

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

CHAPTER 69
SENATE BILL 1084

AN ACT

AMENDING SECTIONS 38-797 AND 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" has the same meaning prescribed in section 38-711.
12 5. "Depository" means a bank in which the monies of the LTD program
13 are deposited and collateralized as provided by law.
14 6. "Employer" has the same meaning prescribed in section 38-711.
15 7. "Employer contributions" means all amounts paid into the LTD
16 program by an employer.
17 8. "Fiscal year" has the same meaning prescribed in section 38-711.
18 9. "LTD program" means the long-term disability program established by
19 this article.
20 10. "Member":
21 (a) Has the same meaning prescribed in section 38-711.
22 (b) Includes an employee described in section 38-956.
23 11. "Monthly compensation" means ~~one-twelfth of a member's annual~~
24 ~~compensation paid and payable in the fiscal year during which a member~~
25 ~~becomes disabled.~~ THE AMOUNT DETERMINED BY TAKING THE SIX PAY PERIODS
26 IMMEDIATELY BEFORE THE DATE OF THE MEMBER'S DISABILITY IN THE FISCAL YEAR IN
27 WHICH THE MEMBER BECOMES DISABLED, DISREGARDING THE HIGHEST TWO AND LOWEST
28 TWO COMPENSATION AMOUNT PAY PERIODS AND DERIVING THE MEDIAN OF THE TWO
29 REMAINING PAY PERIODS. IF THE MEMBER WAS EMPLOYED FOR FEWER THAN SIX PAY
30 PERIODS, MONTHLY COMPENSATION IS DETERMINED BY DERIVING THE MEDIAN OF THE
31 NUMBER OF PAY PERIODS THE MEMBER WORKED IN THE FISCAL YEAR IN WHICH THE
32 MEMBER BECOMES DISABLED.
33 12. "Normal retirement date":
34 (a) Has the same meaning prescribed in section 38-711 for members
35 eligible pursuant to article 2 of this chapter.
36 (b) Means sixty-five years of age for members eligible pursuant to
37 section 38-956.
38 13. "Political subdivision" has the same meaning prescribed in section
39 38-711.
40 14. "State" has the same meaning prescribed in section 38-711.
41 Sec. 2. Section 38-797.07, Arizona Revised Statutes, is amended to
42 read:
43 38-797.07. LTD program benefits; limitations; definitions
44 A. The LTD program is subject to the following limitations:

1 1. Except as provided in paragraph 9 of this subsection, monthly LTD
2 program benefits shall not exceed two-thirds of a member's monthly
3 compensation ~~at the time disability commences~~, reduced by:

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

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

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

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

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

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

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

25 (i) The veteran's disability payment is for the same condition or a
26 condition related to the condition currently causing the member's total
27 disability.

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

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

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

37 2. For a member whose disability commences on or after August 2, 2012,
38 a member's monthly income from the monthly LTD program benefits and sources
39 listed in paragraph 1 of this subsection shall not exceed one hundred per
40 cent of the member's monthly compensation at the time disability commences.
41 ASRS shall offset the member's monthly LTD program benefits by the amount
42 necessary to reduce the member's total monthly income to meet the limit
43 prescribed in this paragraph.

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

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

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

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

10 (a) An intentionally self-inflicted injury.

11 (b) War, whether declared or not.

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

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

19 (i) Has been an active member of an employer for twelve continuous
20 months.

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

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

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

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

31 (b) The date the member:

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

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

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

40 (d) The later of the following:

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

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

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

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

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

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

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

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

15 (a) For primary and dependent social security benefits, the members
16 are eligible for the social security benefits until the social security
17 benefits are actually awarded, or if the social security benefits are denied,
18 until the member pursues the social security appeal process through a hearing
19 before a social security administrative law judge or until the insurance
20 company or claims administrator determines that the member is not eligible
21 for social security benefits.

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

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

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

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

38 B. A member who is eligible pursuant to article 2 of this chapter and
39 who receives monthly LTD program benefits is entitled to receive service
40 credit pursuant to article 2 of this chapter from the time disability
41 commences until LTD program benefits cease to be payable, except that for a
42 member who receives monthly LTD program benefits on or after June 30, 1999
43 the number of years of service credited to the member's retirement account
44 during the period the member receives LTD program benefit payments shall not
45 cause the member's total credited service for retirement benefits to exceed

1 the greater of thirty years or the total years of service credited to the
2 member's retirement account on the commencement of disability.

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

10 D. ASRS may suspend or terminate benefits under this article if a
11 member fails to provide information, data, paperwork or other materials that
12 are requested by ASRS or the insurance company or claims administrator that
13 is selected by the board to administer the LTD program. If the member
14 provides the information requested, ASRS shall retroactively reinstate the
15 benefits or claim for which the member qualifies under this article.

16 E. For the purposes of this section:

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

22 2. "Received medical treatment" means that the member consulted with
23 or received the advice of a licensed medical or dental practitioner,
24 including advice given during a routine examination, and it includes
25 situations in which the member received medical or dental care, treatment or
26 services, including the taking of drugs, medication, insulin or similar
27 substances.

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

APPROVED BY THE GOVERNOR APRIL 17, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2014.