

12103187D

**HOUSE BILL NO. 350**

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 51.1-1110, 51.1-1114, 51.1-1121, 51.1-1125, and 51.1-1127 of the Code of Virginia, relating to the Virginia Retirement System; disability benefits.

Patrons—Cox, M.K., Morris, Albo, Anderson, Bell, Richard P., Carr, Cline, Cole, Comstock, Cosgrove, Cox, J.A., Dance, Dudenhefer, Edmunds, Englin, Fariss, Garrett, Greason, Helsel, Herring, Hodges, Iaquinto, Ingram, Joannou, Landes, Lingamfelter, Marshall, R.G., Massie, Minchew, Morefield, O'Bannon, Pogge, Poindexter, Purkey, Putney, Ramadan, Ransone, Robinson, Rush, Rust, Scott, E.T., Sherwood, Spruill, Stolle, Surovell, Tata, Villanueva, Ware, R.L., Watson, Watts, Webert, Wilt, Wright, Yancey and Yost

Referred to Committee on Appropriations

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

**1. That §§ 51.1-1110, 51.1-1114, 51.1-1121, 51.1-1125, and 51.1-1127 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-1110. Short-term disability benefit.

A. Except as provided in subsection D of § 51.1-1103, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or of maternity leave. If an employee returns to work for one day or less during the 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. Except as provided in subsections C and E of this section and § 51.1-1131, 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, on maternity leave, 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 state service as an eligible employee, as follows:

Months of state service	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
60 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

C. For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsections B and E of this section and § 51.1-1131, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous state service after employment or reemployment and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below that he is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, based on the number of months of continuous state service, that an employee is disabled, on maternity leave, or takes periodic absences due to a major chronic condition as determined by the Board or its designee, as follows:

Months of state service	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
60 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

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

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

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

59 § 51.1-1114. Adjustments to disability benefits.

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

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

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

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

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

73 5. Benefits paid under any compulsory benefits law.

74 *Notwithstanding the foregoing, disability benefit payments shall not be offset by military disability*  
75 *benefits payable to a participating employee.*

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

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

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

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

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

103 § 51.1-1121. Supplemental short-term disability benefit.

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

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

115 C. Except as provided in ~~subsection E~~ *subsections D and F* and §§ 9.1-401.1 and 51.1-1131,  
116 supplemental short-term disability coverage shall provide income replacement for a percentage of a  
117 participating employee's creditable compensation during the period specified below that an employee is  
118 disabled or takes periodic absences due to a major chronic condition, as determined by the Board or its  
119 designee, based on the number of months of state service as an eligible employee, as follows:

120	Work days of 100%	Work days of 80%	Work days of 60%
121	replacement	replacement	replacement
122	Months of	of creditable	of creditable
123	state service	compensation	compensation
124	Less than 60	65	25
125	60 to 119	85	25
126	120 or more	85	40

127 *D. For all eligible employees commencing employment or reemployment on or after July 1, 2009,*  
128 *except as provided in subsection F and §§ 9.1-401.1 and 51.1-1131, short-term disability coverage shall*  
129 *provide income replacement for (i) 60 percent of a participating employee's creditable compensation for*  
130 *the first 60 months of continuous state service after employment or reemployment and (ii) thereafter, a*  
131 *percentage of a participating employee's creditable compensation during the periods specified below,*  
132 *based on the number of months of continuous state service attained by an employee who is disabled, on*  
133 *maternity leave, or takes periodic absences due to a major chronic condition, as determined by the*  
134 *Board or its designee, as follows:*

136	Work days of 100%	Work days of 80%	Work days of 60%
137	replacement	replacement	replacement
138	Months of	of creditable	of creditable
139	state service	compensation	compensation
140	60 to 119	85	25
141	120 or more	85	40

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

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

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

150 § 51.1-1125. Adjustments in supplemental disability benefits.

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

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

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

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

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

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

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

169 *Notwithstanding the foregoing, supplemental disability benefit payments shall not be offset by military*  
170 *disability benefits payable to a participating employee.*

171 B. If the plan administrator deems a participating employee to be eligible for benefits from any of  
172 the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating  
173 employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the  
174 benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the

175 plan administrator, supplemental disability benefit payments may be reduced by amounts from any of  
176 the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is deemed  
177 eligible by the plan administrator as if the employee received such amounts. However, if the employee  
178 has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the  
179 administrator of the plan, and the claim is not approved, the employee's supplemental disability  
180 payments shall not be reduced thereby.

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

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

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

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

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

201 § 51.1-1127. Cessation of supplemental disability benefits.

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

204 1. The end of the period of supplemental disability coverage as provided in subsection F G of  
205 § 51.1-1121 or subsection F of § 51.1-1123;

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

207 3. On the date benefits under the Act cease to be paid, if the participating employee is a member of  
208 the retirement system and is receiving benefits under the Act on his normal retirement date;

209 4. On the date benefits under the Act cease to be paid, if the participating employee is a not a  
210 member of the retirement system and is receiving benefits under the Act on the date he attains age  
211 sixty-five;

212 5. On his normal retirement date, if the participating employee is a member of the retirement system  
213 and is no longer receiving benefits under the Act on his normal retirement date;

214 6. On the date the employee attains age sixty-five, if the participating employee is a not a member of  
215 the retirement system and is no longer receiving benefits under the Act; or

216 7. The effective date of the participating employee's service retirement under any provision of this  
217 title.