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**HOUSE BILL NO. 491**

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 15, containing articles numbered 1 through 6, consisting of sections numbered 51.1-1500 through 51.1-1542, relating to creation of the Virginia Local Sickness and Disability Program.*

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Referred to Committee on Appropriations

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 51.1 a chapter numbered 15, containing articles numbered 1 through 6, consisting of sections numbered 51.1-1500 through 51.1-1542, as follows:**

**CHAPTER 15.****VIRGINIA LOCAL SICKNESS AND DISABILITY PROGRAM.****Article 1****General Provisions.****§ 51.1-1500. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Act" means the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).*

*"Company" means an insurance company issuing a long-term disability insurance policy purchased by the Board pursuant to this chapter.*

*"Disability" means a partial disability or total disability.*

*"Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter. Disability benefits do not include benefits payable under the Act.*

*"Eligible employee" means an individual who is a member of the Virginia Retirement System and covered under a participating employer's leave policy.*

*"Eligible employer" means any local government or any local officer as defined in § 51.1-124.3 participating in the Virginia Retirement System.*

*"Existing employee" means an employee who elected to participate or whose employer mandated coverage in the Virginia Local Sickness and Disability Program.*

*"Local government" means any county, city, town, or other local or regional political subdivision, or any school division.*

*"Local service" means the employee's total period of local service as defined by the eligible employee's participating employer.*

*"Partial disability" exists during the first 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than 80 percent of his predisability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.*

*"Participating employee" means any eligible employee required or electing to participate in the program.*

*"Participating employer" means an eligible employer that is participating in the program pursuant to § 51.1-1503.*

*"Political subdivision" means any county, city, or town, any political entity, subdivision, branch, or unit of the Commonwealth, or any commission, public authority, or body corporate created by or under an act of the General Assembly specifying the powers, privileges, or authority capable of exercise by the commission, public authority, or body corporate.*

*"Program" means the program providing sick leave, family and personal leave, short-term disability benefits, long-term disability benefits, and long-term care insurance for participating employees established pursuant to this chapter.*

*"Total disability" exists (i) during the first 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform all of his essential job functions or (ii) after 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform any job for which he is reasonably qualified based on his training or experience and earning less than 80 percent of his predisability earnings.*

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59 "Work-related injury" means an injury, as such term is defined in § 65.2-101, to a participating  
60 employee for which benefits are payable under the Act and the participating employer is the employer  
61 for purposes of the Act.

62 In addition to the definitions listed above, the definitions listed in § 51.1-124.3 shall apply to this  
63 chapter except as otherwise provided.

64 § 51.1-1501. Sickness and disability program; disability insurance.

65 A. The Board shall develop, implement, and administer a sick leave, short-term disability, and  
66 long-term disability benefits program in accordance with the provisions of this chapter. The Board is  
67 authorized to delegate or assign to any person any of the duties required to be performed by the Board  
68 pursuant to this chapter. The Board is authorized to purchase long-term disability insurance policies for  
69 participating employees. The policies shall be purchased from and carried with a disability insurance  
70 company that is authorized to do business in the Commonwealth. Each policy shall contain a provision  
71 stipulating the maximum expense and risk charges that are determined by the Board to be on a basis  
72 consistent with the general level of charges made by disability insurance companies under policies of  
73 long-term disability insurance issued to large employers. The Board may require that the policies have  
74 reinsurance with an insurance company incorporated or organized under the laws of and authorized to  
75 do business in the Commonwealth. This section is not intended to abrogate the final authority of the  
76 participating employers to establish and interpret personnel policy and procedures.

77 B. Notwithstanding the provisions of subsection A, the Board may self-insure long-term disability  
78 benefits in accordance with the standards set forth in § 51.1-124.30.

79 § 51.1-1502. Additional powers of the Board.

80 In addition to any other powers granted to the Board under this title, the Board shall have the  
81 powers to:

82 1. Establish policies and procedures to implement and administer the program and the provisions of  
83 this chapter;

84 2. Contract for the provision of comprehensive claims management;

85 3. Take all other actions necessary for the implementation and administration of the program; and

86 4. Adopt rules and policies that bring the program into compliance with any applicable law or  
87 regulation of the Commonwealth or the United States.

88 § 51.1-1503. Local government participation in the program.

89 A. The governing body of any local government approved for participation in the Virginia Retirement  
90 System pursuant to § 51.1-130 may adopt a resolution requesting participation in the program. The  
91 governing body's resolution shall be submitted to the Board for approval, and acceptance of the  
92 employees into the Sickness and Disability Program shall be at the option of the Board. If the Board  
93 approves the resolution, eligible employees shall participate in the disability program on the date  
94 mutually agreed upon by the Board and the local government.

95 No employer shall be permitted to participate with enrollment of less than 25 percent of the eligible  
96 employees.

97 Employers may elect to rescind the participation decision subsequent to having participated in the  
98 program for at least five years. The Board must be notified of this decision at least two years prior to  
99 the effective date of rescission.

100 B. Participating employers may mandate that all eligible employees employed as of the coverage  
101 date shall participate in the program or the employer may offer an election to participate to all such  
102 employees. All employees hired after the employer's effective date of coverage shall participate in the  
103 Sickness and Disability Program as a condition of employment. Coverage for any eligible employee who  
104 is not actively at work on the effective date of coverage who elects to participate or whose participation  
105 is mandated shall begin the first day of the month following the employee's return to work for at least  
106 10 consecutive days.

107 An election by an eligible employee to participate in the program established under this chapter  
108 shall be irrevocable so long as the employer continues to participate in the program. Employees  
109 participating in the Sickness and Disability Program no longer participate in the Virginia Retirement  
110 System disability retirement program.

111 C. Any participating employee who commenced employment prior to the participating employer's  
112 effective date of coverage shall have his sick leave balance, as of the effective date of coverage in the  
113 program, converted to disability credits at the rate of one hour of disability credit for each hour of sick  
114 leave. Disability credits may be used to continue periods of 100 percent of creditable compensation for  
115 which the participating employee receives income replacement during periods of short-term disability,  
116 and shall be used for periods of long-term disability. Disability credits shall be reduced by one day for  
117 each day that the participating employee receives short-term or long-term disability.

118 D. If the eligible employee terminates employment for any reason, including to receive an immediate  
119 annuity, he may elect to use the balance of any disability credits received while employed at the  
120 employer from whom he is terminating (i) to convert to service credit under the Virginia Retirement

System on the basis of one month of service for each 173 hours of sick leave, rounded to the next highest month, or (ii) if the employer offers a leave payout program, the employee may elect to be paid for the balance of such disability credit under the same terms and subject to the same conditions as are in effect for the payment of sick leave balance as established by the participating employer.

E. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment, (ii) death, (iii) retirement from service, or (iv) employer's rescission of participation pursuant to subsection A. Eligibility for participation in the program shall be suspended during periods that an employee is placed on nonpay status, including leave without pay, if such nonpay status is due to suspension pending investigation or outcome of court or disciplinary action.

## Article 2.

### Sick Leave and Family and Personal Leave.

#### § 51.1-1504. Sick leave benefit.

A. 1. Any participating employee who commenced employment prior to the participating employer's effective date of coverage shall receive, on the effective date of coverage, an amount of sick leave based on the employee's number of months of local service, as follows:

Months of local service.....	Number of hours
Less than 60	64
60 to 119	72
120 or more	80

2. Thereafter, any such employee shall receive an amount of sick leave pursuant to this same schedule (i) on the commencement of the contract year for employees of local school divisions and (ii) on January 1 for all other employees.

B. 1. Any participating employee who commenced employment on or after the participating employer's effective date of coverage shall receive an initial amount of sick leave at the time his employment or reemployment commences, as follows:

Date employment commenced	Number of hours
January 1 through June 30 or the the first day of the contract- year for school systems	64
July 1 through December 31st or employees in school systems who work less than a full contract year	40

2. Thereafter, any such employee shall receive sick leave as set forth in subdivision A.

2.

C. A participating employer may prorate leave for eligible participating employees whose annual hours exceed 2080.

D. Any partial calendar month during which a participating employee was employed shall constitute one month of local service for purposes of this section.

E. Participating employees shall not be paid or otherwise compensated upon leaving employment for any balance of unused sick leave provided to them under this section.

F. Unused balances of sick leave granted under this section shall not be carried forward beyond the calendar year in which such leave is granted.

G. Employees receiving disability benefits on January 1, or for local school systems the first day of the contract year, of any year shall be granted sick leave for such year on the date they return to active employment. The amount of sick leave granted for such year shall be determined as if they were continuing employment on the date of their return to work as provided in subsection A.

#### § 51.1-1505. Use of sick leave.

Participating employees shall be eligible to take sick leave to account for absences due to an incident, illness, or injury for periods when disability benefits are not payable. Participating employees shall be compensated by their employers at 100 percent of creditable compensation for each hour of sick leave taken, not to exceed the employee's sick leave balance.

#### § 51.1-1506. Sick leave benefit for nonparticipating employees.

Eligible employees subject to personnel policies of the participating employer who elect not to participate in the program shall receive sick leave benefits in accordance with policies of the

181 *participating employer.*

182 *§ 51.1-1507. Family and personal leave benefit.*

183 *A. 1. Any participating employee who commenced employment prior to the participating employer's*  
 184 *effective date of coverage shall receive, on the effective date of coverage, an amount of family and*  
 185 *personal leave based on the employee's number of months of local service, as follows:*

186		
187	<i>Months of local service</i>	<i>Number of hours</i>
188	<i>Less than 120</i>	<i>32</i>
189	<i>120 or more</i>	<i>40</i>

190  
 191 *2. Thereafter, any such employee shall receive an amount of family and personal leave pursuant to*  
 192 *this same schedule (i) on the commencement of the contract year for employees of local school divisions*  
 193 *and (ii) on January 1 for all other employees.*

194 *B. 1. Any participating employee who commenced employment on or after the participating*  
 195 *employer's effective date of coverage shall receive an initial amount of family and personal leave at the*  
 196 *time his employment or reemployment commences, as follows:*

197		
198	<i>Date employment commenced</i>	<i>Number of hours</i>
199	<i>January 1 through June 30 or the</i>	
200	<i>first day of the contract year</i>	
201	<i>for school systems</i>	<i>32</i>
202	<i>July 1 through December 31 or</i>	
203	<i>employees in school systems who</i>	
204	<i>work less than a full contract year</i>	<i>16</i>

205  
 206 *2. Thereafter, any such employee shall receive sick leave as set forth in subdivision A. 2.*

207 *C. Local governments may prorate leave for eligible participating employees whose annual hours*  
 208 *exceed 2080.*

209 *D. Any partial calendar month during which a participating employee was employed shall constitute*  
 210 *one month of local service for purposes of this section.*

211 *E. Participating employees shall not be paid or otherwise compensated upon leaving employment for*  
 212 *any balance of unused family and personal leave provided to them under this section.*

213 *F. Unused balances of family and personal leave granted under this section shall not be carried*  
 214 *forward beyond the calendar year in which such leave is granted.*

215 *G. Employees receiving disability benefits on January 1, or for local school systems the first day of*  
 216 *the contract year, of any year shall be granted family and personal leave for such year on the date they*  
 217 *return to active employment. The amount of family and personal leave granted for such year shall be*  
 218 *determined as if they were continuing employment on the date of their return to work as provided in*  
 219 *subsections A, B and C.*

220 *§ 51.1-1508. Use of family and personal leave.*

221 *A. Participating employees shall be eligible to take family and personal leave to account for*  
 222 *absences due to a short-term incident, illness or death of a family member, or other personal need.*  
 223 *Participating local government employees shall be compensated by their employers at 100 percent of*  
 224 *creditable compensation for each hour of family and personal leave taken, not to exceed the employee's*  
 225 *family and personal leave balance.*

226 *B. Family and personal leave may be taken for any permitted purpose at the sole discretion of the*  
 227 *participating employee, provided that the employee gives reasonable prior notice to his immediate*  
 228 *supervisor and the immediate supervisor does not inform the employee that his taking the leave will*  
 229 *materially impede the ability of the employing agency to perform a critical function due to an*  
 230 *emergency or exigent circumstances.*

231 *Article 3.*

232 *Nonwork-Related Disability Benefits.*

233 *§ 51.1-1509. Applicability of article.*

234 *The provisions of this article shall apply only with respect to the disability programs providing*  
 235 *disability benefits for disabilities not resulting from work-related injuries.*

236 *§ 51.1-1510. Short-term disability benefit.*

237 *A. Short-term disability benefits for participating employees shall commence upon the expiration of a*  
 238 *seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or*  
 239 *medical absence due to pregnancy. If an employee returns to work for one day or less during the*  
 240 *seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be*

considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable, as the result of a catastrophic disability or major chronic condition, shall not require a waiting period.

B. Short-term disability coverage shall provide income replacement for a percentage of a participating employee's creditable compensation during the period specified below that an employee is disabled, for medical absences due to pregnancy, or that an employee takes periodic absences due to a major chronic condition, as determined by the Board or its designee, based on the number of months of local service as an eligible employee as follows:

Months of local service with current participating employer	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
Less than 60	5	20	100
0 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded to the employee during the period of short-term disability coverage.

D. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives short-term disability benefits paid at 100 percent of replacement of creditable compensation.

E. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) medical absences due to pregnancy, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

§ 51.1-1511. Successive periods of short-term disability.

A. A participating employee's disability that is related or due to the same cause or causes as a prior disability for which short-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee returns to his position on an active employment basis for less than (i) 14 consecutive calendar days or (ii) 28 consecutive calendar days if the short-term disability is due to a major chronic condition, as defined by the Board or its designee, requiring periodic absences. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to his position on an active employment basis for 14 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability. However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, requiring periodic absences, and the participating employee returns to his position on an active employment basis for more than 28 consecutive calendar days, any succeeding period of disability shall constitute a new period of short-term disability.

§ 51.1-1512. Long-term disability benefit.

A. Long-term disability benefits for participating employees shall commence upon the expiration of a 180-calendar-day waiting period. The waiting period shall commence the first day of the disability. If an employee returns to work for 14 or fewer consecutive calendar days during such 180-calendar-day waiting period and cannot continue to work, the periods worked shall not be deemed to have interrupted the 180-calendar-day waiting period. However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, the 180-calendar-day waiting period is cumulative from the first day of the disability and may be interrupted by periods of active employment.

B. Long-term disability benefits shall provide income replacement in an amount equal to 60 percent of a participating local government employee's creditable compensation.

C. Creditable compensation during periods an employee receives long-term disability benefits shall (i) not include salary increases awarded during the period covered by long-term disability benefits and (ii) be increased annually by an amount recommended by the program actuary and approved by the Board.

D. An employee's disability credits shall be used, on a day for day basis, to extend the period an employee receives long-term disability benefits paid at 100 percent of replacement of creditable compensation.

E. Long-term disability benefits shall be payable only during periods of (i) total disability or (ii)

301 *partial disability.*

302 *F. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply*  
303 *for Social Security disability benefits.*

304 *§ 51.1-1513. Successive periods of long-term disability.*

305 *A. A participating employee's disability that is related or due to the same cause or causes as a prior*  
306 *disability for which long-term disability benefits were paid shall be deemed to be a continuation of the*  
307 *prior disability if the employee returns to his position on an active employment basis for less than 180*  
308 *consecutive calendar days. Days of work arranged pursuant to vocational, rehabilitation, or*  
309 *return-to-work programs shall not be counted in determining the duration of the period of the*  
310 *employee's return to work.*

311 *B. If a participating employee returns to his position on an active employment basis for 180*  
312 *consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of*  
313 *disability.*

314 *§ 51.1-1514. Adjustments to disability benefits.*

315 *A. Disability benefit payments shall be offset by an amount equal to any sums payable to a*  
316 *participating employee from the following sources:*

317 *1. During the first 12 months the participating employee receives disability benefits, an amount equal*  
318 *to the employee's wages and salary from any employment times the creditable compensation replacement*  
319 *percentage;*

320 *2. After the first 12 months the participating employee receives disability benefits, an amount equal*  
321 *to 70 percent of the employee's wages and salary from any employment;*

322 *3. Except as provided in subsection F, disability payments from the Social Security Administration,*  
323 *military disability benefits, local government disability benefits, federal civil service disability benefits or*  
324 *other similar governmental disability program benefits received by the employee or his family as a*  
325 *result of the qualifying disability;*

326 *4. Benefits received from any other group insurance contract provided by the Commonwealth for the*  
327 *purpose of providing income replacement; and*

328 *5. Benefits paid under any compulsory benefits law.*

329 *B. Disability benefit payments shall be offset by amounts from any of the sources listed in*  
330 *subdivisions A 3, A 4, and A 5 for which a participating employee is eligible as if the employee received*  
331 *such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed*  
332 *denials of the claim as requested by the administrator of the plan, and the claim is not approved, the*  
333 *employee's disability payments shall not be reduced thereby.*

334 *C. If a participating employee's disability benefit payments are reduced as the result of payments*  
335 *from sources listed in subdivisions A 3, A 4, and A 5 or pursuant to subsection B, the employee's*  
336 *disability benefits shall not thereafter be further reduced on account of cost-of-living increases in*  
337 *payments from such sources.*

338 *D. A participating employee shall be required to repay with interest, to the Board or his*  
339 *participating employer, any overpayments of disability benefits on account of the failure of the*  
340 *participating employee to provide the Board or its designee with information necessary to make any of*  
341 *the reductions required to be made under this article.*

342 *E. Any payment to a participating employee that is later determined by the Board or by the*  
343 *participating employer to have been procured on the basis of any false statement or falsification of any*  
344 *record knowingly made by or on behalf of the member, or the employee's failure to make any required*  
345 *report of change in disability status, may be recovered from the employee by the Board, with interest,*  
346 *either by way of a credit against future payments due the employee, his survivors and beneficiaries or*  
347 *by an action at law against the employee.*

348 *F. Supplemental disability payments will not be offset for a participating employee if the employee is*  
349 *receiving a primary retirement benefit for service in the United States armed services, even if a*  
350 *percentage of that primary retirement benefit has been declared a disability payment. Any disability*  
351 *payment that is not a part of the primary retirement benefit will be offset.*

352 *§ 51.1-1515. Rehabilitation incentive.*

353 *Disability benefits payable to a participating employee who fails to cooperate with a rehabilitation*  
354 *program prescribed for the employee shall be decreased by 50 percent of the amounts otherwise payable*  
355 *to such employee.*

356 *§ 51.1-1516. Cessation of disability benefits.*

357 *If not sooner terminated due to the end of the period of disability coverage as provided in subsection*  
358 *E of § 51.1-1510 or subsection E of § 51.1-1512, disability benefits shall cease to be paid to a*  
359 *participating local government employee upon the first to occur of the following:*

360 *1. The date of death of the participating employee;*

361 *2. The participating employee's normal retirement date as defined in §§ 51.1-124.3 and 51.1-201; or*

362 *3. The effective date of the participating employee's service retirement under any provision of this*

title.

§ 51.1-1517. Service retirement of participating employees receiving disability benefits.

A. Upon the normal retirement date of a participating employee receiving disability benefits who is a vested member of the retirement system, the employee shall be eligible for normal retirement under subsection A of § 51.1-153. Such employee shall be authorized to elect any option for the payment of his retirement allowance provided under subsection A of § 51.1-165 for which the employee is otherwise eligible.

B. The retirement allowance for a participating employee taking normal retirement pursuant to this section shall be determined as provided in subdivision A 1 of § 51.1-155 and § 51.1-206, provided that the employee's average final compensation shall be equal to his creditable compensation on the date of the commencement of the disability increased by an amount recommended by the program actuary and approved by the Board, from the date of the commencement of the disability to the date of retirement.

C. The creditable service of a participating employee taking normal retirement pursuant to this section shall include periods during which the employee received disability benefits.

§ 51.1-1518. Survivor benefits.

If a participating employee who is a member of the retirement system dies during a period in which he is receiving disability benefits, survivor benefits shall be payable to the extent provided in subsections A and B of § 51.1-162 and § 51.1-207.

#### Article 4.

##### Work-Related Disability Benefits.

§ 51.1-1519. Applicability of article.

The provisions of this article shall apply only with respect to disability programs providing payment of disability benefits attributed to work-related injuries.

§ 51.1-1520. Initial benefit period.

During the first seven calendar days following the commencement of a disability, a participating employee may use sick leave, family and personal leave, and such other leave as may be provided under the personnel policies of the participating employer to provide income replacement.

§ 51.1-1521. Supplemental short-term disability benefit

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating local government employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability. If an employee returns to work for one day or less during the seven calendar days following the commencement of a disability but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

C. Supplemental short-term disability coverage shall provide income replacement for a percentage of a participating local government employee's creditable compensation during the period specified below that an employee is disabled or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, based on the number of months of local service as an eligible employee, as follows:

Months of local service with current participating employer	Work days of 100 % replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
Less than 60	65	25	35
60 to 119	85	25	15
120 or more	85	40	0

D. Creditable compensation during periods an employee receives supplemental short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

E. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives supplemental short-term disability benefits paid at 100 percent of replacement of creditable compensation.

F. Supplemental short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability as determined by the Board or its designee, or (iii) periodic absences due to a major chronic condition as defined by the Board or its designee.

424 § 51.1-1522. Successive periods of short-term disability.

425 A. A participating employee's disability that is related or due to the same cause or causes as a prior  
426 disability for which supplemental short-term disability benefits were paid shall be deemed to be a  
427 continuation of the prior disability if the employee (i) is eligible for benefits payable under the Act,  
428 whether or not he is receiving such benefits, and (ii) returns to his position on an active employment  
429 basis for less than 14 consecutive calendar days, or 28 consecutive calendar days if the short-term  
430 disability is due to a major chronic condition, as defined by the Board or its designee, requiring  
431 periodic absences. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work  
432 programs shall not be counted in determining the duration of the period of the employee's return to  
433 work.

434 B. If a participating employee returns to his position on an active employment basis for 14  
435 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of  
436 short-term disability. However, if the cause of the participating employee's disability is a major chronic  
437 condition, as defined by the Board or its designee, requiring periodic absences, and the participating  
438 employee returns to his position on an active employment basis for more than 28 consecutive calendar  
439 days, any succeeding period of disability shall constitute a new period of short-term disability.

440 § 51.1-1523. Participating local government supplemental long-term disability benefit.

441 A. Supplemental long-term disability benefits for participating local government employees shall  
442 commence upon the expiration of a 180-calendar-day waiting period. The waiting period shall  
443 commence the first day of the disability. If an employee returns to work for 14 or fewer consecutive  
444 days during such 180-calendar-day period and cannot continue to work, the periods worked shall not be  
445 deemed to interrupt the 180-calendar-day waiting period. However, if the cause of the participating  
446 employee's disability is a major chronic condition, as defined by the Board or its designee, the  
447 180-calendar-day waiting period is cumulative from the first day of the disability and may be  
448 interrupted by periods of active employment.

449 B. Except as provided in subsection D, supplemental long-term disability benefits shall provide  
450 income replacement in an amount equal to 60 percent of a participating local government employee's  
451 creditable compensation.

452 C. Creditable compensation during periods an employee receives supplemental long-term disability  
453 benefits shall (i) not include salary increases awarded during the period covered by long-term disability  
454 benefits and (ii) be increased annually by an amount recommended by the program actuary and  
455 approved by the Board.

456 D. An employee's disability credits shall be used, on a day-to-day basis, to extend the period an  
457 employee receives supplemental long-term disability benefits paid at 100 percent of replacement of  
458 creditable compensation.

459 E. Payments of supplemental long-term disability benefits payable under this article shall be reduced  
460 by an amount equal to any benefits paid to the employee under the Act, for which the employee is  
461 entitled to receive under the Act, excluding any benefit for medical, legal or rehabilitation expenses.

462 F. Supplemental long-term disability benefits shall be payable only during periods of total and  
463 partial disability.

464 G. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply  
465 for Social Security disability benefits.

466 § 51.1-1524. Successive periods of long-term disability.

467 A. A participating employee's disability that is related or due to the same cause or causes as a prior  
468 disability for which supplemental long-term disability benefits were paid shall be deemed to be a  
469 continuation of the prior disability if the employee is eligible for benefits payable under the Act, whether  
470 or not he is receiving such benefits, and returns to any position on an active employment basis for less  
471 than 180 consecutive calendar days. Days of work arranged pursuant to vocational, rehabilitation, or  
472 return-to-work programs shall not be counted in determining the duration of the period of the  
473 employee's return to work.

474 B. If a participating employee returns to any position on an active employment basis for 180  
475 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of  
476 disability.

477 § 51.1-1525. Adjustments in supplemental disability benefits.

478 A. In addition to offsets equal to the amount of any benefits paid to a participating employee under  
479 the Act, supplemental disability benefit payments shall be offset by an amount equal to any sums  
480 payable to a participating employee from the following sources:

481 1. During the first 12 months the employee receives disability benefits, an amount equal to the  
482 employee's wages and salary from any employment times the income replacement percentage payable;

483 2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent  
484 of the employee's wages and salary from any employment;

485 3. Except as provided in subsection G, disability payments from the Social Security Administration,



486 military disability benefits, local government disability benefits, federal civil service disability benefits or  
 487 other similar governmental disability program benefits received by the employee or his family as a  
 488 result of the qualifying disability;

489 4. Benefits received from any other group insurance contract provided by the Commonwealth for the  
 490 purpose of income replacement;

491 5. Benefits paid under any compulsory benefits law; and

492 6. If the participating employee receives a settlement in lieu of periodic payments for a disability  
 493 compensable under the Act, an amount determined by dividing the workers' compensation benefit, which  
 494 such employee would have received had the lump-sum settlement not been consummated into the  
 495 settlement actually accepted by the employee.

496 B. Supplemental disability benefit payments shall be reduced by amounts from any of the sources  
 497 listed in subdivisions A 3, A 4, and A 5 for which a participating employee is eligible as if the employee  
 498 received such amounts. However, if the employee has applied for such benefits, and has reapplied and  
 499 appealed denials of the claim as requested by the administrator of the plan, and the claim is not  
 500 approved, the employee's supplemental disability payments shall not be reduced thereby.

501 C. If a participating employee's disability benefit payments are reduced as the result of payments  
 502 from sources listed in subdivisions A 3, A 4, and A 5, the employee's disability benefits shall not  
 503 thereafter be further reduced on account of cost-of-living increases in payments from such sources.

504 D. Participating employees shall be required to repay, with interest, to the Board or the employer  
 505 any overpayments of supplemental disability benefits on account of the failure of the employee to  
 506 provide the Board or its designee with information necessary to make any of the reductions required to  
 507 be made under this article.

508 E. Any payment to a participating employee that is later determined by the Board or by the employer  
 509 to have been procured on the basis of any false statement or falsification of any record knowingly made  
 510 by or on behalf of the employee, or the employee's failure to make any required report of change in  
 511 disability status, may be recovered from the employee by the Board, with interest, either by way of a  
 512 credit against future payments due the employee, survivors, and beneficiaries or by an action at law  
 513 against the employee.

514 F. If a participating employee's payments under the Act are adjusted or terminated for refusal to  
 515 work or to comply with the requirements of § 65.2-603, his disability benefits shall be computed as if he  
 516 were receiving the compensation to which he would otherwise be entitled under the Act.

517 G. Supplemental disability payments will not be offset for a participating employee if the employee is  
 518 receiving a primary retirement benefit for service in the United States armed services, even if a  
 519 percentage of that primary retirement benefit has been declared a disability payment. Any disability  
 520 payment that is not a part of the primary retirement benefit will be offset.

521 § 51.1-1526. Rehabilitation incentive.

522 Supplemental disability benefits payable to a participating employee who fails to cooperate with a  
 523 rehabilitation program prescribed for the employee shall be decreased by 50 percent of the amounts  
 524 otherwise payable to such employee. In determining the amount of any reduction in benefits under this  
 525 section, the participating employee shall be presumed to continue to receive benefits payable under the  
 526 Act. Failure to comply with a vocational rehabilitation assessment process at any time the employee is  
 527 receiving supplemental disability benefits may constitute a failure to cooperate for purposes of this  
 528 section.

529 § 51.1-1527. Cessation of supplemental disability benefits.

530 Supplemental disability benefits shall cease to be paid to a participating employee upon the first to  
 531 occur of the following:

532 1. The end of the period of supplemental disability coverage as provided in subsection F of  
 533 § 51.1-1121 or subsection F of § 51.1-1123;

534 2. The date of death of the participating employee;

535 3. The date benefits under the Act cease to be paid, if the participating employee is a member of the  
 536 Virginia Retirement System and is receiving benefits under the Act on his normal retirement date;

537 4. On his normal retirement date, if the participating employee is a member of the Virginia  
 538 Retirement System and is no longer receiving benefits under the Act on his normal retirement date; or

539 5. The effective date of the participating employee's service retirement under any provision of this  
 540 title.

541 § 51.1-1528. Service retirement of participating employees receiving supplemental disability benefits.

542 A. Upon the last to occur of (i) the normal retirement date of a participating employee receiving  
 543 disability benefits who is a vested member of the Virginia Retirement System or (ii) the date of cessation  
 544 of benefits payable under the Act, the participating employee shall be eligible for normal retirement  
 545 under subsection A of § 51.1-153. Such participating employee shall be authorized to elect any option  
 546 for the payment of his retirement allowance provided under subsection A of § 51.1-165.

B. The retirement allowance for a participating employee taking normal retirement pursuant to this section shall be determined as provided in subdivision A 1 of § 51.1-155 and § 51.1-206, provided that the participating employee's average final compensation shall be equal to his creditable compensation on the date of the commencement of the disability increased by an amount recommended by the program actuary and approved by the Board, from the date of the commencement of the disability to the date of retirement.

C. The creditable service of a participating employee taking normal retirement pursuant to this section shall include periods during which the participating employee received supplemental disability benefits.

§ 51.1-1529. Survivor benefits.

If a participating employee who is a member of the Virginia Retirement System dies during periods he is receiving supplemental disability benefits, survivor benefits shall be payable to the extent provided in subsection C of § 51.1-162 and § 51.1-207.

§ 51.1-1530. Coordination of benefits.

The Board shall develop guidelines and procedures for the coordination of benefits and claims management for participating local government employees entitled to benefits under the Act and supplemental disability benefits under this article. Such guidelines shall also address disability benefits for participating employees whose disability results from multiple injuries or illnesses, one or more of which is a work-related injury.

#### Article 5.

##### Provisions Applicable to Disability Benefits Generally.

§ 51.1-1531. Supplemental benefits for catastrophic disability.

Disability benefits shall be increased to 80 percent of creditable compensation for any disabled participating employee who (i) is unable to perform at least two of the six activities of daily living due to a loss of functional capacity or (ii) requires substantial supervision to protect the employee from threats to health and safety as a result of severe cognitive impairment. Determination of whether a participating employee satisfies either of these conditions shall be made in accordance with the policies of the Board or its designee.

§ 51.1-1532. Health insurance coverage during disability absences.

Nothing in this chapter shall affect a participating employee's eligibility for health insurance coverage.

§ 51.1-1533. Life and accident insurance coverage during disability absences.

A. Participating local government employees participating in a group life and accident insurance program established pursuant to Chapter 5 (§ 51.1-500 et seq.) of this title shall continue to participate in such program during periods of absence covered by short-term and long-term disability benefits.

B. During periods of absence covered by short-term disability benefits, the amount of the life insurance benefit shall be based on the annual salary of the participating full-time employee at the commencement of the disability and shall be adjusted to include salary increases awarded during the period covered by short-term disability benefits.

C. During periods of absence covered by long-term disability benefits, the amount of the life insurance benefit shall be based on the annual salary of the participating employee at the commencement of the disability. Such amount shall (i) not include salary increases awarded during the period covered by long-term disability benefits and (ii) be increased annually by an amount recommended by the program actuary and approved by the Board.

D. An employee receiving long-term disability benefits shall receive the maximum health insurance premium credit if the participating employer participates in the health insurance credit program as provided for in §§ 51.1-1401, 51.1-1402, or § 51.1-1403.

§ 51.1-1534. Optional insurance during disability absences.

Participating employees may continue coverage under the optional insurance for themselves and their spouses and minor dependents pursuant to §§ 51.1-512 and 51.1-513 at their own expense during periods of disability.

§ 51.1-1535. Exclusions and limitations.

A. Disability benefits shall not be payable to any participating employee (i) whose disability results from the employee's commission of a felony or (ii) during any period when the employee is incarcerated.

B. Long-term disability benefits shall not be payable to any participating employee whose disability results from the abuse of alcohol, the misuse of any prescribed medication, or the misuse of any controlled substance, unless the employee is actively receiving treatment and, in the judgment of the Board or its designee, is fully complying with the treatment plan and is making substantial progress toward rehabilitation.

C. Disability benefits shall not be payable if the participating employee is determined by the Board or its designee to be noncompliant with the program.

§ 51.1-1536. Appeals.

The Board may elect to develop an alternative process to allow appeals of case decisions related to the payment of disability benefits under this chapter. This alternative process shall be modeled after the claims provisions as provided for in the federal Employee Retirement Income Security Act of 1974, as amended. Articles 3 (§ 2.2-4018 et seq.) and 4 (§2.2-4024 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to any portion of this alternative appeals process. However, any person aggrieved by, and claiming the unlawfulness of, a final case decision issued pursuant to this alternative appeals process, whether issued by the Board or by the Board's delegate, shall have a right to seek judicial review thereof. Such judicial review shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 51.1-1537. Board authorized to provide long-term care insurance and benefits.

A. The Board is authorized to develop, implement, and administer a long-term care insurance program for participating employees. The Board may contract for and purchase such long-term care insurance or may self-insure long-term care benefits or may use such other actuarially sound funding necessary to effectuate such long-term care insurance and benefits.

B. The costs of providing long-term care benefits shall be paid by the participating employers. Participating employers shall pay to the Board contribution amounts, to be determined by the Board, to provide the Board with such funds as shall be required from time to time to (i) obtain and maintain long-term care insurance and benefits for participating employees, and (ii) administer the long-term care insurance program, including providing case management and cost containment programs. Contributions shall be deposited in the Disability Insurance Trust Fund established under § 51.1-1542.

#### Article 6.

#### Administration of Program.

§ 51.1-1538. Limitation on coverage.

No person shall have more than one coverage under a disability benefit program. Any person employed in more than one position that provides coverage under a disability benefit program shall elect one position on which his coverage shall be based by written notification to the Board. No person shall receive more than one disability benefit under this chapter at the same time.

§ 51.1-1539. Keeping records and furnishing information required by Board.

Each participating employer whose employees are covered under the provisions of this chapter shall keep records and furnish information required by the Board.

§ 51.1-1540. Benefits exempt from process.

The benefits provided for in this chapter and all proceeds therefrom shall be exempt from levy, garnishment, attachment, and other legal process.

§ 51.1-1541. Policies to provide for accounting to Board; advance premium deposit reserve.

A. Each policy purchased by the Board shall provide for an accounting to the Board not later than 120 days after the end of each policy year. The accounting shall include (i) the amounts of premiums actually accrued under the policy during the policy year, (ii) the total amount of all claim charges incurred during the policy year, and (iii) the amounts of the insurer's expenses and risk charges for the policy year.

B. Any portion of the excess of the total of clause A (i) over the sum of clauses A (ii) and A (iii) may, with the approval of the Board, be held by the insurance company in an advance premium deposit reserve to be used by the company for charges under the policy only. Any expenses incurred by the Board in connection with the administration of the disability benefits provisions of the program may be deducted from the advance premium deposit reserve. The advance premium deposit reserve shall bear interest at a rate to be determined in advance of each policy year by the insurance company. The rate shall be subject to Board approval as being consistent with the rates generally used by the company for similar funds held under other disability insurance policies. Any portion of the excess not held by the insurance company shall be held by the Board to be used for charges under the policy only. If the Board determines that the advance premium deposit reserve, together with any portion of the excess accumulated and held by the Board, has attained an amount estimated to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall inure to the benefit of the local governments as determined by the Board.

C. For purposes of this section, the insurance company may combine and consolidate the policies issued by it as directed by the Board.

§ 51.1-1542. Funding of program; Disability Insurance Trust Fund established.

A. The costs of providing sick leave, family and personal leave, and short-term disability benefits shall be paid by participating employers.

B. Participating employers shall pay to the Board contribution amounts, to be determined by the Board, to provide the Board with such funds as shall be required from time to time to (i) maintain long-term disability insurance benefits under this chapter, and (ii) administer the Program, including providing claim management and cost containment programs. Contributions shall be deposited in the

670 *Disability Insurance Trust Fund.*

671 *C. There is hereby established the Disability Insurance Trust Fund. The costs incurred by the Board*  
672 *in providing long-term disability insurance and administering the Program and in administering the*  
673 *long-term care insurance program established under this chapter, including the provision of claims*  
674 *management and cost containment programs, shall be withdrawn from time to time by the Board from*  
675 *the Disability Insurance Trust Fund. The funds of the Disability Insurance Trust Fund shall be deemed*  
676 *separate and independent trust funds, which may be commingled with other funds of the Commonwealth*  
677 *for investment purposes, but which shall be segregated from all other funds of the Commonwealth for*  
678 *all other purposes and shall be administered solely in the interests of the participating employees and*  
679 *beneficiaries thereof. Neither the General Assembly nor any local government, public officer, employee,*  
680 *or agency shall use or authorize the use of such trust funds for any purpose other than as provided in*  
681 *law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight*  
682 *of the Disability Insurance Trust Fund.*

683 **2. That the Board is authorized to operate a pilot program in conformity with this act beginning**  
684 **July 1, 2004, and ending July 1, 2005, for any local government or local governments willing to**  
685 **participate.**

686 **3. That the second and third enactments are effective on July 1, 2004, and the first enactment is**  
687 **effective on July 1, 2005.**