

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 174
HOUSE BILL 2338

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, monthly LTD
7 program benefits shall not exceed two-thirds of a member's monthly
8 compensation, reduced by:
9 (a) For a member whose disability commences before July 1, 2008,
10 sixty-four ~~per-cent~~ PERCENT of social security disability benefits that the
11 member and the member's dependents are eligible to receive.
12 (b) For a member whose disability commences on or after July 1, 2008,
13 eighty-five ~~per-cent~~ PERCENT of social security disability benefits that the
14 member and the member's dependents are eligible to receive, but not
15 including:
16 (i) The amount of attorney fees approved pursuant to social security
17 administration rules and reasonable documented costs paid to an attorney to
18 secure that disability benefit.
19 (ii) Any cost-of-living adjustments that are granted after the member
20 commences benefits under this section.
21 (c) For a member whose disability commences before July 1, 2008,
22 eighty-three ~~per-cent~~ PERCENT of social security retirement benefits that the
23 member is eligible to receive.
24 (d) For a member whose disability commences on or after July 1, 2008,
25 eighty-five ~~per-cent~~ PERCENT of social security retirement benefits that the
26 member is eligible to receive, but not including any cost-of-living
27 adjustments that are granted after the member commences benefits under this
28 section.
29 (e) All of any workers' compensation benefits.
30 (f) All of any payments for a veteran's disability if both of the
31 following apply:
32 (i) The veteran's disability payment is for the same condition or a
33 condition related to the condition currently causing the member's ~~total~~
34 disability.
35 (ii) The veteran's disability is due to, or a result of, service in
36 the armed forces of the United States.
37 (g) All of any other benefits by reason of employment that are
38 financed partly or wholly by an employer, including payments for sick leave.
39 This subdivision does not include any retirement benefit that is received by
40 the member pursuant to a state retirement system or plan other than ASRS.
41 (h) Fifty ~~per-cent~~ PERCENT of any salary, wages, commissions or other
42 employment related pay that the member receives or is entitled to receive
43 from any gainful employment in which the member actually engages.
44 2. For a member whose disability commences on or after August 2, 2012,
45 a member's monthly income from the monthly LTD program benefits and sources
46 listed in paragraph 1 of this subsection shall not exceed one hundred ~~per~~

1 ~~cent~~ PERCENT of the member's monthly compensation at the time disability
2 commences. ASRS shall offset the member's monthly LTD program benefits by the
3 amount necessary to reduce the member's total monthly income to meet the
4 limit prescribed in this paragraph.

5 3. Monthly LTD program benefits are not payable until a member has had
6 a ~~total~~ disability for a period of six consecutive months.

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

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

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

16 (a) An intentionally self-inflicted injury.

17 (b) War, whether declared or not.

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

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

25 (i) Has been an active member of an employer for twelve continuous
26 months.

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

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

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

36 (a) The date the member ceases to have a ~~total~~ disability.

37 (b) The date the member:

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

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

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

46 (d) The later of the following:

- 1 (i) The member's normal retirement date.
- 2 (ii) The month following sixty months of payments if disability occurs
3 before sixty-five years of age.
- 4 (iii) The month following attainment of seventy years of age if
5 disability occurs at sixty-five years of age or after but before sixty-nine
6 years of age.
- 7 (iv) The month following twelve months of payments if disability
8 occurs at or after sixty-nine years of age.
- 9 (e) If the member is convicted of a criminal offense and sentenced to
10 more than six months in a jail, prison or other penal institution, the first
11 day of the month following the first thirty continuous days of the member's
12 confinement for the remainder of the confinement.
- 13 8. Monthly LTD program benefits are payable only for disabilities that
14 commence on or after July 1, 1988.
- 15 9. The minimum benefit for a member who is entitled to receive monthly
16 LTD program benefits is fifty dollars per month.
- 17 10. Members are eligible to receive the LTD program benefits and
18 payments described in paragraph 1 of this subsection, and the reductions
19 provided by paragraph 1 of this subsection apply even though the social
20 security benefits are not actually paid as follows:
- 21 (a) For primary and dependent social security benefits, the members
22 are eligible for the social security benefits until the social security
23 benefits are actually awarded, or if the social security benefits are denied,
24 until the member pursues the social security appeal process through a hearing
25 before a social security administrative law judge or until the insurance
26 company or claims administrator determines that the member is not eligible
27 for social security benefits.
- 28 (b) For benefits and payments from any other source provided in
29 paragraph 1 of this subsection, the members are eligible for the benefits if
30 it is reasonable to believe that those benefits will be paid on proper
31 completion of the claim or would have been paid except for the failure of the
32 member to pursue the claim in time.
- 33 11. A member shall be considered to have a ~~total~~ disability if based on
34 objective medical evidence:
- 35 (a) During the first thirty months of a period of disability, the
36 member is unable to perform all duties of the position held by the member
37 when the member developed a ~~total~~ disability.
- 38 (b) For a member who has received monthly LTD program benefits for
39 twenty-four months within a five-year period, the member is unable to perform
40 any work for compensation or gain for which the member is reasonably
41 qualified by education, training or experience in an amount at least equal to
42 the scheduled LTD program benefits prescribed in paragraph 1 of this
43 subsection.
- 44 B. A member who is eligible pursuant to article 2 of this chapter and
45 who receives monthly LTD program benefits is entitled to receive service
46 credit pursuant to article 2 of this chapter from the time disability

1 commences until LTD program benefits cease to be payable, except that for a
2 member who receives monthly LTD program benefits on or after June 30, 1999
3 the number of years of service credited to the member's retirement account
4 during the period the member receives LTD program benefit payments shall not
5 cause the member's total credited service for retirement benefits to exceed
6 the greater of thirty years or the total years of service credited to the
7 member's retirement account on the commencement of disability.

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

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

21 E. For the purposes of this section:

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

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

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

APPROVED BY THE GOVERNOR APRIL 1, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 2, 2015.