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SENATE BILL NO. 1000

Offered January 10, 2001

Prefiled January 9, 2001

A BILL to amend and reenact §§ 51.1-1100, 51.1-1103, 51.1-1106, 51.1-1116, 51.1-1127, 51.1-1131, 51.1-1135.1, and 51.1-1140 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 2 of Title 2.1 a section numbered 2.1-20.1:9 and by adding a section numbered 51.1-513.2, and to repeal § 51.1-502.2 of the Code of Virginia, relating to the state sickness and disability program.

Patron—Trumbo

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-1100, 51.1-1103, 51.1-1106, 51.1-1116, 51.1-1127, 51.1-1131, 51.1-1135.1, and 51.1-1140 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 2.1 a section numbered 2.1-20.1:9 and by adding a section numbered 51.1-513.2 as follows:

§ 2.1-20.1:9. Employees of the University of Virginia Medical Center.

The University of Virginia Medical Center, hereafter referred to as the Medical Center, may purchase basic group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part any of its employees. In addition, the Medical Center may establish, administer and make available to employees a program of optional insurance, including life, accidental death and dismemberment, and disability insurance. Employees of the Medical Center covered under the aforesaid basic insurance policies purchased by the Medical Center shall not be covered by the insurance program established pursuant to § 51.1-501 or be considered "eligible employees" under § 51.1-1100, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board, purchases such insurance policies from the Virginia Retirement System. Nor shall they be required to present at their own expense evidence of insurability satisfactory to an insurance company upon changing from one form of coverage to another form of coverage provided pursuant to this section. Chapter 5 of Title 51.1 (§ 51.1-500 et seq.) shall not apply to any insurance coverage offered by the Medical Center except that the provisions of §§ 51.1-510 and 51.1-511 shall apply to such insurance coverage; provided that any administrative or ministerial functions performed by or on behalf of the Board of the Virginia Retirement System under §§ 51.1-510 and 51.1-511 shall be performed by the Medical Center.

Notwithstanding the definition of "state employee" contained in § 51.1-124.3, all employees of the Medical Center may be enrolled in a health care plan other than that provided for in § 2.1-20.1 at the election of the Medical Center and subject to the review and approval of the Board of Visitors of the University of Virginia; however, any Medical Center employee who was first employed by the Medical Center prior to July 1, 1996, and who had not been classified as a health care provider under the provisions of § 51.1-502.1 prior to July 1, 1996, shall be provided the option of enrolling in a health care plan elected by the Medical Center or enrolling in the health care plan established pursuant to § 2.1-20.1 until such time as the University of Virginia Board of Visitors may determine that it is not in the best interest of the University to continue to provide that option to any employees of the Medical Center. If the Board of Visitors determines that such health plan option will not continue to be provided, any Medical Center employees who must reenroll in a different health plan shall be allowed to do so with a waiver of preexisting medical conditions for the employees and, if applicable, their spouses and dependents.

Subject to such eligibility criteria as it may establish, the Medical Center may make available to any of its employees the insurance programs established pursuant to this section, including health plan coverage, notwithstanding the fact that such employees may not be eligible for participation in any retirement plan established pursuant to § 51.1-126.3 or the retirement system established pursuant to Chapter 1 (§ 51.1-124.1 et seq.) of this title.

The eligibility of any employee of the Medical Center for participation in any insurance program established pursuant to this section shall not of itself render such employees eligible for participation in the Virginia Retirement System or any optional retirement program.

§ 51.1-513.2. Board authorized to provide long-term care insurance and benefits.

A. For purposes of this section, "eligible employee" means the same as that term is defined in § 51.1-1100.

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59 *B. The Board is authorized to develop, implement, and administer a long-term care insurance*
60 *program for eligible employees. The Board may contract for and purchase such long-term care*
61 *insurance or may self-insure long-term care benefits or may use such other actuarially sound funding*
62 *necessary to effectuate such long-term care insurance and benefits.*

63 *C. The costs of providing long-term care benefits shall be paid by state agencies from funds as shall*
64 *be appropriated by law to state agencies. State agencies shall pay to the Board from such funds*
65 *contribution amounts, to be determined by the Board, to provide the Board with such funds as shall be*
66 *required from time to time to (i) obtain and maintain long-term care insurance and benefits for eligible*
67 *employees, and (ii) administer the long-term care insurance program, including providing case*
68 *management and cost containment programs. Contributions shall be deposited in the Disability*
69 *Insurance Trust Fund established under § 51.1-1140.*

70 *D. The long-term care insurance program for eligible employees shall be coordinated with any*
71 *disability, life, or other insurance program administered under this title, including but not limited to,*
72 *any long-term care insurance program administered by the Department of Human Resource*
73 *Management.*

74 § 51.1-1100. Definitions.

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

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

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

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

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

83 "Eligible employee" means (i) a state employee as defined in § 51.1-124.3 who is a member of the
84 retirement system, (ii) an employee as defined in § 51.1-201, (iii) an employee as defined in § 51.1-212,
85 or (iv) a qualifying part-time employee. Any person participating in a plan established pursuant to
86 §§ 51.1-126, 51.1-126.1, 51.1-126.4, 51.1-126.5, 51.1-502.1, ~~51.1-502.2~~ or § 51.1-502.3 shall not be an
87 eligible employee. *Employees of the University of Virginia Medical Center covered under the basic*
88 *insurance policies purchased by the Medical Center shall not be considered eligible employees under*
89 *this chapter, unless the University of Virginia Board of Visitors, or a duly authorized agent or*
90 *representative of the Board of Visitors, purchases such insurance policies from the Retirement System.*

91 "Existing employee" means an employee who elected to participate in the Virginia Sickness and
92 Disability Program.

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

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

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

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

105 "State service" means the employee's total period of state service as an eligible employee, including
106 all periods of classified full-time and classified part-time service and periods of leave without pay, but
107 not including periods during which the employee did not meet the definition of an eligible employee.

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

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

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

118 § 51.1-1103. Participation in the program.

119 A. All prior elections to participate in the program shall be irrevocable.

120 B. 1. Except for eligible employees who are employed by an institution of higher education in a

121 *faculty position performing teaching, research or administrative duties, all* ~~all~~ *eligible employees*
 122 *commencing employment or who are reemployed on or after January 1, 1999, shall participate in the*
 123 *program. The effective date of participation in the program for such employees shall be their first day of*
 124 *employment.*

125 *2. Except for such employees of an institution of higher education, all eligible employees not*
 126 *participating in the program prior to October 1, 2001, shall participate in the program effective*
 127 *January 10, 2002, unless such employee elects not to participate in the program as provided herein. An*
 128 *election not to participate shall be in writing, and on forms prescribed by the Retirement System, and*
 129 *shall be received by the Retirement System during the period commencing on October 1, 2001, but*
 130 *before January 1, 2002. An election not to participate in the program shall be irrevocable and such*
 131 *employee shall be ineligible to participate in the program for the period of his continued employment by*
 132 *the Commonwealth.*

133 *B. All eligible employees who commenced employment prior to January 1, 1999, may elect to*
 134 *participate in the program. Any election to participate in the program shall be in writing and shall be*
 135 *submitted to the Board or its designee during an enrollment period commencing January 1, 1999, and*
 136 *ending on March 31, 1999. Any election to participate in the program shall be irrevocable. Any such*
 137 *eligible employee who does not elect to participate in the program during the enrollment period shall be*
 138 *ineligible to participate in the program for the period of his continued employment by the*
 139 *Commonwealth. Any eligible employee who does not affirmatively elect to participate in the program*
 140 *shall be deemed to have declined to participate in the program. The effective date of participation in the*
 141 *program for electing employees shall be the first day of the pay period following the delivery of notice*
 142 *of the election to the Board or its designee.*

143 *C. Any eligible employee who is employed by an institution of higher education in a faculty position*
 144 *performing teaching, research or administrative duties may elect to participate in the program established*
 145 *under this chapter or under an existing program provided by the institution. For eligible employees who*
 146 *commenced employment prior to January 1, 1999, the election shall be in accordance with subsection B.*
 147 *For eligible employees commencing employment or who are reemployed on or after January 1, 1999, an*
 148 *irrevocable decision to participate in either program established under this chapter or the program*
 149 *provided by the institution shall be made not later than ninety days from the time of entry upon the*
 150 *performance of his duties.*

151 *C. Any eligible employee who is (i) employed by an institution of higher education in a faculty*
 152 *position performing teaching, research or administrative duties prior to October 1, 2001, and (ii) not*
 153 *participating in the program, shall participate in the program established under this chapter effective*
 154 *January 10, 2002, unless such employee elects not to participate in the manner provided in subdivision*
 155 *B. 2. Any eligible employee of an institution of higher education in a faculty position performing*
 156 *teaching, research or administrative duties employed or reemployed on or after October 1, 2001, shall*
 157 *participate in the program unless such employee elects not to participate in the program, in writing and*
 158 *on such forms as prescribed by the Retirement System, within thirty days from the time of entry upon*
 159 *the performance of his duties. The effective date of participation in the program for such employees*
 160 *shall be the first day following the expiration of such thirty-day period or January 10, 2002, whichever*
 161 *is later.*

162 *Any eligible employee under this subsection shall participate in the sickness and disability program*
 163 *established by his institution of higher education until such time as the employee participates in the*
 164 *program established under this chapter. If the institution of higher education has not established its own*
 165 *sickness and disability program, such eligible employee shall participate in the program established*
 166 *under this chapter effective on his first day of employment.*

167 *An election not to participate in the program established under this chapter shall be irrevocable and*
 168 *such employee shall be ineligible to participate in the program for the period of his continued*
 169 *employment by the Commonwealth.*

170 *D. In addition to the conditions set forth in subsection B, any eligible employee commencing*
 171 *employment or who is reemployed prior to January 1, 1999, who is a member of the retirement system*
 172 *shall select one of the following options at the time of making his election to participate in the program:*

173 *1. To convert his sick leave balance as of the effective date of coverage to service credit under the*
 174 *retirement system on the basis of one month of service for each 173 hours of sick leave, rounded to the*
 175 *next highest month; or*

176 *2. To convert his sick leave balance as of the effective date of coverage to disability credits as*
 177 *provided in subsection F. The provisions of this subsection shall apply to any eligible employee who*
 178 *participates in the program under the provisions of subdivision B. 2. or subsection C.*

179 *1. Any eligible employee, except a person employed by an institution of higher education in a faculty*
 180 *position performing teaching, research or administrative duties, who (i) is a member of the Retirement*
 181 *System, and (ii) commenced employment or was reemployed prior to January 1, 1999, shall have his*

182 sick leave balances, as of the effective date of coverage in the program, converted to disability credits,
183 as provided in subsection E.

184 2. Any eligible employee employed by an institution of higher education in a faculty position
185 performing teaching, research or administrative duties who is a member of the Retirement System shall
186 have his sick leave balances, as of the effective date of coverage in the program, converted to disability
187 credits, as provided in subsection E.

188 E3. Any participating eligible employee commencing employment prior to January 1, 1999, who
189 elects to participate in the program and is not a member of the retirement system shall convert his sick
190 leave balance as of the effective date of coverage Retirement System shall have his sick leave balances,
191 as of the effective date of coverage in the program, converted to disability credits as provided in
192 subsection FE.

193 FE. Any participating eligible employee converting his sick leave balance as provided in subdivision
194 D 2 or subsection E D shall receive one hour of disability credit for each hour of sick leave. Disability
195 credits shall be used to continue periods for which the participating employee receives income
196 replacement during periods of short-term and long-term disability at 100 percent of creditable
197 compensation. Disability credits shall be reduced by one day for each day that the participating
198 employee receives short-term or long-term disability benefits.

199 F. Upon retiring directly from state service and receiving an immediate annuity, the eligible
200 employee's unused disability credits shall be converted to service credit under the Retirement System at
201 the rate of one month of service for each 173 hours of disability credits, rounded to the next highest
202 month. Upon leaving state service under any other circumstances, the employee shall be paid for the
203 balance of such disability credits under the same terms and subject to the same conditions as are in
204 effect for the payment of sick leave benefits in the employee's agency on December 31, 1998, unless he
205 elects to have such credits converted to service credit under the Retirement System at the rate of one
206 month of service for each 173 hours of disability credits, rounded to the next highest month. Upon entry
207 into long-term disability, the employee may be paid for the balance of such disability credits under the
208 same terms and subject to the same conditions in effect for payment of sick leave benefits in the
209 employee's agency as of December 31, 1998.

210 G. Eligibility for participation in the program shall terminate upon the earliest to occur of an
211 employee's (i) termination of employment, (ii) death, or (iii) retirement from service. Eligibility for
212 participation in the program shall be suspended during periods that an employee is placed on nonpay
213 status, including leave without pay, if such nonpay status is due to disciplinary action.

214 § 51.1-1106. Sick leave benefit for nonparticipating employees.

215 Eligible employees subject to personnel policies of the Department of Human Resource Management
216 who do not elect not to participate in the program shall receive sick leave benefits in accordance with
217 policies of the Department of Human Resource Management. Eligible employees not subject to
218 personnel policies of the Department of Human Resource Management who do not elect not to
219 participate in the program shall receive sick leave benefits in accordance with policies of their
220 appointing authority.

221 § 51.1-1116. Cessation of disability benefits.

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

225 1. The date of death of the participating employee;

226 2. (i) The participating employee's normal retirement date if the employee is a member of the
227 retirement system or (ii) the date the employee attains age sixty-five if the employee is not a member of
228 the retirement system; or

229 3. After the first twelve months of long-term disability benefits, the date the participating employee's
230 wages and salary from any employment exceed eighty-five percent of his predisability earnings; or

231 43. The effective date of the participating full-time employee's service retirement under any provision
232 of this title.

233 § 51.1-1127. Cessation of supplemental disability benefits.

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

236 1. The end of the period of supplemental disability coverage as provided in subsection F of
237 § 51.1-1121 or subsection F of § 51.1-1123;

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

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

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

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

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

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

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

§ 51.1-1131. Supplemental benefits for catastrophic disability.

Disability benefits shall be increased to eighty percent of creditable compensation for any disabled participating employee who (i) is unable to perform at least two of the ~~seven~~ *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.

§ 51.1-1135.1. Appeals.

~~In lieu of the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), the~~ *The* Board may elect to *develop an alternative process* to allow appeals of case decisions related to the payment of disability ~~payments~~ *benefits* under this chapter ~~to be made under a process developed by the Board which shall be modeled after the claims provisions as provided for in the federal Employee Retirement Income Security Act of 1974, as amended.~~ *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, 3.1, and 5 of the Administrative Process Act (§ 9-6.14:1 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 4 of the Administrative Process Act (§ 9-6.14:15 et seq.).*

§ 51.1-1140. 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 state agencies from funds as shall be appropriated by law to state agencies.

B. State agencies shall pay to the Board, from funds as shall be appropriated by law to state agencies, 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 disability insurance policies under this chapter, and (ii) administer the Program, including providing case management and cost containment programs. Contributions shall be deposited in the Disability Insurance Trust Fund.

C. There is hereby established the Disability Insurance Trust Fund. The costs incurred by the Board in providing policies of long-term disability insurance and administering the Program *and in administering the long-term care insurance program established under § 51.1-513.2*, including the provision of case management and cost containment programs, shall be withdrawn from time to time by the Board from the Disability Insurance Trust Fund. The funds of the Disability Insurance Trust Fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the participating employees and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the Disability Insurance Trust Fund.

2. That § 51.1-502.2 of the Code of Virginia is repealed.