

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 235

Short Title: Clarify Law Enfor. Retire.

(Public)

Sponsors: Representatives McLaughlin; Black, Easterling, and Foster.

Referred to: Pensions and Retirement.

March 12, 1991

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 time,
12 calculated on the basis of his total creditable service represented by the
13 sum of his creditable service at the time of his first retirement and his
14 creditable service after he was restored to service. Provided, however,
15 any election of an optional allowance cannot be changed unless the
16 member subsequently completes three years of membership service
17 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 section.

- 11 (6) Notwithstanding any other provision to the contrary, a beneficiary in
12 receipt of a disability retirement allowance until the earliest date on
13 which he would have qualified for an unreduced service retirement
14 allowance shall thereafter (i) not be subject to further reexaminations
15 as to disability, (ii) not be subject to any reduction in allowance on
16 account of being engaged in a gainful occupation other than with an
17 employer participating in the Retirement System, and (iii) be
18 considered a beneficiary in receipt of a service retirement allowance.
19 Provided, however, a beneficiary in receipt of a disability retirement
20 allowance whose allowance is reduced on account of reexamination as
21 to disability or to ability to engage in a gainful occupation prior to the
22 date on which he would have qualified for an unreduced service
23 retirement allowance shall have only the right to elect to convert to an
24 early or service retirement allowance as permitted under subdivision
25 (1) above."

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

27 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
28 this subsection shall be applicable to members retired on a disability retirement
29 allowance and shall not be applicable to members in service on or after January 1, 1988.
30 Once each year during the first five years following retirement of a member on a
31 disability retirement allowance, and once in every three-year period thereafter, the
32 Board of Trustees may, and upon his application shall, require any disability beneficiary
33 who has not yet attained the age of 60 years to undergo a medical examination, such
34 examination to be made at the place of residence of said beneficiary or other place
35 mutually agreed upon, by a physician or physicians designated by the Board of
36 Trustees. Should any disability beneficiary who has not yet attained the age of 60 years
37 refuse to submit to at least one medical examination in any such year by a physician or
38 physicians designated by the Board of Trustees, his allowance may be discontinued
39 until his withdrawal of such refusal, and should his refusal continue for one year all his
40 rights in and to his pension may be revoked by the Board of Trustees.

- 41 (1) The Board of Trustees shall determine whether a disability beneficiary
42 is engaged in or is able to engage in a gainful occupation paying more
43 than the difference, as hereinafter indexed, between his disability
44 retirement allowance and the gross compensation earned as an

1 employee during the 12 consecutive months of service in the final 48
2 months prior to retirement producing the highest gross compensation
3 excluding any compensation received on account of termination. If the
4 disability beneficiary is earning or is able to earn more than the
5 difference, the portion of his disability retirement allowance not
6 provided by his contributions shall be reduced to an amount which,
7 together with the portion of the disability retirement allowance
8 provided by his contributions and the amount earnable by him shall
9 equal the amount of his gross compensation prior to retirement. This
10 difference shall be increased on January 1 each year by the ratio of the
11 Consumer Price Index to the Index one year earlier, calculated to the
12 nearest tenth of one percent (1/10th of 1%). Should the earning
13 capacity of the disability beneficiary later change, the portion of his
14 disability retirement allowance not provided by his contributions may
15 be further modified. In lieu of the reductions on account of a disability
16 beneficiary earning more than the aforesaid difference, he may elect to
17 convert his disability retirement allowance to a service retirement
18 allowance calculated on the basis of his average final compensation
19 and creditable service at the time of disability and his age at the time
20 of conversion to service retirement. This election is irrevocable.
21 Provided, the provisions of this subdivision shall not apply to
22 beneficiaries of the Law-Enforcement Officers' Retirement System
23 transferred to this Retirement System who ~~commenced retirement~~ were
24 first employed on and before July 1, 1981.

- 25 (2) Should a disability beneficiary under the age of 60 years be restored to
26 active service at a compensation not less than his average final
27 compensation, his retirement allowance shall cease, he shall again
28 become a member of the Retirement System, and he shall contribute
29 thereafter at the same rate he paid prior to disability; provided that, on
30 and after July 1, 1971, if a disability beneficiary under the age of 62
31 years is restored to active service at a compensation not less than his
32 average final compensation, his retirement allowance shall cease, he
33 shall again become a member of the Retirement System, and he shall
34 contribute thereafter at the uniform contribution rate payable by all
35 members. Any such prior service certificate on the basis of which his
36 service was computed at the time of his retirement shall be restored to
37 full force and effect, and, in addition, upon his subsequent retirement
38 he shall be credited with all his service as a member, but should he be
39 restored to active service on or after the attainment of the age of 50
40 years his pension upon subsequent retirement shall not exceed the sum
41 of the pension which he was receiving immediately prior to his last
42 restoration and the pension that he would have received on account of
43 his service since his last restoration had he entered service at the time
44 as a new entrant.

- 1 (3) Notwithstanding the foregoing, a member retired on a disability
2 retirement allowance who is restored to service and subsequently
3 retires on or after July 1, 1971, shall be entitled to an allowance not
4 less than the allowance described in a. below reduced by the amount in
5 b. below:
- 6 a. The allowance to which he would have been entitled if he were
7 retiring for the first time, calculated on the basis of his total
8 creditable service represented by the sum of his creditable
9 service at the time of his first retirement and his creditable
10 service after he was restored to service.
- 11 b. The actuarial equivalent of the retirement benefits he previously
12 received.
- 13 (3a) Notwithstanding the foregoing, a member retired on a disability
14 retirement allowance who is restored to service and subsequently
15 retires on or after July 1, 1985, shall be entitled to an allowance to
16 which he would have been entitled if he were retiring for the first time,
17 calculated on the basis of his total creditable service represented by the
18 sum of his creditable service at the time of his first retirement and his
19 creditable service after he was restored to service. Provided, however,
20 any election of an optional allowance cannot be changed unless the
21 member subsequently completes three years of membership service
22 after being restored to service.
- 23 (4) As a condition to the receipt of the disability retirement allowance
24 provided for in G.S. 135-5(d), (d1), (d2) and (d3) each member retired
25 on a disability retirement allowance shall, on or before April 15 of
26 each calendar year, provide the Board of Trustees with a statement of
27 his or her income received as compensation for services, including
28 fees, commissions or similar items, and income received from
29 business, for the previous calendar year. Such statement shall be filed
30 on a form as required by the Board of Trustees.
- 31 The Director of the State Retirement System shall contact any State
32 or federal agency which can provide information to substantiate the
33 statement required to be submitted by this subdivision and may enter
34 into agreements for the exchange of information.
- 35 (5) Notwithstanding any other provisions of this Article to the contrary, a
36 beneficiary who was a beneficiary retired on a disability retirement
37 with the Law-Enforcement Officers' Retirement System at the time of
38 the transfer of law-enforcement officers employed by a participating
39 employer and beneficiaries last employed by a participating employer
40 to this Retirement System and who also was a contributing member of
41 this Retirement System at that time, shall continue to be paid his
42 retirement allowance without restriction and may continue as a
43 member of this Retirement System with all the rights and privileges
44 appendant to membership. Any beneficiary who retired on a disability

1 retirement allowance as an employee of any participating employer
2 under the Law-Enforcement Officers' Retirement System and becomes
3 employed as an employee other than as a law-enforcement officer by
4 an employer participating in the Retirement System after the
5 aforementioned transfer shall continue to be paid his retirement
6 allowance without restriction and may continue as a member of this
7 Retirement System with all the rights and privileges appendant to
8 membership until January 1, 1989, at which time his retirement
9 allowance shall cease and his subsequent retirement shall be
10 determined in accordance with the preceding subdivision (3a) of this
11 subsection. Any beneficiary as hereinbefore described who becomes
12 employed as a law-enforcement officer by an employer participating in
13 the Retirement System shall cease to be a beneficiary and shall
14 immediately commence membership and his subsequent retirement
15 shall be determined in accordance with subdivision (3a) of this
16 subsection.

- 17 (6) Notwithstanding any other provision to the contrary, a beneficiary in
18 receipt of a disability retirement allowance until the earliest date on
19 which he would have qualified for an unreduced service retirement
20 allowance shall thereafter (i) not be subject to further reexaminations
21 as to disability, (ii) not be subject to any reduction in allowance on
22 account of being engaged in a gainful occupation other than with an
23 employer participating in the Retirement System, and (iii) be
24 considered a beneficiary in receipt of a service retirement allowance.
25 Provided, however, a beneficiary in receipt of a disability retirement
26 allowance whose allowance is reduced on account of reexamination as
27 to disability or to ability to engage in a gainful occupation prior to the
28 date on which he would have qualified for an unreduced service
29 retirement allowance shall have only the right to elect to convert to an
30 early or service retirement allowance as permitted under subdivision
31 (1) above."

32 Sec. 3. This act becomes effective July 1, 1991.