

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 984

Short Title: Law Enfor. Ret. Clar.

(Public)

Sponsors: Representatives McLaughlin; Foster and Buchanan.

Referred to: Pensions and Retirement.

April 3, 1989

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING LAW ENFORCEMENT OFFICER
DISABILITY RETIREMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-27(e) reads as rewritten:

"(e) Reexamination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability allowance, and once in every three-year period thereafter, the Board of Trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of 60 years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by the physician or physicians designated by the Board of Trustees. Should any disability beneficiary who has not yet attained the age of 60 years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the Board of Trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the Board of Trustees.

(1) The Board of Trustees shall determine whether a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference, as hereinafter indexed, between his disability retirement allowance and the gross compensation earned as an employee during the 12 consecutive months in the final 48 months of service prior to retirement producing the highest gross compensation excluding any compensation received on account of termination. If the

1 disability beneficiary is earning or is able to earn more than the
2 difference, the portion of his disability retirement allowance not
3 provided by his contributions shall be reduced to an amount which,
4 together with the portion of the disability retirement allowance
5 provided by his contributions and the amount earnable by him shall
6 equal the amount of his gross compensation prior to retirement. This
7 difference shall be increased on January 1 each year by the ratio of the
8 Consumer Price Index to the Index one year earlier, calculated to the
9 nearest tenth of a percent (1/10 of 1%). Should the earning capacity of
10 the disability beneficiary later change, the portion of his disability
11 retirement allowance not provided by his contributions may be further
12 modified. In lieu of the reductions on account of a disability
13 beneficiary earning more than the aforesaid difference, he may elect to
14 convert his disability retirement allowance to a service retirement
15 allowance calculated on the basis of his average final compensation
16 and creditable service at the time of disability retirement and his age at
17 the time of conversion to service retirement. This election is
18 irrevocable.

19 The provisions of this subdivision shall not apply to beneficiaries
20 of the Law Enforcement Officers' Retirement System transferred to
21 this Retirement System who ~~commenced retirement~~ were first employed
22 on and before July 1, 1981.

23 (2) Should a disability beneficiary under the age of 62 years be restored to
24 active service at a compensation not less than his average final
25 compensation, his retirement allowance shall cease, he shall again
26 become a member of the Retirement System and he shall contribute
27 thereafter at the contribution rate which is applicable during his
28 subsequent membership service. Any prior service certificate on the
29 basis of which his service was computed at the time of his retirement
30 shall be restored to full force and effect, and in addition, upon his
31 subsequent retirement he shall be credited with all his service as a
32 member, but should he be restored to active service on or after the
33 attainment of the age of 50 years his pension upon subsequent
34 retirement shall not exceed the sum of the pension which he was
35 receiving immediately prior to his last restoration after June 30, 1951,
36 and the pension that he would have received on account of his service
37 since such last restoration had he entered service at that time as a new
38 entrant.

39 (3) Notwithstanding the foregoing, a member retired on a disability
40 retirement allowance who is restored to service and subsequently
41 retires on or after July 1, 1971, shall be entitled to an allowance not
42 less than the allowance prescribed in a below reduced by the amount in
43 b below.

- 1 a. The allowance to which he would have been entitled if he were
2 retiring for the first time, calculated on the basis of his total
3 creditable service represented by the sum of his creditable
4 service at the time of his first retirement and his creditable
5 service after he was restored to service.
6 b. The actuarial equivalent of the retirement benefits he previously
7 received.

8 (3a) Notwithstanding the foregoing, a member retired on a disability
9 retirement allowance who is restored to service and subsequently
10 retires on or after July 1, 1985, shall be entitled to an allowance to
11 which he would have been entitled if he were retiring for the first
12 time, calculated on the basis of his total creditable service
13 represented by the sum of his creditable service at the time of his
14 first retirement and his creditable service after he was restored to
15 service. Provided, however, any election of an optional allowance
16 cannot be changed unless the member subsequently completes three
17 years of membership service after being restored to service.

18 (4) As a condition to the receipt of the disability retirement allowance
19 provided for in G.S. 128-27(d), (d1), (d2) and (d3) each member
20 retired on a disability retirement allowance shall, on or before April 15
21 of each calendar year, provide the Board of Trustees with a statement
22 of his or her income received as compensation for services, including
23 fees, commissions or similar items, and income received from
24 business, for the previous calendar year. Such statement shall be filed
25 on a form as required by the Board of Trustees.

26 The Director of the State Retirement Systems shall contact any
27 State or federal agency which can provide information to substantiate
28 the statement required to be submitted by this subdivision and may
29 enter into agreements for the exchange of information.

30 (5) Notwithstanding any other provisions of this Article to the contrary, a
31 beneficiary who was a beneficiary retired on a disability retirement
32 with the Law Enforcement Officers' Retirement System at the time of
33 the transfer of law enforcement officers employed by a participating
34 employer and beneficiaries last employed by a participating employer
35 to this Retirement System and who also was a contributing member of
36 this Retirement System at that time, shall continue to be paid his
37 retirement allowance without restriction and may continue as a
38 member of this Retirement System with all the rights and privileges
39 appendant to membership. Any beneficiary who retired on a disability
40 retirement allowance as an employee of any participating employer
41 under the Law Enforcement Officers' Retirement System and becomes
42 employed as an employee other than as a law enforcement officer by
43 an employer participating in the Retirement System after the
44 aforementioned transfer shall continue to be paid his retirement

1 allowance without restriction and may continue as a member of this
2 Retirement System with all the rights and privileges appendant to
3 membership until January 1, 1989, at which time his retirement
4 allowance shall cease and his subsequent retirement shall be
5 determined in accordance with the preceding subdivision (3a) of this
6 section. Any beneficiary as hereinbefore described who becomes
7 employed as a law enforcement officer by an employer participating in
8 the Retirement System shall cease to be a beneficiary and shall
9 immediately commence membership and his subsequent retirement
10 shall be determined in accordance with subdivision (3a) of this
11 section."

12 Sec. 2. G.S. 135-5(e) reads as rewritten:

13 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
14 this subsection shall be applicable to members retired on a disability retirement
15 allowance prior to January 1, 1988. Once each year during the first five years following
16 retirement of a member on a disability retirement allowance, and once in every three-
17 year period thereafter, the Board of Trustees may, and upon his application shall,
18 require any disability beneficiary who has not yet attained the age of 60 years to
19 undergo a medical examination, such examination to be made at the place of residence
20 of said beneficiary or other place mutually agreed upon, by a physician or physicians
21 designated by the Board of Trustees. Should any disability beneficiary who has not yet
22 attained the age of 60 years refuse to submit to at least one medical examination in any
23 such year by a physician or physicians designated by the Board of Trustees, his
24 allowance may be discontinued until his withdrawal of such refusal, and should his
25 refusal continue for one year all his rights in and to his pension may be revoked by the
26 Board of Trustees.

27 (1) The Board of Trustees shall determine whether a disability beneficiary
28 is engaged in or is able to engage in a gainful occupation paying more
29 than the difference, as hereinafter indexed, between his disability
30 retirement allowance and the gross compensation earned as an
31 employee during the 12 consecutive months of service in the final 48
32 months prior to retirement producing the highest gross compensation
33 excluding any compensation received on account of termination. If the
34 disability beneficiary is earning or is able to earn more than the
35 difference, the portion of his disability retirement allowance not
36 provided by his contributions shall be reduced to an amount which,
37 together with the portion of the disability retirement allowance
38 provided by his contributions and the amount earnable by him shall
39 equal the amount of his gross compensation prior to retirement. This
40 difference shall be increased on January 1 each year by the ratio of the
41 Consumer Price Index to the Index one year earlier, calculated to the
42 nearest tenth of one percent (1/10th of 1%). Should the earning
43 capacity of the disability beneficiary later change, the portion of his
44 disability retirement allowance not provided by his contributions may

1 be further modified. In lieu of the reductions on account of a disability
2 beneficiary earning more than the aforesaid difference, he may elect to
3 convert his disability retirement allowance to a service retirement
4 allowance calculated on the basis of his average final compensation
5 and creditable service at the time of disability and his age at the time
6 of conversion to service retirement. This election is irrevocable.
7 Provided, the provisions of this subdivision shall not apply to
8 beneficiaries of the Law-Enforcement Officers' Retirement System
9 transferred to this Retirement System who ~~commenced retirement~~ were
10 first employed on and before July 1, 1981.

11 (2) Should a disability beneficiary under the age of 60 years be restored to
12 active service at a compensation not less than his average final
13 compensation, his retirement allowance shall cease, he shall again
14 become a member of the Retirement System, and he shall contribute
15 thereafter at the same rate he paid prior to disability; provided that, on
16 and after July 1, 1971, if a disability beneficiary under the age of 62
17 years is restored to active service at a compensation not less than his
18 average final compensation, his retirement allowance shall cease, he
19 shall again become a member of the Retirement System, and he shall
20 contribute thereafter at the uniform contribution rate payable by all
21 members. Any such prior service certificate on the basis of which his
22 service was computed at the time of his retirement shall be restored to
23 full force and effect, and, in addition, upon his subsequent retirement
24 he shall be credited with all his service as a member, but should he be
25 restored to active service on or after the attainment of the age of 50
26 years his pension upon subsequent retirement shall not exceed the sum
27 of the pension which he was receiving immediately prior to his last
28 restoration and the pension that he would have received on account of
29 his service since his last restoration had he entered service at the time
30 as a new entrant.

31 (3) Notwithstanding the foregoing, a member retired on a disability
32 retirement allowance who is restored to service and subsequently
33 retires on or after July 1, 1971, shall be entitled to an allowance not
34 less than the allowance described in a below reduced by the amount in
35 b below:

36 a. The allowance to which he would have been entitled if he were
37 retiring for the first time, calculated on the basis of his total
38 creditable service represented by the sum of his creditable
39 service at the time of his first retirement and his creditable
40 service after he was restored to service.

41 b. The actuarial equivalent of the retirement benefits he previously
42 received.

43 (3a) Notwithstanding the foregoing, a member retired on a disability
44 retirement allowance who is restored to service and subsequently

1 retires on or after July 1, 1985, shall be entitled to an allowance to
2 which he would have been entitled if he were retiring for the first
3 time, calculated on the basis of his total creditable service
4 represented by the sum of his creditable service at the time of his
5 first retirement and his creditable service after he was restored to
6 service. Provided, however, any election of an optional allowance
7 cannot be changed unless the member subsequently completes three
8 years of membership service after being restored to service.

- 9 (4) As a condition to the receipt of the disability retirement allowance
10 provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired
11 on a disability retirement allowance shall, on or before April 15 of
12 each calendar year, provide the Board of Trustees with a statement of
13 his or her income received as compensation for services, including
14 fees, commissions or similar items, and income received from
15 business, for the previous calendar year. Such statement shall be filed
16 on a form as required by the Board of Trustees.

17 The Director of the State Retirement System shall contact any State or
18 federal agency which can provide information to substantiate the
19 statement required to be submitted by this subdivision and may enter
20 into agreements for the exchange of information.

- 21 (5) Notwithstanding any other provisions of this Article to the contrary, a
22 beneficiary who was a beneficiary retired on a disability retirement
23 with the Law-Enforcement Officers' Retirement System at the time of
24 the transfer of law-enforcement officers employed by a participating
25 employer and beneficiaries last employed by a participating employer
26 to this Retirement System and who also was a contributing member of
27 this Retirement System at that time, shall continue to be paid his
28 retirement allowance without restriction and may continue as a
29 member of this Retirement System with all the rights and privileges
30 appendant to membership. Any beneficiary who retired on a disability
31 retirement allowance as an employee of any participating employer
32 under the Law-Enforcement Officers' Retirement System and becomes
33 employed as an employee other than as a law-enforcement officer by
34 an employer participating in the Retirement System after the
35 aforementioned transfer shall continue to be paid his retirement
36 allowance without restriction and may continue as a member of this
37 Retirement System with all the rights and privileges appendant to
38 membership until January 1, 1989, at which time his retirement
39 allowance shall cease and his subsequent retirement shall be
40 determined in accordance with the preceding subdivision (3a) of this
41 section. Any beneficiary as hereinbefore described who becomes
42 employed as a law-enforcement officer by an employer participating in
43 the Retirement System shall cease to be a beneficiary and shall

- 1 immediately commence membership and his subsequent retirement
2 shall be determined in accordance with subdivision (3a) of this section.
3 (6) Notwithstanding any other provision to the contrary, a beneficiary in
4 receipt of a disability retirement allowance until the earliest date on
5 which he would have qualified for an unreduced service retirement
6 allowance shall thereafter (i) not be subject to further reexaminations
7 as to disability, (ii) not be subject to any reduction in allowance on
8 account of being engaged in a gainful occupation other than with an
9 employer participating in the Retirement System, and (iii) be
10 considered a beneficiary in receipt of a service retirement allowance.
11 Provided, however, a beneficiary in receipt of a disability retirement
12 allowance whose allowance is reduced on account of reexamination as
13 to disability or to ability to engage in a gainful occupation prior to the
14 date on which he would have qualified for an unreduced service
15 retirement allowance shall have only the right to elect to convert to an
16 early or service retirement allowance as permitted under subdivision
17 (1) above."
18 Sec. 3. This act shall become effective July 1, 1989.