

987221681

SENATE BILL NO. 126

Offered January 14, 1998

A BILL to amend the Code of Virginia by adding in Title 51.1 a chapter numbered 11, containing articles numbered 1 through 6, consisting of sections numbered 51.1-1100 through 51.1-1140, and to repeal § 51.1-513 of the Code of Virginia, relating to a sickness and disability program for state employees.

Patrons—Holland, Hanger and Walker; Delegates: Barlow, Hull, Putney and Reid

Referred to the Committee on Finance

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 11, containing articles numbered 1 through 6, consisting of sections numbered 51.1-1100 through 51.1-1140, as follows:

CHAPTER 11.

SICKNESS AND DISABILITY PROGRAM.

Article 1.

General Provisions.

§ 51.1-1100. 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 (i) a state employee as defined in § 51.1-124.3 who is a member of the retirement system or (ii) a qualifying part-time employee. Any person participating in a plan established pursuant to §§ 51.1-126, 51.1-126.1, 51.1-126.2, 51.1-502.1, 51.1-502.2, or 51.1-502.3 shall not be an eligible employee.

"Partial disability" exists when, as a result of an injury or illness, an employee is (i) able to perform one or more, but not all, of the material and substantial duties of his own or any other job on an active employment or a part-time basis or (ii) able to perform all of the material and substantial duties of his own or any other job on a part-time basis. An employee shall be eligible for partial disability benefits if he is earning twenty percent or more of his pre-disability earnings.

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

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

"Qualifying part-time employee" means any person who would qualify as a state employee as defined in § 51.1-124.3 but, rather than being regularly employed full time on a salaried basis, is regularly employed part time for at least twenty hours but less than forty hours per week on a salaried basis.

"Total disability" exists (i) during the first twenty-four months following the occurrence or commencement of an illness or injury if an employee is unable to perform his normal job duties, or (ii) after twenty-four months following the occurrence or commencement of an illness or injury if an employee is unable to perform the main duties of any job for which he is reasonably qualified based on his training or experience and earning less than twenty percent of his pre-disability earnings.

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

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

§ 51.1-1101. Sickness and disability program; disability insurance policies.

The Board shall develop, implement, and administer a sick leave, short-term disability, and long-term disability benefits program in accordance with the provisions of this chapter. The Board is authorized to delegate or assign to any person any of the duties required to be performed by the Board pursuant to this chapter. The Board is authorized to purchase long-term disability insurance policies for

60 participating employees. The policies shall be purchased from and carried with a disability insurance  
 61 company which is authorized to do business in the Commonwealth. Each policy shall contain a  
 62 provision stipulating the maximum expense and risk charges that are determined by the Board to be on  
 63 a basis consistent with the general level of charges made by disability insurance companies under  
 64 policies of long-term disability insurance issued to large employers. The Board may require that the  
 65 policies have reinsurance with a disability insurance company incorporated or organized under the laws  
 66 of and authorized to do business in the Commonwealth.

67 § 51.1-1102. Additional powers of the Board.

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

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

72 2. Contract for the provision of comprehensive case management;

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

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

76 § 51.1-1103. Participation in the program.

77 A. All eligible employees commencing employment on or after January 1, 1999, shall participate in  
 78 the program. The effective date of participation in the program for such employees shall be their first  
 79 day of employment.

80 B. All eligible employees who commenced employment prior to January 1, 1999, may elect to  
 81 participate in the program. Any election to participate in the program shall be in writing and shall be  
 82 submitted to the Board during an enrollment period commencing January 1, 1999, and ending on March  
 83 31, 1999. Any election to participate in the program shall be irrevocable. Any such eligible employee  
 84 who does not elect to participate in the program during the enrollment period shall be ineligible to  
 85 participate in the program for the period of his continued employment by the Commonwealth. Any  
 86 eligible employee who does not affirmatively elect to participate in the program shall be deemed to have  
 87 declined to participate in the program. The effective date of participation in the program for electing  
 88 employees shall be the thirtieth day following the delivery of notice of the election to the Board.

89 C. In addition to the conditions set forth in subsection B, any eligible employee commencing  
 90 employment prior to January 1, 1999, who is a member of the retirement system shall select one of the  
 91 following options at the time of making his election to participate in the program:

92 1. To convert his sick leave balance as of the effective date of his participation in the program to  
 93 service credit under the retirement system on the basis of one month of service for each 173 hours of  
 94 sick leave, rounded to the next highest month; or

95 2. To convert his sick leave balance as of the effective date of his participation in the program to  
 96 disability credits as provided in subsection E.

97 D. Any participating employee commencing employment prior to January 1, 1999, who elects to  
 98 participate in the program and is not a member of the retirement system shall convert his sick leave  
 99 balance as of the effective date of his participation in the program to disability credits as provided in  
 100 subsection E.

101 E. Any participating employee converting his sick leave balance as provided in subdivision C 2 or  
 102 subsection D shall receive one hour of disability credit for each hour of sick leave. Disability credits  
 103 shall be used to continue periods for which the participating employee receives income replacement  
 104 during periods of short-term and long-term disability at 100 percent of creditable compensation.  
 105 Disability credits shall be reduced by one hour for each hour that the participating employee receives  
 106 short-term or long-term disability benefits. Upon leaving state service, the employee shall be paid for  
 107 the balance of such disability credits under the same terms and subject to the same conditions as are in  
 108 effect for the conversion of sick leave benefits in the employee's agency on December 31, 1998.

109 F. Eligibility for participation in the program shall terminate upon the earliest to occur of an  
 110 employee's (i) termination of employment, (ii) death, or (iii) retirement from service. Eligibility for  
 111 participation in the program shall be suspended during periods that an employee is placed on non-pay  
 112 status, including leave without pay.

## 113 Article 2.

### 114 Sick Leave and Family and Personal Leave.

115 § 51.1-1104. Sick leave benefit for participating employees.

116 A. On the effective date of participation in the program, and thereafter on each January 1, existing  
 117 participating full-time employees shall receive an amount of sick leave based on the employee's number  
 118 of months of service as an eligible employee, as follows:

119

120

Months of service

Number of hours

121  
 122  
 123  
 124  
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 128  
 129  
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 131  
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Less than 60 64

60 to 119 72

120 or more 80

*B. Participating full-time employees commencing employment on or after January 1, 1999, shall receive an amount of sick leave for the calendar year during which their employment commences based on their first date of employment, as follows:*

<i>Date employment commenced</i>	<i>Number of hours</i>
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January 1 through June 30	64
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July 1 through December 31	40
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*C. On the effective date of participation in the program, and thereafter on each January 1, existing participating qualifying part-time employees shall receive an amount of sick leave based on the employee's number of months of service as an eligible employee, as follows:*

<i>Months of service</i>	<i>Number of hours</i>
--------------------------	------------------------

Less than 120	32
---------------	----

120 or more	40
-------------	----

*D. Participating qualifying part-time employees commencing employment on or after January 1, 1999, shall receive an amount of sick leave for the calendar year during which their employment commences based on first date of employment, as follows:*

<i>Date employment commenced</i>	<i>Number of hours</i>
----------------------------------	------------------------

January 1 through June 30	32
---------------------------	----

July 1 through December 31	20
----------------------------	----

*E. Any partial calendar month during which a participating employee was employed without interruption prior to January 1, 1999, shall constitute one month of service for purposes of this section.*

*F. 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.*

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

*H. Employees receiving disability benefits on January 1 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 commencing employment on the date of their return to work as provided in subsections B and D.*

*§ 51.1-1105. Use of sick leave by participating employees.*

*Participating employees shall be eligible to take sick leave to account for absences due to a short-term incident, illness or injury in accordance with case management guidelines approved by the Board. Participating employees shall be compensated by their employers at 100 percent of creditable*

179 compensation for each hour of sick leave taken, not to exceed the employee's sick leave balance.

180 § 51.1-1106. Sick leave benefit for nonparticipating employees.

181 Eligible employees subject to personnel policies of the Department of Personnel and Training who  
 182 do not elect to participate in the program shall receive sick leave benefits in accordance with policies of  
 183 the Department of Personnel and Training. Eligible employees not subject to personnel policies of the  
 184 Department of Personnel and Training who do not elect to participate in the program shall receive sick  
 185 leave benefits in accordance with policies of their appointing authority.

186 § 51.1-1107. Family and personal leave benefit.

187 A. On the effective date of participation in the program, and thereafter on each January 1, existing  
 188 participating employees shall receive an amount of family and personal leave based on the number of  
 189 months of service as an eligible employee, as follows:

190 Months of service	Number of hours
191	
192	
193 Less than 120	32
194	
195	
196 120 or more	40

197

198 B. Any partial calendar month during which a participating employee was employed without  
 199 interruption prior to January 1, 1999, shall constitute one month of service for purposes of this section.

200 C. Participating employees commencing employment on or after January 1, 1999, shall receive an  
 201 amount of family and personal leave for the first calendar year of employment based on the date  
 202 employment commenced, as follows:

203 Date employment commenced	Number of hours
204	
205	
206 January 1 through June 30	32
207	
208	
209 July 1 through December 31	16

210

211 D. 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 E. 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 F. Employees receiving disability benefits on January 1 of any year shall be granted family and  
 216 personal leave for such year on the date they return to active employment. The amount of family and  
 217 personal leave granted for such year shall be determined as if they were commencing employment on  
 218 the date of their return to work as provided in subsection C.

219 § 51.1-1108. Use of family and personal leave.

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

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

230 *Article 3.*  
 231 *Non-Work Related Disability Benefits.*

232 § 51.1-1109. Applicability of article.

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

235 § 51.1-1110. Short-term disability benefit.

236 A. Short-term disability benefits for participating employees shall commence upon the expiration of a  
 237 seven calendar day waiting period. The waiting period shall commence on the day following the  
 238 commencement of a disability or a period of maternity leave. If an employee returns to work for one

239 day or less during the seven calendar day waiting period but cannot continue to work, the periods  
 240 worked shall not be considered to have interrupted the seven calendar day waiting period.

241 B. Except as provided in subsection D and § 51.1-1131, short-term disability coverage shall provide  
 242 income replacement for a percentage of a participating employee's creditable compensation during the  
 243 period specified below that an employee is disabled, on maternity leave, or takes periodic absences due  
 244 to a major chronic condition, as determined by the Board, based on the number of months of service as  
 245 an eligible employee, as follows:

	Work days of 100 %	Work days of 80 %	Work days of 60
246			
247	%		
248			
249	replacement	replacement	replacement
250			
251	Months of	of creditable	of creditable
252			
253	service	compensation	compensation
254			
255			
256	Less than 60	5	20
257			100
258			
259	60 to 119	25	25
260	75		
261			
262			
263	120 to 179	25	50
264	50		
265			
266			
267	180 or more	25	75
268	25		
269			

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

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

275 E. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii)  
 276 partial disability, (iii) maternity leave, or (iv) periodic absences due to a major chronic condition as  
 277 defined by the Board or its designee. Short term disability benefits shall be payable for each instance of  
 278 absence due to a major chronic condition, as defined by the Board or its designee, after the  
 279 participating employee has satisfied one seven calendar day waiting period in each calendar year.

280 § 51.1-1111. Successive periods of short-term disability.

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

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

295 § 51.1-1112. Long-term disability benefit.

296 A. Long-term disability benefits for participating employees shall commence upon the expiration of a  
 297 180 calendar day waiting period. The waiting period shall commence on the day following the

298 commencement of the disability. If an employee returns to work for fourteen or fewer consecutive  
299 calendar days during such 180 calendar day waiting period and cannot continue to work, the periods  
300 worked shall not be deemed to have interrupted the 180 calendar day waiting period. However, if the  
301 cause of the participating employee's disability is a major chronic condition, as defined by the Board or  
302 its designee, the 180 calendar day waiting period is cumulative from the day following the  
303 commencement of the disability and can be interrupted by periods of active employment.

304 B. Except as provided in subsection D and § 51.1-1131, long-term disability benefits shall provide  
305 income replacement in an amount equal to sixty percent of a participating employee's creditable  
306 compensation.

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

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

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

316 § 51.1-1113. Successive periods of long-term disability.

317 A. A participating employee's disability which is related or due to the same cause or causes as a  
318 prior disability for which long-term disability benefits were paid shall be deemed to be a continuation of  
319 the prior disability if the employee returns to his position on an active employment basis for less than  
320 180 consecutive calendar days. Days of work arranged pursuant to vocational, rehabilitation, or  
321 return-to-work programs shall not be counted in determining the duration of the period of the  
322 employee's return to work.

323 B. If a participating employee returns to his position on an active employment basis for 180  
324 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of  
325 long-term disability.

326 § 51.1-1114. Adjustments to disability benefits.

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

329 1. During the first twelve months the employee receives disability benefits, the portion of the  
330 employee's wages and salary from any employment that causes the total of the disability benefits and  
331 wages and salary to exceed 100 percent of creditable compensation;

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

334 3. Social security disability payments or other similar governmental disability program benefits  
335 received by the employee or his family as a result of the qualifying disability;

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

338 5. Benefits paid under any compulsory benefits law.

339 B. Disability benefit payments shall be offset by amounts from any of the sources listed in  
340 subdivisions A 3 through A 5 for which a participating employee is eligible as if the employee received  
341 such amounts. However, if the employee has applied for such benefits and their payment is not  
342 approved, the employee's disability payments shall not be reduced thereby.

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

347 D. Participating employees shall be required to repay with interest to the Board any overpayments of  
348 disability benefits on account of the failure of the employee to provide the Board with information  
349 necessary to make any of the reductions required to be made under this article.

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

355 § 51.1-1115. Rehabilitation incentive.

356 Disability benefits payable to a participating employee who fails to cooperate with a rehabilitation  
357 program prescribed for the employee shall be decreased by fifty percent of the amounts otherwise  
358 payable to such employee.

359 § 51.1-1116. Cessation of disability benefits.

360 If not sooner terminated due to the end of the period of disability coverage as provided in subsection  
361 E of § 51.1-1110 or subsection E of § 51.1-1112, disability benefits shall cease to be paid to a  
362 participating employee upon the first to occur of the following:

- 363 1. The date of death of the participating employee;
- 364 2. (i) The participating employee's normal retirement date if the employee is a member of the  
365 retirement system or (ii) the date the employee attains age sixty-five if the employee is not a member of  
366 the retirement system;
- 367 3. After the first twelve months of long-term disability benefits, the date the participating employee's  
368 wages and salary from any employment exceed eighty-five percent of his pre-disability earnings; or
- 369 4. The effective date of the participating employee's service retirement under any provision of this  
370 title.

371 § 51.1-1117. Service retirement of participating employees receiving disability benefits.

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

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

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

385 § 51.1-1118. Survivor benefits.

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

389 Article 4.

390 Work-Related Disability Benefit.

391 § 51.1-1119. Applicability of article.

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

394 § 51.1-1120. Initial benefit period.

395 During the first seven calendar days following the commencement of a disability, a participating  
396 employee may use sick leave, family and personal leave, and annual and compensatory leave to provide  
397 income replacement.

398 § 51.1-1121. Supplemental short-term disability benefit.

399 A. The short-term disability benefits payable to disabled participating employees are intended to  
400 supplement the benefits paid to the employee pursuant to the Act. Payments of supplemental short-term  
401 disability benefits payable under this article shall be reduced by an amount equal to any benefits paid  
402 to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any  
403 payments for medical, legal or rehabilitation expenses.

404 B. Supplemental short-term disability benefits for participating employees shall commence upon the  
405 expiration of a seven calendar day waiting period. The waiting period shall commence on the day  
406 following the commencement of a disability. If an employee returns to work for one day or less during  
407 the seven calendar days following the commencement of a disability but cannot continue to work, the  
408 periods worked shall not be considered to have interrupted the seven calendar day waiting period.

409 C. Except as provided in subsection E and § 51.1-1131, supplemental short-term disability coverage  
410 shall provide income replacement for a percentage of a participating employee's creditable  
411 compensation during the period specified below that an employee is disabled, based on the number of  
412 months of service as an eligible employee, as follows:

413	Work days of 100 %	Work days of 80 %	Work days of
414	60 %		
415			
416	replacement	replacement	replacement
417			
418	Months of	of creditable	of creditable
419			
420	service	compensation	compensation

421				
422				
423	Less than 60	65	20	35
424				
425				
426	60 to 119	85	25	15
427				
428				
429	120 to 179	85	40	0
430				
431				
432	180 or more	85	40	0
433				

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

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

439 *F. Supplemental short-term disability benefits shall be payable only during periods of (i) total*  
 440 *disability, (ii) partial disability as determined by the Board, or (iii) periodic absences due to a major*  
 441 *chronic condition as defined by the Board or its designee. Short term disability benefits shall be payable*  
 442 *for each instance of absence due to a major chronic condition, as defined by the Board or its designee,*  
 443 *after the participating employee has satisfied one seven calendar day waiting period in each calendar*  
 444 *year.*

445 *§ 51.1-1122. Successive periods of short-term disability.*

446 *A. A participating employee's disability which is related or due to the same cause or causes as a*  
 447 *prior disability for which supplemental short-term disability benefits were paid shall be deemed to be a*  
 448 *continuation of the prior disability if the employee (i) is eligible for benefits payable under the Act,*  
 449 *whether or not he is receiving such benefits, and (ii) returns to his position on an active employment*  
 450 *basis for less than fourteen consecutive calendar days, or twenty-eight consecutive calendar days if the*  
 451 *short-term disability is due to a major chronic condition, as defined by the Board or its designee,*  
 452 *requiring periodic absences. Days of work arranged pursuant to vocational, rehabilitation, or*  
 453 *return-to-work programs shall not be counted in determining the duration of the period of the*  
 454 *employee's return to work.*

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

461 *§ 51.1-1123. Supplemental long-term disability benefit.*

462 *A. Supplemental long-term disability benefits for participating employees shall commence upon the*  
 463 *expiration of a 180 calendar day waiting period. The waiting period shall commence on the day*  
 464 *following the commencement of the disability. If an employee returns to work for fourteen or fewer*  
 465 *consecutive days during such 180 calendar day period and cannot continue to work, the periods worked*  
 466 *shall not be deemed to interrupt the 180 calendar day waiting period. However, if the cause of the*  
 467 *participating employee's disability is a major chronic condition, as defined by the Board or its designee,*  
 468 *the 180 calendar day waiting period is cumulative from the day following the commencement of the*  
 469 *disability and can be interrupted by periods of active employment.*

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

473 *C. Creditable compensation during periods an employee receives supplemental long-term disability*  
 474 *benefits shall (i) not include salary increases awarded during the period covered by long-term disability*  
 475 *benefits and (ii) be increased annually by an amount recommended by the actuary of the Virginia*  
 476 *Retirement System and approved by the Board.*

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

480 *E. Payments of supplemental long-term disability benefits payable under this article shall be reduced*  
 481 *by an amount equal to any benefits paid to the employee under the Act, for which the employee is*

482 entitled to receive under the Act, excluding any benefit for medical, legal or rehabilitation expenses.

483 F. Supplemental long-term disability benefits shall be payable only during periods of disability.

484 § 51.1-1124. Successive periods of long-term disability.

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

492 B. If a participating employee returns to his position on an active employment basis for 180  
493 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of  
494 long-term disability.

495 § 51.1-1125. Adjustments in supplemental disability benefits.

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

499 1. During the first twelve months the employee receives disability benefits, the employee's wages and  
500 salary from any employment that cause the total of the supplemental disability benefits, earnings, and  
501 benefits payable under the Act to exceed 100 percent of creditable compensation;

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

504 3. Social security disability payments or other similar governmental disability program benefits  
505 received by the employee or his family as a result of the qualifying disability;

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

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

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

513 B. Supplemental disability benefit payments shall be reduced by amounts from any of the sources  
514 listed in subdivisions A 3 through A 5 for which a participating employee is eligible as if the employee  
515 received such amounts. However, if the employee has applied for such benefits and their payment is not  
516 approved, the employee's supplemental disability payments shall not be reduced thereby.

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

521 D. Participating employees shall be required to repay to the Board any overpayments of  
522 supplemental disability benefits on account of the failure of the employee to provide the Board with  
523 information necessary to make any of the reductions required to be made under this article.

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

527 § 51.1-1126. Rehabilitation incentive.

528 Supplemental disability benefits payable to a participating employee who fails to cooperate with a  
529 rehabilitation program prescribed for the employee shall be decreased by fifty percent of the amounts  
530 otherwise payable to such employee. In determining the amount of any reduction in benefits under this  
531 section, the participating employee shall be presumed to continue to receive benefits payable under the  
532 Act.

533 § 51.1-1127. Cessation of supplemental disability benefits.

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

536 1. The end of the period of supplemental disability coverage as provided in subsection F of  
537 § 51.1-1121 or subsection F of § 51.1-1123;

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

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

541 4. On the date benefits under the Act cease to be paid, if the participating employee is a not a  
542 member of the retirement system and is receiving benefits under the Act on the date he attains age

543 *sixty-five;*

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

546 6. *On the date the employee attains age sixty-five, if the participating employee is a not a member of*  
547 *the retirement system and is no longer receiving benefits under the Act on his normal retirement date;*

548 7. *After the first twelve months of long-term disability benefits, the date the participating employee's*  
549 *wages and salary from any employment exceed eighty-five percent of his pre-disability earnings; or*

550 8. *The effective date of the participating employee's service retirement under any provision of this*  
551 *title.*

552 § 51.1-1128. *Service retirement of participating employees receiving supplemental disability benefits.*

553 A. *Upon the last to occur of (i) the normal retirement date of a participating employee receiving*  
554 *disability benefits who is a vested member of the retirement system or (ii) the date of cessation of*  
555 *benefits payable under the Act, the employee shall be eligible for normal retirement under subsection A*  
556 *of § 51.1-153. Such employee shall be authorized to elect any option for the payment of his retirement*  
557 *allowance provided under subsection A of § 51.1-165.*

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

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

566 § 51.1-1129. *Survivor benefits.*

567 *If a participating employee who is a member of the retirement system dies during periods he is*  
568 *receiving supplemental disability benefits, survivor benefits shall be payable to the extent provided in*  
569 *subsection C of § 51.1-162.*

570 § 51.1-1130. *Coordination of benefits.*

571 *The Board and the Division of Risk Management of the Department of General Services, as*  
572 *administrator of the Commonwealth's self-insurance program for workers' compensation coverage, shall*  
573 *jointly develop guidelines and procedures for the coordination of benefits and case management for*  
574 *participating employees entitled to benefits under the Act and supplemental disability benefits under this*  
575 *article. Such guidelines shall also address disability benefits for participating employees whose disability*  
576 *results from multiple injuries or illnesses, one or more of which is a work-related injury. The Board*  
577 *shall have the authority to approve the final guidelines and procedures.*

578 Article 5.

579 Provisions Applicable to Disability Benefits Generally.

580 § 51.1-1131. *Supplemental benefits for catastrophic disability.*

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

587 § 51.1-1132. *Health insurance coverage during disability absences.*

588 A. *Participating employees enrolled in a health insurance plan established pursuant to § 2.1-20.1*  
589 *shall continue to be covered during periods of short-term disability and shall have the option of*  
590 *continuing to be covered by such plan during periods of absence covered by long-term disability*  
591 *benefits.*

592 B. *The Commonwealth shall pay the employer's share of the cost of health insurance coverage under*  
593 *such plan for participating employees and for the families or dependents of such employees during*  
594 *periods the employee is receiving short-term disability benefits to the same extent as for other state*  
595 *employees covered by such plan.*

596 C. *Participating employees enrolled in such plan shall pay the full cost for coverage under such plan*  
597 *for themselves and for their families and dependents during periods the employee is receiving long-term*  
598 *disability benefits.*

599 § 51.1-1133. *Life and accident insurance coverage during disability absences.*

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

603 B. *During periods of absence covered by short-term disability benefits, the amount of the life*  
604 *insurance benefit shall be based on the annual salary of the participating employee at the*

605 commencement of the disability and shall be adjusted to include salary increases awarded during the  
606 period covered by short-term disability benefits.

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

612 § 51.1-1134. Optional insurance during disability absences.

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

616 § 51.1-1135. Exclusions and limitations.

617 A. Disability benefits shall not be payable to any participating employee who is convicted of a  
618 felony.

619 B. Long-term disability benefits shall not be payable to any participating employee whose disability  
620 results from the abuse of alcohol, the misuse of any prescribed medication, or the misuse of any  
621 controlled substance.

622 Article 6.

623 Administration of Program.

624 § 51.1-1136. Limitation on coverage.

625 No person shall have more than one coverage under a disability benefit program. Any person  
626 employed in more than one position which provides coverage under a disability benefit program shall  
627 elect one position on which his coverage shall be based by written notification to the Board.

628 § 51.1-1137. Keeping records and furnishing information required by Board.

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

631 § 51.1-1138. Benefits exempt from process.

632 The benefits provided for in this chapter and all proceeds therefrom shall be exempt from levy,  
633 garnishment, attachment, and other legal process, except as provided in §§ 51.1-124.4 and 51.1-510.

634 § 51.1-1139. Policies to provide for accounting to Board; advance premium deposit reserve.

635 A. Each policy purchased by the Board shall provide for an accounting to the Board not later than  
636 120 days after the end of each policy year. The accounting shall include (i) the amounts of premiums  
637 actually accrued under the policy during the policy year, (ii) the total amount of all claim charges  
638 incurred during the policy year, and (iii) the amounts of the insurer's expenses and risk charges for the  
639 policy year.

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

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

655 § 51.1-1140. Funding of program; disability insurance trust fund established.

656 A. The costs of providing sick leave, family and personal leave, and short-term disability benefits  
657 shall be paid by state agencies from funds as shall be appropriated by law to state agencies.

658 B. State agencies shall pay to the Board, from funds as shall be appropriated by law to state  
659 agencies, contribution amounts, to be determined by the Board, to provide the Board with such funds as  
660 shall be required from time to time to (i) obtain and maintain long-term disability insurance policies  
661 under this chapter and (ii) administer the Program, including providing case management and cost  
662 containment programs. Contributions shall be deposited in the disability insurance trust fund.

663 C. There is hereby established the disability insurance trust fund. The costs incurred by the Board in  
664 providing policies of long-term disability insurance and administering the Program, including the  
665 provision of case management and cost containment programs, shall be withdrawn from time to time by

666 *the Board from the disability insurance trust fund. The funds of the disability insurance fund shall be*  
667 *deemed separate and independent trust funds, shall be segregated from all other funds of the*  
668 *Commonwealth, and shall be invested and administered solely in the interests of the participating*  
669 *employees and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or*  
670 *agency shall use or authorize the use of such trust funds for any purpose other than as provided in law*  
671 *for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the*  
672 *disability insurance trust fund.*

673 **2. That § 51.1-513 of the Code of Virginia is repealed.**