days as long as the participant continues to meet the definition of disability. However, a
26 disabled participant may elect to receive any salary continuation as provided in G.S.
27 135-104 in lieu of short-term disability benefits; provided further, such election shall
28 not extend the 365 days duration of short-term payments. An election to receive any
29 salary continuation for any part of a given day shall be in lieu of any short-term benefit
30 otherwise payable for that day, provided further, any lump-sum payout for vacation
31 leave shall be treated as if the beneficiary or participant had exhausted the leave and
32 shall be in lieu of any short-term benefit otherwise payable.

33 (c) The monthly benefit as provided in subsection (a) of this section shall be
34 equal to fifty percent (50%) of 1/12th of the annual base rate of compensation last
35 payable to the participant prior to the beginning of the short-term benefit period as may
36 be adjusted for percentage increases as provided under G.S. 135-108 plus fifty percent
37 (50%) of 1/12th of the annual longevity payment to which the participant would be
38 eligible, to a maximum of three thousand dollars (\$3,000) per month reduced by
39 monthly payments for Workers' Compensation to which the participant may be entitled.
40 The monthly benefit shall be further reduced by the amount of any payments from the
41 federal Veterans Administration, any other federal agency, or any payments made under
42 the provisions of G.S. 127A-108, to which the participant or beneficiary may be entitled
43 on account of the same disability. Provided, that should a participant have earnings in
44 an amount greater than the short-term benefit, the amount of the short-term benefit shall

1 be reduced on a dollar-for-dollar basis by the amount that exceeds the short-term
2 benefit.

3 (d) The provisions of this section shall be administered by the employer and
4 further, the benefits during the first six months of the short-term disability period shall
5 be the full responsibility of and paid by the employer; Provided, further, that upon the
6 completion of the initial six months of the short-term disability period, the employer
7 will continue to be responsible for the short-term benefits to the participant, however,
8 such employer shall notify the Plan, at the conclusion of the short-term disability period
9 or upon termination of short-term disability benefits, if earlier, of the amount of short-
10 term benefits paid and the Plan shall reimburse the employer the amounts so paid.

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

17 (f) A participant or beneficiary of short-term disability benefits or his legal
18 representative or any person deemed by the Board of Trustees to represent the
19 participant or beneficiary, or the employer of the participant or beneficiary, may request
20 the Board of Trustees to have the Medical Board make a determination of eligibility for
21 the short-term disability benefits as provided in this section or to make a preliminary
22 determination of eligibility for the long-term disability benefits as provided in G.S. 135-
23 106. A preliminary determination of eligibility for long-term disability benefits shall not
24 preclude the requirement that the Medical Board make a determination of eligibility for
25 long-term disability benefits.

26 (g) The Board of Trustees may extend the short-term disability benefits of a
27 beneficiary beyond the benefit period of 365 days for an additional period of not more
28 than 365 days; provided the Medical Board determines that the beneficiary's disability is
29 temporary and likely to end within the extended period of short-term disability benefits.
30 During the extended period of short-term disability benefits, payment of benefits shall
31 be made by the Plan directly to the beneficiary."

32 Sec. 3. G.S. 135-106 reads as rewritten:

33 **"§ 135-106. Long-term disability benefits.**

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

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

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

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

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

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

1 ~~payable shall be no less than ten dollars (\$10.00) a month.~~ entitled. The monthly benefit
2 shall be further reduced by the amount of any monthly payments from the federal
3 Veterans Administration, any other federal agency or any payments made under the
4 provisions of G.S.127A-108, to which the participant or beneficiary may be entitled on
5 account of the same disability. Provided, in any event, the benefit payable shall be no
6 less than ten dollars (\$10.00) a month. However, a disabled participant may elect to
7 receive any salary continuation as provided in G.S. 135-104 in lieu of long-term
8 disability benefits; provided such election shall not extend the first 36 consecutive
9 calendar months of the long-term disability period. An election to receive any salary
10 continuation for any part of any given day shall be in lieu of any long-term benefit
11 payable for that day, provided further, any lump-sum payout for vacation leave shall be
12 treated as if the beneficiary or participant had exhausted the leave and shall be in lieu of
13 any long-term benefit otherwise payable. Notwithstanding the foregoing, upon the
14 completion of four years from the conclusion of the waiting period as provided in G.S.
15 135-104, the beneficiary's benefit shall be reduced by an amount, as determined by the
16 Board of Trustees, equal to a primary Social Security disability benefit to which the
17 beneficiary might be entitled had the beneficiary been awarded Social Security
18 disability benefits. Provided that, in any event, a beneficiary's benefit shall be reduced
19 by an amount, as determined by the Board of Trustees, equal to a primary Social
20 Security retirement benefit to which the beneficiary might be entitled.

21 Notwithstanding the foregoing, the long-term disability benefit is payable so long as
22 the beneficiary is disabled until the earliest date at which the beneficiary is eligible for
23 an unreduced service retirement allowance from the Retirement System, at which time
24 the beneficiary would receive a retirement allowance calculated on the basis of the
25 beneficiary's average final compensation at the time of disability as adjusted to reflect
26 compensation increases subsequent to the time of disability and the creditable service
27 accumulated by the beneficiary, including creditable service while in receipt of benefits
28 under the Plan.

29 (c) Notwithstanding the foregoing, a beneficiary in receipt of long-term disability
30 benefits who has earnings during the long-term disability period shall have his long-
31 term disability benefit reduced when the sum of the net long-term disability benefit and
32 the earnings equals one hundred percent (100%) of monthly compensation adjusted as
33 provided under G.S. 135-108. The net long-term benefit shall mean the long-term
34 benefit amount payable as calculated under (b) above, after the reduction for Social
35 Security benefits to which the beneficiary might be entitled. The net long-term disability
36 benefit shall be reduced dollar-for-dollar for the amount of earnings in excess of the one
37 hundred percent (100%) monthly limit. Any beneficiary exceeding the earnings
38 limitations shall notify the Plan by the fifth of the month succeeding the month in which
39 the earnings were received of the amount of earnings in excess of the limitations herein
40 provided. Failure to report excess earnings may result in a suspension or termination of
41 benefits as determined by the Board of Trustees.

42 (d) Notwithstanding the foregoing, a participant or beneficiary who has applied
43 for and been approved by the Medical Board for long-term disability benefits may make
44 an irrevocable election, within 90 days from the date of notification of such approval,

1 and prior to receipt of any long-term disability benefit payments, to forfeit all pending
2 and accrued rights to the long-term disability benefit including any ancillary benefits
3 and retire on an early service retirement allowance or receive a return of accumulated
4 contributions from the Retirement System."

5 Sec. 4. This act is effective January 1, 1988, provided, however, that in
6 applying the provisions of G.S. 135-101, 135-105, and 135-106, as amended by this act,
7 to any person who was denied disability benefits, such person shall have 180 days after
8 ratification of this act in which to make a timely application for such benefits.