

REFERENCE TITLE: ASRS; long-term disability program

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

## **SB 1085**

Introduced by  
Senator Yarbrough

AN ACT

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 38-797.07, 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 9 of this subsection, **FOR A MEMBER**  
7 **WHOSE DISABILITY COMMENCES BEFORE JANUARY 1, 2015,** monthly LTD program  
8 benefits ~~shall not exceed~~ **EQUAL** two-thirds of a member's monthly compensation  
9 at the time disability commences, **AND FOR A MEMBER WHOSE DISABILITY COMMENCES**  
10 **ON OR AFTER JANUARY 1, 2015, MONTHLY LTD PROGRAM BENEFITS EQUAL TWO-THIRDS OF**  
11 **A MEMBER'S MONTHLY COMPENSATION FOR THE PERIOD THE MEMBER IS RECEIVING**  
12 **BENEFITS PURSUANT TO PARAGRAPH 11, SUBDIVISION (a) OF THIS SUBSECTION, AND**  
13 **MONTHLY LTD PROGRAM BENEFITS EQUAL SIXTY PER CENT OF A MEMBER'S MONTHLY**  
14 **COMPENSATION FOR THE PERIOD THE MEMBER IS RECEIVING BENEFITS PURSUANT TO**  
15 **PARAGRAPH 11, SUBDIVISION (b) OF THIS SUBSECTION** reduced by:

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

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

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

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

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

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

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

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

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

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

42 (g) All of any other benefits by reason of employment that are  
43 financed partly or wholly by an employer, including payments for sick leave.  
44 This subdivision does not include any retirement benefit that is received by  
45 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 August 2, 2012,  
5 a member's monthly income from the monthly LTD program benefits and sources  
6 listed in paragraph 1 of this subsection shall not exceed one hundred per  
7 cent of the member's monthly compensation at the time disability commences.  
8 ASRS shall offset the member's monthly LTD program benefits by the amount  
9 necessary to reduce the member's total monthly income to meet the limit  
10 prescribed in this paragraph.

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

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

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

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

22 (a) An intentionally self-inflicted injury.

23 (b) War, whether declared or not.

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

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

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

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

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

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

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

43 (b) The date the member:

44 (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~~ THE member, who has received monthly LTD program benefits  
2 for twenty-four months within a five-year period, ~~the member~~ is unable to  
3 perform 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 is eligible pursuant to article 2 of this chapter and  
8 who receives monthly LTD program benefits is entitled to receive service  
9 credit pursuant to article 2 of this chapter from the time disability  
10 commences until LTD program benefits cease to be payable, except that for a  
11 member who receives monthly LTD program benefits on or after June 30, 1999  
12 the number of years of service credited to the member's retirement account  
13 during the period the member receives LTD program benefit payments shall not  
14 cause the member's total credited service for retirement benefits to exceed  
15 the greater of thirty years or the total years of service credited to the  
16 member's retirement account on the commencement of disability.

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

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

30 E. For the purposes of this section:

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

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

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