

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 192**  
**SENATE BILL 1079**

AN ACT

AMENDING SECTION 38-797, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 44, SECTION 5 AND CHAPTER 69, SECTION 1; REPEALING SECTION 38-797, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 44, SECTION 5 AND CHAPTER 215, SECTION 166; AMENDING SECTION 38-797.07, ARIZONA REVISED STATUTES; RELATING TO THE LONG-TERM DISABILITY PROGRAM.

(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, as amended by  
3 Laws 2014, chapter 44, section 5 and chapter 69, section 1 is amended to  
4 read:

5 38-797. Definitions

6 In this article, unless the context otherwise requires:

7 1. "ASRS" means the Arizona state retirement system established by  
8 article 2 of this chapter.

9 2. "Assets" means the accumulated resources of the LTD program.

10 3. "Board" means the ASRS board established pursuant to section  
11 38-713.

12 4. "Compensation" has the same meaning prescribed in section  
13 38-711.

14 5. "Depository" means a bank in which the monies of the LTD program  
15 are deposited and collateralized as provided by law.

16 6. "Employer" has the same meaning prescribed in section 38-711.

17 7. "Employer contributions" means all amounts paid into the LTD  
18 program by an employer.

19 8. "Fiscal year" has the same meaning prescribed in section 38-711.

20 9. "LTD program" means the long-term disability program established  
21 by this article.

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

23 11. "Monthly compensation" means the amount determined by taking the  
24 six pay periods immediately before the date of the member's disability in  
25 the fiscal year in which the member ~~becomes disabled~~ DEVELOPS A  
26 DISABILITY, disregarding the highest two and lowest two compensation  
27 amount pay periods and deriving the ~~median~~ MEAN of the two remaining pay  
28 periods. If the member was employed for fewer than six pay periods,  
29 monthly compensation is determined by deriving the ~~median~~ MEAN of the  
30 number of pay periods the member worked in the fiscal year in which the  
31 member ~~becomes disabled~~ DEVELOPS A DISABILITY.

32 12. "Normal retirement date" has the same meaning prescribed in  
33 section 38-711.

34 13. "Political subdivision" has the same meaning prescribed in  
35 section 38-711.

36 14. "State" has the same meaning prescribed in section 38-711.

37 Sec. 2. Repeal

38 Section 38-797, Arizona Revised Statutes, as amended by Laws 2014,  
39 chapter 44, section 5 and chapter 215, section 166 is repealed.

1           Sec. 3. Section 38-797.07, Arizona Revised Statutes, is amended to  
2 read:

3           38-797.07. LTD program benefits; limitations; definitions

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

5           1. Except as provided in paragraph 9 of this subsection, monthly  
6 LTD program benefits shall not exceed two-thirds of a member's monthly  
7 compensation, reduced by:

8           (a) For a member whose disability commences before July 1, 2008,  
9 sixty-four percent of social security disability benefits that the member  
10 and the member's dependents are eligible to receive.

11           (b) For a member whose disability commences on or after July 1,  
12 2008, eighty-five percent of social security disability benefits that the  
13 member and the member's dependents are eligible to receive, but not  
14 including:

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

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

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

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

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

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

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

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

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

41           (h) Fifty percent of any salary, wages, commissions or other  
42 ~~employment-related~~ EMPLOYMENT-RELATED pay that the member receives or is  
43 entitled to receive from any gainful employment in which the member  
44 actually engages.

1           2. For a member whose disability commences on or after August 2,  
2 2012, a member's monthly income from the monthly LTD program benefits and  
3 sources listed in paragraph 1 of this subsection shall not exceed one  
4 hundred percent of the member's monthly compensation at the time  
5 disability commences. ASRS shall offset the member's monthly LTD program  
6 benefits by the amount necessary to reduce the member's total monthly  
7 income to meet the limit prescribed in this paragraph.

8           3. Monthly LTD program benefits are not payable until a member has  
9 had a disability for a period of six consecutive months.

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

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

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

19           (a) An intentionally self-inflicted injury.

20           (b) War, whether declared or not.

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

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

28           (i) Has been an active member of an employer for twelve continuous  
29 months.

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

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

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

39           (a) The date the member ceases to have a disability.

40           (b) The date the member:

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

42           (ii) Refuses to undergo any medical examination or refuses to  
43 participate in any work rehabilitation program for which the member is  
44 reasonably qualified by education, training or experience and that is

1 requested by the insurance company or claims administrator that is  
2 selected by the board to administer the LTD program.

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

5 (d) The later of the following:

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

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

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

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

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

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

20 9. EXCEPT AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION, the  
21 minimum benefit for a member who is entitled to receive monthly LTD  
22 program benefits is ~~fifty dollars~~ \$50 per month.

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

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

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

39 11. A member shall be considered to have a disability if based on  
40 objective medical evidence:

41 (a) During the first thirty months of a period of disability, the  
42 member is unable to perform ~~at~~ ONE OR MORE duties of the ~~position~~  
43 OCCUPATION held by the member when the member developed a disability.

44 (b) For a member who has received monthly LTD program benefits for  
45 twenty-four months within a five-year period, the member is unable to

1 perform any work for compensation or gain for which the member is  
2 reasonably qualified by education, training or experience in an amount at  
3 least equal to the scheduled LTD program benefits prescribed in paragraph  
4 1 of this subsection.

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

16 C. This section does not prohibit a member whose disability has  
17 been established to the satisfaction of the board from relying on  
18 treatment by prayer through spiritual means in accordance with the tenets  
19 and practice of a recognized church, religious denomination or Native  
20 American traditional medicine by a duly accredited practitioner of the  
21 church, denomination or Native American traditional medicine without  
22 suffering reduction or suspension of the member's monthly LTD program  
23 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  
26 that are requested by ASRS or the insurance company or claims  
27 administrator that is selected by the board to administer the LTD program.  
28 ASRS OR ITS CONTRACTED ADMINISTRATOR MAY INVESTIGATE INFORMATION THAT  
29 INDICATES A MEMBER MAY HAVE FALSIFIED INFORMATION OR RECORDS RELATED TO  
30 LTD PROGRAM ELIGIBILITY OR BENEFITS OR MAY NOT OTHERWISE MEET THE  
31 REQUIREMENTS OF LTD PROGRAM ELIGIBILITY. IN CONNECTION WITH AN  
32 INVESTIGATION INVOLVING THE LTD PROGRAM, ASRS OR ITS CONTRACTED  
33 ADMINISTRATOR MAY COLLECT AND EXAMINE ANY STATEMENT OR EVIDENCE, OR MAY  
34 AUTHORIZE A THIRD PARTY TO COLLECT AND EXAMINE ANY STATEMENT OR EVIDENCE,  
35 THAT RELATES TO A MEMBER FALSIFYING INFORMATION OR RECORDS RELATED TO LTD  
36 PROGRAM ELIGIBILITY OR BENEFITS. If the member provides the information  
37 requested, ASRS shall retroactively reinstate the benefits or claim for  
38 which the member qualifies under this article.

39 E. For the purposes of this section:

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

1           2. "Received medical treatment" means that the member consulted  
2 with or received the advice of a licensed medical or dental practitioner,  
3 including advice given during a routine examination, and it includes  
4 situations in which the member received medical or dental care, treatment  
5 or services, including the taking of drugs, medication, insulin or similar  
6 substances.

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

APPROVED BY THE GOVERNOR MAY 8, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2019.