

REFERENCE TITLE: ASRS; LTD amendments

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2118

Introduced by
Representative Boone

AN ACT

AMENDING SECTION 38-797, ARIZONA REVISED STATUTES; REPEALING SECTION 38-797.06, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2.1, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 38-797.06; AMENDING SECTION 38-797.07, 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, Arizona Revised Statutes, is amended to
3 read:

4 38-797. Definitions

5 In this article, unless the context otherwise requires:

6 1. "ASRS" means the Arizona state retirement system established by
7 article 2 of this chapter.

8 2. "Assets" means the accumulated resources of the LTD program.

9 3. "Board" means the ASRS board established pursuant to section
10 38-713.

11 4. "Compensation" ~~means the gross amount paid to a member by an~~
12 ~~employer as salary or wages, including amounts that are subject to deferred~~
13 ~~compensation or tax shelter agreements, for services rendered to or for an~~
14 ~~employer, or that would have been paid to the member except for the member's~~
15 ~~election or a legal requirement that all or part of the gross amount be used~~
16 ~~for other purposes. Compensation does not include:~~

17 ~~(a) Lump sum payments on termination of employment for accumulated~~
18 ~~vacation or annual leave, sick leave, compensatory time or any other form of~~
19 ~~termination pay whether the payments are made in one payment or by~~
20 ~~installments over a period of time.~~

21 ~~(b) Damages, costs, attorney fees, interest or other penalties paid~~
22 ~~pursuant to a court order or a compromise settlement or agreement to satisfy~~
23 ~~a grievance or claim even though the amount of the payment is based in whole~~
24 ~~or in part on previous salary or wage levels, except that, if the court order~~
25 ~~or compromise settlement or agreement directs salary or wages to be paid for~~
26 ~~a specific period of time, the payment is compensation for that specific~~
27 ~~period of time.~~

28 ~~(c) Payment, at the member's option, in lieu of fringe benefits that~~
29 ~~are normally paid for or provided by the employer.~~

30 ~~(d) Merit awards pursuant to section 38-613 and performance bonuses~~
31 ~~paid to assistant attorneys general pursuant to section 41-192 HAS THE SAME~~
32 ~~MEANING PRESCRIBED IN SECTION 38-711.~~

33 5. "Depository" means a bank in which the monies of the LTD program
34 are deposited and collateralized as provided by law.

35 6. "Employer" ~~means:~~

36 ~~(a) This state.~~

37 ~~(b) Participating political subdivisions HAS THE SAME MEANING~~
38 ~~PRESCRIBED IN SECTION 38-711.~~

39 7. "Employer contributions" means all amounts paid into the LTD
40 program by an employer.

41 8. "Fiscal year" ~~means the period from July 1 of any year to June 30~~
42 ~~of the following year HAS THE SAME MEANING PRESCRIBED IN SECTION 38-711.~~

43 9. "LTD program" means the long-term disability program established by
44 this article.

45 10. "Member" has the same meaning prescribed in section 38-711.

1 11. "Monthly compensation" means one-twelfth of a member's annual
2 compensation paid and payable in the fiscal year during which a member
3 becomes disabled.

4 12. "Normal retirement date" ~~means the earliest of the following:~~

5 ~~(a) A member's sixty fifth birthday.~~

6 ~~(b) A member's sixty second birthday and completion of at least ten~~
7 ~~years of credited service.~~

8 ~~(c) The first day that the sum of a member's age and years of total~~
9 ~~credited service equals eighty~~ HAS THE SAME MEANING PRESCRIBED IN SECTION
10 38-711.

11 13. "Political subdivision" ~~means any political subdivision of this~~
12 ~~state~~ HAS THE SAME MEANING PRESCRIBED IN SECTION 38-711.

13 14. "State" ~~means this state, including any department, office, board,~~
14 ~~commission, agency, institution or other instrumentality of this state~~ HAS
15 THE SAME MEANING PRESCRIBED IN SECTION 38-711.

16 Sec. 2. Repeal

17 Section 38-797.06, Arizona Revised Statutes, is repealed.

18 Sec. 3. Title 38, chapter 5, article 2.1, Arizona Revised Statutes, is
19 amended by adding a new section 38-797.06, to read:

20 38-797.06. Contribution rate; annual report

21 A. THE BOARD SHALL SELECT AN ACTUARY TO DETERMINE REQUIRED EMPLOYER
22 CONTRIBUTIONS ON AN ANNUAL BASIS. THE ACTUARY SHALL BE A FELLOW OF THE
23 SOCIETY OF ACTUARIES.

24 B. EMPLOYER CONTRIBUTIONS SHALL BE A PERCENTAGE OF COMPENSATION OF ALL
25 EMPLOYEES OF THE EMPLOYERS, AS THE ASRS ACTUARY DETERMINES PURSUANT TO THIS
26 SECTION. THE ACTUARY SHALL MAKE THIS DETERMINATION IN AN ANNUAL VALUATION
27 PERFORMED AS OF JUNE 30. THE VALUATION AS OF JUNE 30 OF A CALENDAR YEAR
28 SHALL DETERMINE THE PERCENTAGE TO BE APPLIED TO COMPENSATION FOR THE FISCAL
29 YEAR BEGINNING JULY 1 OF THE FOLLOWING CALENDAR YEAR. THE ACTUARY SHALL
30 DETERMINE THE TOTAL EMPLOYER CONTRIBUTION USING AN ACTUARIAL COST METHOD
31 CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS. THE TOTAL EMPLOYER
32 CONTRIBUTIONS SHALL BE EQUAL TO THE EMPLOYER NORMAL COST PLUS THE AMOUNT
33 REQUIRED TO AMORTIZE THE PAST SERVICE FUNDING REQUIREMENT OVER A PERIOD
34 CONSISTENT WITH GENERALLY ACCEPTED ACTUARIAL STANDARDS.

35 C. ALL CONTRIBUTIONS MADE BY THE EMPLOYER AND ALLOCATED TO THE LTD
36 TRUST FUND ESTABLISHED BY SECTION 38-797.02 ARE IRREVOCABLE AND SHALL BE USED
37 AS BENEFITS UNDER THIS ARTICLE OR TO PAY EXPENSES OF THE LTD PROGRAM.

38 D. ASRS SHALL PROVIDE A PRELIMINARY REPORT ON OR BEFORE NOVEMBER 30 OF
39 THE VALUATION YEAR AND A FINAL REPORT ON OR BEFORE JANUARY 15 OF THE
40 FOLLOWING YEAR TO THE GOVERNOR, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
41 AND THE PRESIDENT OF THE SENATE ON THE CONTRIBUTION RATE FOR THE ENSUING
42 FISCAL YEAR.

1 Sec. 4. Section 38-797.07, Arizona Revised Statutes, is amended to
2 read:

3 38-797.07. LTD program benefits; limitations; definitions

4 A. The LTD program is subject to the following limitations:

5 1. Except as provided in paragraph 7 of this subsection, monthly LTD
6 PROGRAM benefits shall not exceed two-thirds of a member's monthly
7 compensation at the time disability commences, reduced by:

8 (a) For a member whose disability commences before July 1, 2008,
9 sixty-four per cent of social security disability benefits that the member ~~or~~
10 AND the member's dependents are eligible to receive.

11 (b) For a member whose disability commences on or after July 1, 2008,
12 eighty-five per cent of social security disability benefits that the member
13 ~~or~~ AND the member's dependents are eligible to receive, but not including:

14 (i) The amount of attorney fees approved pursuant to social security
15 administration rules and reasonable documented costs paid to an attorney to
16 secure that disability benefit.

17 (ii) Any cost-of-living adjustments that are granted after the member
18 commences benefits under this section.

19 (c) For a member whose disability commences before July 1, 2008,
20 eighty-three per cent of social security retirement benefits that the member
21 is eligible to receive.

22 (d) For a member whose disability commences on or after July 1, 2008,
23 eighty-five per cent of social security retirement benefits that the member
24 is eligible to receive, but not including any cost-of-living adjustments that
25 are granted after the member commences benefits under this section.

26 (e) All of any workers' compensation benefits.

27 (f) All of any payments for a veteran's disability if both of the
28 following apply:

29 (i) The veteran's disability payment is for the same condition or a
30 condition related to the condition currently causing the member's total
31 disability.

32 (ii) The veteran's disability is due to, or a result of, service in
33 the armed forces of the United States.

34 (g) All of any other benefits by reason of employment that are
35 financed partly or wholly by an employer, including payments for sick leave.
36 This subdivision does not include any retirement benefit that is received by
37 the member pursuant to a state retirement system or plan other than ASRS.

38 (h) Fifty per cent of any salary, wages, commissions or other
39 employment related pay that the member receives or is entitled to receive
40 from any gainful employment in which the member actually engages.

41 2. Monthly LTD PROGRAM benefits are not payable until a member has
42 been totally disabled for a period of six consecutive months.

43 3. Monthly LTD PROGRAM benefits are not payable to a member who is
44 receiving retirement benefits from ASRS.

1 4. Monthly LTD PROGRAM benefits are not payable to a member whose
2 disability is due to, or a result of, any of the following:

3 (a) An intentionally self-inflicted injury.

4 (b) War, whether declared or not.

5 (c) An injury incurred while engaged in a felonious criminal act or
6 enterprise.

7 (d) For a member whose most recent membership in the LTD program
8 commences before July 1, 2008, an injury or sickness for which the member
9 received medical treatment within three months before the date of the
10 member's coverage under the LTD program. This subdivision does not apply to
11 a member who either:

12 (i) Has been an active member of an employer for twelve continuous
13 months.

14 (ii) Is employed by an employer before July 1, 1988.

15 (e) For a member whose most recent membership in the LTD program
16 commences on or after July 1, 2008, an injury or sickness for which the
17 member received medical treatment within six months before the date of the
18 member's coverage under the LTD program. This subdivision does not apply to
19 a member who has been an active member of an employer for twelve continuous
20 months.

21 5. Monthly LTD PROGRAM benefits cease to be payable to a member at the
22 earliest of the following:

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

24 (b) The date the member:

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

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

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

33 (d) The later of the following:

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

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

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

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

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

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

3 7. The minimum benefit for a member who is entitled to receive MONTHLY
4 LTD PROGRAM benefits ~~under the LTD program~~ is fifty dollars per month.

5 8. Members are eligible to receive the LTD PROGRAM benefits and
6 payments described in paragraph 1 of this subsection, and the reductions
7 provided by paragraph 1 of this subsection apply even though the SOCIAL
8 SECURITY benefits are not actually paid as follows:

9 (a) For primary and dependent social security benefits, the members
10 are eligible for the SOCIAL SECURITY benefits until the SOCIAL SECURITY
11 benefits are actually awarded, or if the SOCIAL SECURITY benefits are denied,
12 until the member pursues the social security appeal process through a hearing
13 before a social security administrative law judge or until the insurance
14 company or claims administrator determines that the member is not eligible
15 for social security ~~disability~~ benefits.

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

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

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

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

31 B. A member who receives monthly LTD PROGRAM benefits ~~from the LTD~~
32 ~~program~~ is entitled to receive service credit pursuant to article 2 of this
33 chapter from the time disability commences until LTD PROGRAM benefits cease
34 to be payable, except that for a member who receives monthly LTD PROGRAM
35 benefits ~~from the LTD program~~ on or after June 30, 1999 the number of years
36 of service credited to the member's retirement account during the period the
37 member receives LTD PROGRAM benefit payments shall not cause the member's
38 total credited service for retirement benefits to exceed the greater of
39 thirty years or the total years of service credited to the member's
40 retirement account on the commencement of disability.

41 C. This section does not prohibit a member whose disability has been
42 established to the satisfaction of the board from relying on treatment by
43 prayer through spiritual means in accordance with the tenets and practice of
44 a recognized church, religious denomination or Native American traditional
45 medicine by a duly accredited practitioner of the church, denomination or

1 Native American traditional medicine without suffering reduction or
2 suspension of the member's monthly LTD PROGRAM benefits.

3 D. For the purposes of this section:

4 1. "Received medical treatment" means that the member consulted with
5 or received the advice of a licensed medical or dental practitioner,
6 including advice given during a routine examination, and it includes
7 situations in which the member received medical or dental care, treatment or
8 services, including the taking of drugs, medication, insulin or similar
9 substances.

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