

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 289

Short Title: Remove Disability Age Limit.

(Public)

Sponsors: Senator Block.

Referred to: Pensions and Retirement.

March 27, 1991

A BILL TO BE ENTITLED

**AN ACT TO REMOVE THE AGE LIMIT FOR RESTORATION TO MEMBERSHIP
FOR A DISABILITY BENEFICIARY IN THE LOCAL GOVERNMENTAL
EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE
EMPLOYEES RETIREMENT SYSTEM.**

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

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

21 The provisions of this subdivision shall not apply to beneficiaries of
22 the Law Enforcement Officers' Retirement System transferred to this
23 Retirement System who commenced retirement on and before July 1,
24 1981.

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

41 (3) Notwithstanding the foregoing, a member retired on a disability
42 retirement allowance who is restored to service and subsequently
43 retires on or after July 1, 1971, shall be entitled to an allowance not

1 less than the allowance prescribed in a below reduced by the amount in
2 b below.

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

8 b. The actuarial equivalent of the retirement benefits he previously
9 received.

10 (3a) Notwithstanding the foregoing, should a member-beneficiary who
11 retired on a disability retirement allowance who is be restored to
12 service as an employee, then the retirement allowance shall cease as of
13 the first day of the month following the month in which the beneficiary
14 restored to service and the beneficiary shall become a member of the
15 Retirement System and shall contribute thereafter as allowed by law at
16 the uniform contribution payable by all members. and subsequently
17 retires on or after July 1, 1985, Upon the subsequent retirement of the
18 beneficiary, he shall be entitled to an allowance to which he would
19 have been entitled if he were retiring for the first time, calculated on
20 the basis of his total creditable service represented by the sum of his
21 creditable service at the time of his first retirement and his creditable
22 service after he was restored to service. Provided, however, any
23 election of an optional allowance cannot be changed unless the
24 member subsequently completes three years of membership service
25 after being restored to service.

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

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

38 (5) Notwithstanding any other provisions of this Article to the contrary, a
39 beneficiary who was a beneficiary retired on a disability retirement
40 with the Law Enforcement Officers' Retirement System at the time of
41 the transfer of law enforcement officers employed by a participating
42 employer and beneficiaries last employed by a participating employer
43 to this Retirement System and who also was a contributing member of
44 this Retirement System at that time, shall continue to be paid his

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

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

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

35 "(e) Reexamination of Beneficiaries Retired for Disability. – The provisions of
36 this subsection shall be applicable to members retired on a disability retirement
37 allowance and shall not be applicable to members in service on or after January 1, 1988.
38 Once each year during the first five years following retirement of a member on a
39 disability retirement allowance, and once in every three-year period thereafter, the
40 Board of Trustees may, and upon his application shall, require any disability beneficiary
41 who has not yet attained the age of 60 years to undergo a medical examination, such
42 examination to be made at the place of residence of said beneficiary or other place
43 mutually agreed upon, by a physician or physicians designated by the Board of
44 Trustees. Should any disability beneficiary who has not yet attained the age of 60 years

1 refuse to submit to at least one medical examination in any such year by a physician or
2 physicians designated by the Board of Trustees, his allowance may be discontinued
3 until his withdrawal of such refusal, and should his refusal continue for one year all his
4 rights in and to his pension may be revoked by the Board of Trustees.

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

33 (2) Should a disability beneficiary under the age of 60 years be restored to
34 active service at a compensation not less than his average final
35 compensation, his retirement allowance shall cease, he shall again
36 become a member of the Retirement System, and he shall contribute
37 thereafter at the same rate he paid prior to disability; provided that, on
38 and after July 1, 1971, if a disability beneficiary under the age of 62
39 years is restored to active service at a compensation not less than his
40 average final compensation, his retirement allowance shall cease, he
41 shall again become a member of the Retirement System, and he shall
42 contribute thereafter at the uniform contribution rate payable by all
43 members. Any such prior service certificate on the basis of which his
44 service was computed at the time of his retirement shall be restored to

1 full force and effect, and, in addition, upon his subsequent retirement
2 he shall be credited with all his service as a member, but should he be
3 restored to active service on or after the attainment of the age of 50
4 years his pension upon subsequent retirement shall not exceed the sum
5 of the pension which he was receiving immediately prior to his last
6 restoration and the pension that he would have received on account of
7 his service since his last restoration had he entered service at the time
8 as a new entrant.

9 (3) Notwithstanding the foregoing, a member retired on a disability
10 retirement allowance who is restored to service and subsequently
11 retires on or after July 1, 1971, shall be entitled to an allowance not
12 less than the allowance described in a. below reduced by the amount in
13 b. below:

14 a. The allowance to which he would have been entitled if he were
15 retiring for the first time, calculated on the basis of his total
16 creditable service represented by the sum of his creditable
17 service at the time of his first retirement and his creditable
18 service after he was restored to service.

19 b. The actuarial equivalent of the retirement benefits he previously
20 received.

21 (3a) Notwithstanding the foregoing, should a member-beneficiary who
22 retired on a disability retirement allowance who is be restored to
23 service as an employee or teacher, then the retirement allowance shall
24 cease as of the first day of the month following the month in which the
25 beneficiary is restored to service and the beneficiary shall become a
26 member of the Retirement System and shall contribute thereafter as
27 allowed by law at the uniform contribution payable by all members.
28 and subsequently retires on or after July 1, 1985, Upon the subsequent
29 retirement of the beneficiary, he shall be entitled to an allowance to
30 which he would have been entitled if he were retiring for the first time,
31 calculated on the basis of his total creditable service represented by the
32 sum of his creditable service at the time of his first retirement and his
33 creditable service after he was restored to service. Provided, however,
34 any election of an optional allowance cannot be changed unless the
35 member subsequently completes three years of membership service
36 after being restored to service.

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

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

5 (5) Notwithstanding any other provisions of this Article to the contrary, a
6 beneficiary who was a beneficiary retired on a disability retirement
7 with the Law-Enforcement Officers' Retirement System at the time of
8 the transfer of law-enforcement officers employed by a participating
9 employer and beneficiaries last employed by a participating employer
10 to this Retirement System and who also was a contributing member of
11 this Retirement System at that time, shall continue to be paid his
12 retirement allowance without restriction and may continue as a
13 member of this Retirement System with all the rights and privileges
14 appendant to membership. Any beneficiary who retired on a disability
15 retirement allowance as an employee of any participating employer
16 under the Law-Enforcement Officers' Retirement System and becomes
17 employed as an employee other than as a law-enforcement officer by
18 an employer participating in the Retirement System after the
19 aforementioned transfer shall continue to be paid his retirement
20 allowance without restriction and may continue as a member of this
21 Retirement System with all the rights and privileges appendant to
22 membership until January 1, 1989, at which time his retirement
23 allowance shall cease and his subsequent retirement shall be
24 determined in accordance with the preceding subdivision (3a) of this
25 subsection. Any beneficiary as hereinbefore described who becomes
26 employed as a law-enforcement officer by an employer participating in
27 the Retirement System shall cease to be a beneficiary and shall
28 immediately commence membership and his subsequent retirement
29 shall be determined in accordance with subdivision (3a) of this
30 subsection.

31 (6) Notwithstanding any other provision to the contrary, a beneficiary in
32 receipt of a disability retirement allowance until the earliest date on
33 which he would have qualified for an unreduced service retirement
34 allowance shall thereafter (i) not be subject to further reexaminations
35 as to disability, (ii) not be subject to any reduction in allowance on
36 account of being engaged in a gainful occupation other than with an
37 employer participating in the Retirement System, and (iii) be
38 considered a beneficiary in receipt of a service retirement allowance.
39 Provided, however, a beneficiary in receipt of a disability retirement
40 allowance whose allowance is reduced on account of reexamination as
41 to disability or to ability to engage in a gainful occupation prior to the
42 date on which he would have qualified for an unreduced service
43 retirement allowance shall have only the right to elect to convert to an

1 early or service retirement allowance as permitted under subdivision
2 (1) above."
3 Sec. 3. This act becomes effective July 1, 1991.