

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 235  
Committee Substitute Favorable 6/12/91  
Committee Substitute #2 Favorable 6/19/92

Short Title: Clarify Disability Retire.

(Public)

Sponsors:

Referred to:

March 12, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING LAW 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

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 provided by~~  
7 ~~his contributions and the amount earnable by him shall equal the amount of~~  
8 ~~his gross compensation prior to retirement.~~ by one dollar (\$1.00) for each  
9 two dollars (\$2.00) of earnings in excess of the difference, provided  
10 that the disability retirement allowance shall not be reduced below the  
11 amount provided by his own contributions. This difference shall be  
12 increased on January 1 each year by the ratio of the Consumer Price  
13 Index to the Index one year earlier, calculated to the nearest tenth of a  
14 percent (1/10 of 1%). Should the earning capacity of the disability  
15 beneficiary later change, the portion of his disability retirement  
16 allowance not provided by his contributions may be further modified.  
17 In lieu of the reductions on account of a disability beneficiary earning  
18 more than the aforesaid difference, he may elect to convert his  
19 disability retirement allowance to a service retirement allowance  
20 calculated on the basis of his average final compensation and  
21 creditable service at the time of disability retirement and his age at the  
22 time of conversion to service retirement. This election is irrevocable.

23 The provisions of this subdivision shall not apply to beneficiaries  
24 of the Law Enforcement Officers' Retirement System transferred to  
25 this Retirement System who commenced retirement on and before July  
26 1, 1981.

- 27 (2) Should a disability beneficiary under the age of 62 years be restored to  
28 active service at a compensation not less than his average final  
29 compensation, his retirement allowance shall cease, he shall again  
30 become a member of the Retirement System and he shall contribute  
31 thereafter at the contribution rate which is applicable during his  
32 subsequent membership service. Any prior service certificate on the  
33 basis of which his service was computed at the time of his retirement  
34 shall be restored to full force and effect, and in addition, upon his  
35 subsequent retirement he shall be credited with all his service as a  
36 member, but should he be restored to active service on or after the  
37 attainment of the age of 50 years his pension upon subsequent  
38 retirement shall not exceed the sum of the pension which he was  
39 receiving immediately prior to his last restoration after June 30, 1951,  
40 and the pension that he would have received on account of his service  
41 since such last restoration had he entered service at that time as a new  
42 entrant.
- 43 (3) 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, 1971, shall be entitled to an allowance not  
2 less than the allowance prescribed in a below reduced by the amount in  
3 b below.

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

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

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

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

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

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

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

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

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

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

- 1           (1)    The Board of Trustees shall determine whether a disability beneficiary  
2           is engaged in or is able to engage in a gainful occupation paying more  
3           than the difference, as hereinafter indexed, between his disability  
4           retirement allowance and the gross compensation earned as an  
5           employee during the 12 consecutive months of service in the final 48  
6           months prior to retirement producing the highest gross compensation  
7           excluding any compensation received on account of termination. If the  
8           disability beneficiary is earning or is able to earn more than the  
9           difference, ~~the portion of his disability retirement allowance not~~  
10          ~~provided by his contributions shall be reduced to an amount which,~~  
11          ~~together with the portion of the disability retirement allowance provided by~~  
12          ~~his contributions and the amount earnable by him shall equal the amount of~~  
13          ~~his gross compensation prior to retirement.~~ by one dollar (\$1.00) for each  
14          two dollars (\$2.00) of earnings in excess of the difference, provided  
15          that the disability retirement allowance shall not be reduced below the  
16          amount provided by his own contributions. This difference shall be  
17          increased on January 1 each year by the ratio of the Consumer Price  
18          Index to the Index one year earlier, calculated to the nearest tenth of  
19          one percent (1/10th of 1%). Should the earning capacity of the  
20          disability beneficiary later change, the portion of his disability  
21          retirement allowance not provided by his contributions may be further  
22          modified. In lieu of the reductions on account of a disability  
23          beneficiary earning more than the aforesaid difference, he may elect to  
24          convert his disability retirement allowance to a service retirement  
25          allowance calculated on the basis of his average final compensation  
26          and creditable service at the time of disability and his age at the time  
27          of conversion to service retirement. This election is irrevocable.  
28          Provided, the provisions of this subdivision shall not apply to  
29          beneficiaries of the Law-Enforcement Officers' Retirement System  
30          transferred to this Retirement System who commenced retirement on  
31          and before July 1, 1981.
- 32          (2)    Should a disability beneficiary under the age of 60 years be restored to  
33          active service at a compensation not less than his average final  
34          compensation, his retirement allowance shall cease, he shall again  
35          become a member of the Retirement System, and he shall contribute  
36          thereafter at the same rate he paid prior to disability; provided that, on  
37          and after July 1, 1971, if a disability beneficiary under the age of 62  
38          years is restored to active service at a compensation not less than his  
39          average final compensation, his retirement allowance shall cease, he  
40          shall again become a member of the Retirement System, and he shall  
41          contribute thereafter at the uniform contribution rate payable by all  
42          members. Any such prior service certificate on the basis of which his  
43          service was computed at the time of his retirement shall be restored to  
44          full force and effect, and, in addition, upon his subsequent retirement

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

8 (3) 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, 1971, shall be entitled to an allowance not  
11 less than the allowance described in a. below reduced by the amount in  
12 b. below:

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

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

20 (3a) Notwithstanding the foregoing, a member retired on a disability  
21 retirement allowance who is restored to service and subsequently  
22 retires on or after July 1, 1985, shall be entitled to an allowance to  
23 which he would have been entitled if he were retiring for the first time,  
24 calculated on the basis of his total creditable service represented by the  
25 sum of his creditable service at the time of his first retirement and his  
26 creditable service after he was restored to service. Provided, however,  
27 any election of an optional allowance cannot be changed unless the  
28 member subsequently completes three years of membership service  
29 after being restored to service.

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

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

42 (5) Notwithstanding any other provisions of this Article to the contrary, a  
43 beneficiary who was a beneficiary retired on a disability retirement  
44 with the Law-Enforcement Officers' Retirement System at the time of

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

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

39 Sec. 3. This act becomes effective July 1, 1992.