

REFERENCE TITLE: ASRS; long-term disability amendments

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HB 2145

Introduced by  
Representative McClure

AN ACT

AMENDING SECTIONS 38-797.07, 38-797.08 AND 38-797.11, ARIZONA REVISED  
STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section. 1. Section 38-797.07, Arizona Revised Statutes, is amended to  
3 read:  
4 38-797.07. LTD program benefits; limitations; definitions  
5 A. The LTD program is subject to the following limitations:  
6 1. Except as provided in paragraph 7 of this subsection, monthly  
7 benefits shall not exceed two-thirds of a member's monthly compensation at  
8 the time disability commences, reduced by:  
9 (a) ~~FOR A MEMBER WHOSE DISABILITY COMMENCED BEFORE JULY 1, 2008,~~  
10 sixty-four per cent of social security disability benefits that the member or  
11 the member's dependents are eligible to receive.  
12 (b) ~~FOR A MEMBER WHOSE DISABILITY COMMENCED ON OR AFTER JULY 1, 2008,~~  
13 ~~ALL OF ANY SOCIAL SECURITY DISABILITY BENEFITS THAT THE MEMBER OR THE~~  
14 ~~MEMBER'S DEPENDENTS ARE ELIGIBLE TO RECEIVE.~~  
15 (c) ~~FOR A MEMBER WHOSE DISABILITY COMMENCED BEFORE JULY 1, 2008,~~  
16 eighty-three per cent of social security retirement benefits that the member  
17 is eligible to receive.  
18 (d) ~~FOR A MEMBER WHOSE DISABILITY COMMENCED ON OR AFTER JULY 1, 2008,~~  
19 ~~ALL OF ANY SOCIAL SECURITY RETIREMENT BENEFITS THAT THE MEMBER IS ELIGIBLE TO~~  
20 ~~RECEIVE.~~  
21 ~~(e)~~ (e) All of any workers' compensation benefits.  
22 ~~(d)~~ (f) All of any payments for a veteran's disability if both of the  
23 following apply:  
24 (i) The veteran's disability payment is for the same condition or a  
25 condition related to the condition currently causing the member's total  
26 disability.  
27 (ii) The veteran's disability is due to, or a result of, service in  
28 the armed forces of the United States.  
29 ~~(e)~~ (g) All of any other benefits by reason of employment that are  
30 financed partly or wholly by an employer, including payments for sick leave.  
31 This subdivision does not include any retirement benefit that is received by  
32 the member pursuant to a state retirement system or plan other than ASRS.  
33 ~~(f)~~ (h) Fifty per cent of any salary, wages, commissions or other  
34 employment related pay that the member receives or is entitled to receive  
35 from any gainful employment in which the member actually engages.  
36 2. Monthly benefits are not payable until a member has been totally  
37 disabled for a period of six consecutive months.  
38 3. Monthly benefits are not payable to a member who is receiving  
39 retirement benefits from ASRS.  
40 4. Monthly benefits are not payable to a member whose disability is  
41 due to, or a result of, any of the following:  
42 (a) An intentionally self-inflicted injury.  
43 (b) War, whether declared or not.  
44 (c) An injury incurred while engaged in a felonious criminal act or  
45 enterprise.

1 (d) FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM  
2 COMMENCED BEFORE JULY 1, 2008, an injury or sickness for which the member  
3 received medical treatment within three months before the date of the  
4 member's coverage under the LTD program. This subdivision does not apply to  
5 a member who either:

6 (i) Has been an active member of an employer for twelve continuous  
7 months.

8 (ii) Is employed by an employer ~~as of June 30~~ BEFORE JULY 1, 1988.

9 (e) FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM  
10 COMMENCED ON OR AFTER JULY 1, 2008, AN INJURY OR SICKNESS FOR WHICH THE  
11 MEMBER RECEIVED MEDICAL TREATMENT WITHIN SIX MONTHS BEFORE THE DATE OF THE  
12 MEMBER'S COVERAGE UNDER THE LTD PROGRAM. THIS SUBDIVISION DOES NOT APPLY TO  
13 A MEMBER WHO HAS BEEN AN ACTIVE MEMBER OF AN EMPLOYER FOR TWELVE CONTINUOUS  
14 MONTHS.

15 5. Monthly benefits cease to be payable to a member at the earliest of  
16 the following:

17 (a) The date the member ceases to be totally disabled.

18 (b) The date the member:

19 (i) Ceases to be under the direct care of a doctor.

20 (ii) Refuses to undergo any medical examination or refuses to  
21 participate in any work rehabilitation program for which the member is  
22 reasonably qualified by education, training or experience and that is  
23 requested by the insurance company or claims administrator that is selected  
24 by the board to administer the LTD program.

25 (c) The date the member withdraws employee contributions with interest  
26 and ceases to be a member.

27 (d) The later of the following:

28 (i) The member's normal retirement date.

29 (ii) The month following sixty months of payments if disability occurs  
30 before sixty-five years of age.

31 (iii) The month following attainment of seventy years of age if  
32 disability occurs at sixty-five years of age or after but before sixty-nine  
33 years of age.

34 (iv) The month following twelve months of payments if disability  
35 occurs at or after sixty-nine years of age.

36 (e) If the member is convicted of a criminal offense and sentenced to  
37 more than six months in a jail, prison or other penal institution, the first  
38 day of the month following the first thirty continuous days of the member's  
39 confinement for the remainder of the confinement.

40 6. Monthly benefits are payable under the LTD program only for  
41 disabilities that commence on or after July 1, 1988.

42 7. The minimum benefit for a member who is entitled to receive  
43 benefits under the LTD program is fifty dollars per month.

44 8. Members are eligible to receive the benefits and payments described  
45 in paragraph 1 of this subsection, and the reductions provided by paragraph 1

1 of this subsection apply even though the benefits are not actually paid as  
2 follows:

3 (a) For primary and dependent social security benefits, the members  
4 are eligible for the benefits until the benefits are actually awarded, or if  
5 the benefits are denied, until the member pursues the social security appeal  
6 process through a hearing before a social security administrative law judge  
7 or until the insurance company or claims administrator determines that the  
8 member is not eligible for social security disability benefits.

9 (b) For benefits and payments from any other source provided in  
10 paragraph 1 of this subsection, the members are eligible for the benefits if  
11 it is reasonable to believe that the benefits will be paid on proper  
12 completion of the claim or would have been paid except for the failure of the  
13 member to pursue the claim in time.

14 9. A member shall be considered totally disabled if:

15 (a) During the first thirty months of a period of disability, the  
16 member is unable to perform all duties of the position held by the member  
17 when the member became totally disabled.

18 (b) For a member who has received monthly benefits for twenty-four  
19 months within a five-year period, the member is unable to perform any work  
20 for compensation or gain for which the member is reasonably qualified by  
21 education, training or experience in an amount at least equal to the  
22 scheduled benefits prescribed in paragraph 1 of this subsection.

23 B. A member who receives monthly benefits from the LTD program is  
24 entitled to receive service credit pursuant to article 2 of this chapter from  
25 the time disability commences until benefits cease to be payable, except that  
26 for a member who receives monthly benefits from the LTD program on or after  
27 June 30, 1999 the number of years of service credited to the member's  
28 retirement account during the period the member receives LTD benefit payments  
29 shall not cause the member's total credited service for retirement benefits  
30 to exceed the greater of thirty years or the total years of service credited  
31 to the member's retirement account on the commencement of disability.

32 C. This section does not prohibit a member whose disability has been  
33 established to the satisfaction of the board from relying on treatment by  
34 prayer through spiritual means in accordance with the tenets and practice of  
35 a recognized church, religious denomination or Native American traditional  
36 medicine by a duly accredited practitioner of the church, denomination or  
37 Native American traditional medicine without suffering reduction or  
38 suspension of the member's monthly benefits.

39 D. For the purposes of this section:

40 1. "Received medical treatment" means that the member consulted with  
41 or received the advice of a licensed medical or dental practitioner,  
42 including advice given during a routine examination, and it includes  
43 situations in which the member received medical or dental care, treatment or  
44 services, including the taking of drugs, medication, insulin or similar  
45 substances.

1           2. "Social security" and "social security disability" includes the  
2 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States  
3 Code sections 231 through 231u).

4           Sec. 2. Section 38-797.08, Arizona Revised Statutes, is amended to  
5 read:

6           38-797.08. Errors; benefit recomputation

7           If any change or error in the records results in any member receiving  
8 from the LTD program more or less than the member would have been entitled to  
9 receive if the records had been correct, the board shall correct the error  
10 and shall adjust the payments in a manner so that the equivalent of the  
11 benefit to which the member was correctly entitled is paid. The board shall  
12 correct any change or error and shall pay the appropriate monies to a member  
13 or shall recover monies from the member if the member is overpaid. **THE BOARD**  
14 **SHALL RECOVER MONIES BY REDUCING ANY BENEFIT THAT IS OTHERWISE PAYABLE BY**  
15 **ASRS OR THE LTD PROGRAM TO AN ACTIVE, INACTIVE, DISABLED OR RETIRED MEMBER,**  
16 **SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE PAYEE.**

17           Sec. 3. Section 38-797.11, Arizona Revised Statutes, is amended to  
18 read:

19           38-797.11. Exemptions from execution, attachment and taxation;  
20 exception

21           A. The benefits, the employer and member contributions and the  
22 securities in the LTD trust fund established by section 38-797.02 are not  
23 subject to execution or attachment and are nonassignable except as  
24 specifically provided in this article **OR ARTICLE 2 OF THIS CHAPTER**. The  
25 employer and member contributions and the securities in the LTD trust fund  
26 established by section 38-797.02 are exempt from state, county and municipal  
27 income taxes. Benefits received by a member from the LTD program are subject  
28 to tax pursuant to title 43.

29           B. Interest, earnings and all other credits pertaining to benefits are  
30 not subject to execution or attachment and are nonassignable.