

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE BILL 2023

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 ~~7~~ 8 of this subsection, monthly
7 LTD program benefits shall not exceed two-thirds of a member's monthly
8 compensation at the time disability commences, reduced by:

9 (a) For a member whose disability commences before July 1, 2008,
10 sixty-four per cent of social security disability benefits that the member
11 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 of social security disability benefits that the member
14 and the member's dependents are eligible to receive, but not including:

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

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

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

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

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

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

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

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

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

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

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

1 3. MONTHLY LTD PROGRAM BENEFITS ARE NOT PAYABLE TO A MEMBER WHO FILES
2 AN INITIAL CLAIM FOR DISABILITY MORE THAN TWENTY-FOUR MONTHS AFTER THE DATE
3 OF THE MEMBER'S DATE OF DISABILITY.

4 ~~3.~~ 4. Monthly LTD program benefits are not payable to a member who is
5 receiving retirement benefits from ASRS.

6 ~~4.~~ 5. Monthly LTD program benefits are not payable to a member whose
7 disability is due to, or a result of, any of the following:

8 (a) An intentionally self-inflicted injury.

9 (b) War, whether declared or not.

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

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

17 (i) Has been an active member of an employer for twelve continuous
18 months.

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

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

26 ~~5.~~ 6. Monthly LTD program benefits cease to be payable to a member at
27 the earliest of the following:

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

29 (b) The date the member:

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

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

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

38 (d) The later of the following:

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

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

42 (iii) The month following attainment of seventy years of age if
43 disability occurs at sixty-five years of age or after but before sixty-nine
44 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 ~~6-~~ 7. Monthly LTD program benefits are payable only for disabilities
8 that commence on or after July 1, 1988.

9 ~~7-~~ 8. The minimum benefit for a member who is entitled to receive
10 monthly LTD program benefits is fifty dollars per month.

11 ~~8-~~ 9. 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 ~~9-~~ 10. A member shall be considered totally disabled if:

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

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

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

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

8 D. ASRS MAY SUSPEND OR TERMINATE BENEFITS UNDER THIS ARTICLE IF A
9 MEMBER FAILS TO PROVIDE INFORMATION, DATA, PAPERWORK OR OTHER MATERIALS THAT
10 ARE REQUESTED BY ASRS OR THE INSURANCE COMPANY OR CLAIMS ADMINISTRATOR THAT
11 IS SELECTED BY THE BOARD TO ADMINISTER THE LTD PROGRAM.

12 ~~D.~~ E. For the purposes of this section:

13 1. "Received medical treatment" means that the member consulted with
14 or received the advice of a licensed medical or dental practitioner,
15 including advice given during a routine examination, and it includes
16 situations in which the member received medical or dental care, treatment or
17 services, including the taking of drugs, medication, insulin or similar
18 substances.

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