

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SENATE BILL 1178

AN ACT

AMENDING SECTIONS 38-797 AND 38-797.07, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; 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. "AVERAGE MONTHLY COMPENSATION" MEANS:

10 (a) THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE
11 REMITTED DURING A PERIOD OF THIRTY-SIX CONSECUTIVE MONTHS DURING WHICH A
12 MEMBER RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY
13 MONTHS OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE
14 REPORTED TO ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID
15 LEAVE OF ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION.
16 THE THIRTY-SIX CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE
17 AND AFTER OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS.

18 (b) IF THE MEMBER WAS EMPLOYED FOR LESS THAN THIRTY-SIX CONSECUTIVE
19 MONTHS, THE MONTHLY AVERAGE OF COMPENSATION OF THE TOTAL CONSECUTIVE MONTHS
20 WORKED. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO ASRS OR THAT
21 FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF ABSENCE OR
22 SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE CONSECUTIVE
23 MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER OR MAY BE
24 COMPLETELY AFTER ANY EXCLUDED MONTHS.

25 ~~3.~~ 4. "Board" means the ASRS board established pursuant to section
26 38-713.

27 ~~4.~~ 5. "Compensation" has the same meaning prescribed in section
28 38-711.

29 ~~5.~~ 6. "Depository" means a bank in which the monies of the LTD
30 program are deposited and collateralized as provided by law.

31 ~~6.~~ 7. "Employer" has the same meaning prescribed in section 38-711.

32 ~~7.~~ 8. "Employer contributions" means all amounts paid into the LTD
33 program by an employer.

34 ~~8.~~ 9. "Fiscal year" has the same meaning prescribed in section
35 38-711.

36 ~~9.~~ 10. "LTD program" means the long-term disability program
37 established by this article.

38 ~~10.~~ 11. "Member" has the same meaning prescribed in section 38-711.

39 ~~11.~~ 12. "Monthly compensation" means one-twelfth of a member's annual
40 compensation paid and payable in the fiscal year during which a member
41 becomes disabled.

42 ~~12.~~ 13. "Normal retirement date" has the same meaning prescribed in
43 section 38-711.

1 ~~13-~~ 14. "Political subdivision" has the same meaning prescribed in
2 section 38-711.

3 ~~14-~~ 15. "State" has the same meaning prescribed in section 38-711.

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

6 38-797.07. LTD program benefits; limitations; definitions

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

8 1. Except as provided in paragraph 9 of this subsection, **FOR A MEMBER**
9 **WHOSE DISABILITY COMMENCES BEFORE JANUARY 1, 2014**, monthly LTD program
10 benefits shall ~~not-exceed~~ **EQUAL** two-thirds of a member's monthly compensation
11 at the time disability commences, **AND FOR A MEMBER WHOSE DISABILITY COMMENCES**
12 **ON OR AFTER JANUARY 1, 2014, MONTHLY LTD PROGRAM BENEFITS SHALL EQUAL SIXTY**
13 **PER CENT OF A MEMBER'S AVERAGE MONTHLY COMPENSATION AT THE TIME DISABILITY**
14 **COMMENCES** reduced by:

15 (a) For a member whose disability commences before July 1, 2008,
16 sixty-four per cent of social security disability benefits that the member
17 and the member's dependents are eligible to receive.

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

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

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

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

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

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

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

36 (i) The veteran's disability payment is for the same condition or a
37 condition related to the condition currently causing the member's total
38 disability.

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

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

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

4 2. For a member whose disability commences on or after ~~the effective~~
5 ~~date of this amendment to this section~~ AUGUST 2, 2012, a member's monthly
6 income from the monthly LTD program benefits and sources listed in paragraph
7 1 of this subsection shall not exceed one hundred per cent of the member's
8 monthly compensation OR AVERAGE MONTHLY COMPENSATION, WHICHEVER IS
9 APPLICABLE, at the time disability commences. ASRS shall offset the member's
10 monthly LTD program benefits by the amount necessary to reduce the member's
11 total monthly income to meet the limit prescribed in this paragraph.

12 3. Monthly LTD program benefits are not payable until a member has
13 been totally disabled for a period of six consecutive months.

14 4. Monthly LTD program benefits are not payable to a member who files
15 an initial claim for disability more than twelve months after the date of the
16 member's date of disability unless the member demonstrates to ASRS good cause
17 for not filing the initial claim within twelve months after the date of
18 disability.

19 5. Monthly LTD program benefits are not payable to a member who is
20 receiving retirement benefits from ASRS.

21 6. Monthly LTD program benefits are not payable to a member whose
22 disability is due to, or a result of, any of the following:

23 (a) An intentionally self-inflicted injury.

24 (b) War, whether declared or not.

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

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

32 (i) Has been an active member of an employer for twelve continuous
33 months.

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

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

41 7. Monthly LTD program benefits cease to be payable to a member at the
42 earliest of the following:

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

44 (b) The date the member:

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

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

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

8 (d) The later of the following:

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

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

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

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

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

21 8. Monthly LTD program benefits are payable only for disabilities that
22 commence on or after July 1, 1988.

23 9. The minimum benefit for a member who is entitled to receive monthly
24 LTD program benefits is fifty dollars per month.

25 10. Members are eligible to receive the LTD program benefits and
26 payments described in paragraph 1 of this subsection, and the reductions
27 provided by paragraph 1 of this subsection apply even though the social
28 security benefits are not actually paid as follows:

29 (a) For primary and dependent social security benefits, the members
30 are eligible for the social security benefits until the social security
31 benefits are actually awarded, or if the social security benefits are denied,
32 until the member pursues the social security appeal process through a hearing
33 before a social security administrative law judge or until the insurance
34 company or claims administrator determines that the member is not eligible
35 for social security benefits.

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

41 11. A member shall be considered totally disabled if based on objective
42 medical evidence:

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

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

7 B. A member who receives monthly LTD program benefits is entitled to
8 receive service credit pursuant to article 2 of this chapter from the time
9 disability commences until LTD program benefits cease to be payable, except
10 that for a member who receives monthly LTD program benefits on or after June
11 30, 1999 the number of years of service credited to the member's retirement
12 account during the period the member receives LTD program benefit payments
13 shall not cause the member's total credited service for retirement benefits
14 to exceed the greater of thirty years or the total years of service credited
15 to the member's retirement account on the commencement of disability.

16 C. This section does not prohibit a member whose disability has been
17 established to the satisfaction of the board from relying on treatment by
18 prayer through spiritual means in accordance with the tenets and practice of
19 a recognized church, religious denomination or Native American traditional
20 medicine by a duly accredited practitioner of the church, denomination or
21 Native American traditional medicine without suffering reduction or
22 suspension of the member's monthly LTD program benefits.

23 D. ASRS may suspend or terminate benefits under this article if a
24 member fails to provide information, data, paperwork or other materials that
25 are requested by ASRS or the insurance company or claims administrator that
26 is selected by the board to administer the LTD program. If the member
27 provides the information requested, ASRS shall retroactively reinstate the
28 benefits or claim for which the member qualifies under this article.

29 E. For the purposes of this section:

30 1. "Objective medical evidence" means evidence that established facts
31 and conditions, as perceived without distortion by personal feelings,
32 prejudices or interpretations, and includes x-rays, quantitative tests,
33 laboratory findings, data, records, reports from the attending physician and
34 reports from a consulting physician, as applicable.

35 2. "Received medical treatment" means that the member consulted with
36 or received the advice of a licensed medical or dental practitioner,
37 including advice given during a routine examination, and it includes
38 situations in which the member received medical or dental care, treatment or
39 services, including the taking of drugs, medication, insulin or similar
40 substances.

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

1 Sec. 3. Appropriation: ASRS: exemption

2 A. The sum of \$35,000 is appropriated from the Arizona state
3 retirement system administration account in fiscal year 2013-2014 to the
4 Arizona state retirement system for the implementation of this act.

5 B. The appropriation made in subsection A of this section is exempt
6 from the provisions of section 35-190, Arizona Revised Statutes, relating to
7 lapsing of appropriations.