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**HOUSE BILL NO. 459**

Offered January 11, 2006

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*A BILL to amend and reenact §§ 51.1-1114, 51.1-1123 and 51.1-1125 of the Code of Virginia, relating to the Virginia Retirement System; sickness and disability program.*

Patron—Ingram

Referred to Committee on Appropriations

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

**1. That §§ 51.1-1114, 51.1-1123 and 51.1-1125 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-1114. Adjustments to disability benefits.

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

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

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

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

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

5. Benefits paid under any compulsory benefits law.

~~B. Disability~~ *If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, disability benefit payments shall* may be offset by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is *deemed* eligible *by the plan administrator* as if the employee received such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim is not approved, the employee's disability payments shall not be reduced thereby.

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

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

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

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

§ 51.1-1123. Supplemental long-term disability benefit.

A. Supplemental long-term disability benefits for participating employees shall commence upon the expiration of a 125-work-day waiting period. The waiting period shall commence the first day of the

59 disability. If an employee returns to work for 14 or fewer consecutive days during such 125-work-day  
60 period and cannot continue to work, the periods worked shall not be deemed to interrupt the  
61 125-work-day waiting period. However, if the cause of the participating employee's disability is a major  
62 chronic condition, as defined by the Board or its designee, the 125-work-day waiting period is  
63 cumulative from the first day of the disability and can be interrupted by periods of active employment.

64 B. Except as provided in subsection D and § 51.1-1131, supplemental long-term disability benefits  
65 shall provide income replacement in an amount equal to 60 percent of a participating employee's  
66 creditable compensation.

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

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

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

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

79 G. ~~To~~ *Unless otherwise directed*, to be eligible for benefits under this section, the employee must  
80 apply for Social Security disability benefits.

81 § 51.1-1125. Adjustments in supplemental disability benefits.

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

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

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

89 3. Except as provided in subsection G, disability payments from the Social Security Administration,  
90 military disability benefits, local government disability benefits, federal civil service disability benefits or  
91 other similar governmental disability program benefits received by the employee or his family as a result  
92 of the qualifying disability;

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

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

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

100 B. ~~Supplemental~~ *If the plan administrator deems a participating employee to be eligible for benefits*  
101 *from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the*  
102 *participating employee to apply for those benefits and to pursue whatever additional steps are necessary*  
103 *to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as*  
104 *directed by the plan administrator, supplemental disability benefit payments shall may be reduced by*  
105 *amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating*  
106 *employee is deemed eligible by the plan administrator as if the employee received such amounts.*  
107 *However, if the employee has applied for such benefits, and has reapplied and appealed denials of the*  
108 *claim as requested by the administrator of the plan, and the claim is not approved, the employee's*  
109 *supplemental disability payments shall not be reduced thereby.*

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

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

118 E. Any payment to a participating employee that is later determined by the Board or by the employer  
119 to have been procured on the basis of any false statement or falsification of any record knowingly made  
120 by or on behalf of the employee, or the employee's failure to make any required report of change in

121 disability status, may be recovered from the employee by the Board, with interest, either by way of a  
122 credit against future payments due the employee or by an action at law against the employee.

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

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