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**HOUSE BILL NO. 363**

Offered January 13, 2016

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*A BILL to amend and reenact §§ 51.1-1100, 51.1-1103, 51.1-1110, and 51.1-1121 of the Code of Virginia, relating to benefits under the state sickness and disability program.*

Patron—Loupassi

Referred to Committee on Appropriations

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

**1. That §§ 51.1-1100, 51.1-1103, 51.1-1110, and 51.1-1121 of the Code of Virginia are amended and reenacted as follows:**

**§ 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, including the hybrid retirement program described in § 51.1-169; (ii) an employee as defined in § 51.1-201; (iii) an employee as defined in § 51.1-212; or (iv) a qualifying part-time employee. Any person participating in a plan established pursuant to § 51.1-126, 51.1-126.1, 51.1-126.4, 51.1-126.5, 51.1-502.1, or 51.1-502.3 shall not be an eligible employee. Employees of the University of Virginia Medical Center covered under the basic insurance policies purchased by the Medical Center shall not be considered eligible employees under this chapter, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board of Visitors, purchases such insurance policies from the Virginia Retirement System.

"Employee vested prior to participating in the program" means a participating employee who (i) immediately before becoming a participating employee was employed in a covered position for retirement purposes under Chapter 1 (§ 51.1-124.1 et seq.) with at least five years of creditable service, as defined in § 51.1-124.3, under the Virginia Retirement System, including the hybrid retirement program described in § 51.1-169, or at least five years of creditable service while earning the benefits permitted by § 51.1-138 and (ii) did not have a break in service between such prior position and commencing employment as a participating employee.

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

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

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

"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 20 hours but less than 40 hours per week on a salaried basis.

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

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

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59 less than 80 percent of his predisability earnings.

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

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

65 **§ 51.1-1103. Participation in the program.**

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

67 B. 1. Except for eligible employees who are employed by an institution of higher education in a  
68 faculty position performing teaching, research or administrative duties, all eligible employees  
69 commencing employment or who are reemployed on or after January 1, 1999, shall participate in the  
70 program. The effective date of participation in the program for such employees shall be their first day of  
71 employment.

72 2. Except for such employees of an institution of higher education, all eligible employees not  
73 participating in the program prior to October 1, 2002, shall participate in the program effective January  
74 10, 2003, unless such employee elects not to participate in the program as provided herein. An election  
75 not to participate shall be in writing, and on forms prescribed by the Retirement System, and shall be  
76 received by the Retirement System during the period commencing on October 1, 2002, but before  
77 January 1, 2003. An election not to participate in the program shall be irrevocable and such employee  
78 shall be ineligible to participate in the program for the period of his continued employment by the  
79 Commonwealth except that any such employee who elects to participate in the hybrid retirement  
80 program described in § 51.1-169 shall participate in the program.

81 C. Any eligible employee who is employed by an institution of higher education in a faculty position  
82 performing teaching, research or administrative duties may elect to participate in the program established  
83 under this chapter or under an existing program provided by the institution. Any eligible employee who  
84 is (i) employed by an institution of higher education in a faculty position performing teaching, research  
85 or administrative duties prior to October 1, 2002, and (ii) not participating in the program, shall  
86 participate in the program established under this chapter effective January 10, 2003, unless such  
87 employee elects not to participate in the manner provided in subdivision B 2. Any eligible employee of  
88 an institution of higher education in a faculty position performing teaching, research or administrative  
89 duties employed or reemployed on or after October 1, 2002, shall participate in the program unless such  
90 employee elects not to participate in the program, in writing and on such forms as prescribed by the  
91 Retirement System, within 60 days from the time of entry upon the performance of his duties. The  
92 effective date of participation in the program for such employee shall be the first day following the  
93 expiration of such 60-day period or January 10, 2003, whichever is later.

94 Any eligible employee under this subsection shall participate in the sickness and disability program  
95 established by his institution of higher education until such time as the employee participates in the  
96 program established under this chapter. If the institution of higher education has not established its own  
97 sickness and disability program, such eligible employee shall participate in the program established  
98 under this chapter effective on his first day of employment.

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

102 D. Notwithstanding any provision to the contrary, no participating employee commencing  
103 employment or reemployment on or after July 1, 2009, shall receive benefits under Article 3 of this  
104 Chapter (§ 51.1-1109 et seq.), Nonwork Related Disability Benefits), until the participating employee  
105 completes one continuous year of active employment or reemployment. *However, this condition shall*  
106 *not apply to any employee vested prior to participating in the program.*

107 E. The provisions of this subsection shall apply to any eligible employee who participates in the  
108 program under the provisions of subdivision B 2 or subsection C. Any eligible employee, including a  
109 person employed by an institution of higher education in a faculty position performing teaching, research  
110 or administrative duties, who (i) is a member of the Retirement System, and (ii) commenced  
111 employment or was reemployed prior to January 1, 1999, shall have his sick leave balances, as of the  
112 effective date of coverage in the program, converted to disability credits, as provided in subsection F.

113 F. Any eligible employee converting his sick leave balance as provided in subsection E shall receive  
114 one hour of disability credit for each hour of sick leave. Disability credits shall be used to continue  
115 periods for which the participating employee receives income replacement during periods of short-term  
116 and long-term disability at 100 percent of creditable compensation. Disability credits shall be reduced by  
117 one day for each day that the participating employee receives short-term or long-term disability benefits.

118 G. Upon retiring directly from state service and receiving an immediate annuity, the eligible  
119 employee's unused disability credits shall be converted to service credit under the Retirement System at  
120 the rate of one month of service for each 173 hours of disability credits, rounded to the next highest

month, unless the employee elects to be paid for the balance of such disability credits under the same terms and subject to the same conditions as are in effect for the payment of sick leave benefits in the employee's agency on December 31, 1998. Upon leaving state service under any other circumstances, the employee shall be paid for the balance of such disability credits under the same terms and subject to the same conditions as are in effect for the payment of sick leave benefits in the employee's agency on December 31, 1998, unless he elects to have such credits converted to service credit under the Retirement System at the rate of one month of service for each 173 hours of disability credits, rounded to the next highest month. Upon entry into long-term disability, the employee may be paid for the balance of such disability credits under the same terms and subject to the same conditions in effect for payment of sick leave benefits in the employee's agency as of December 31, 1998.

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

**§ 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 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, 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

*Notwithstanding any other provision of this section and only for purposes of short-term disability income replacement, any employee vested prior to participating in the program shall, upon commencing employment on or after July 1, 2009, as a participating employee, be deemed to have a beginning balance of months of state service equal to the number of months of creditable service credited to him, as of such beginning employment date, under the Virginia Retirement System or while earning the benefits permitted by § 51.1-138.*

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.

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

F. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial

disability, (iii) maternity leave, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

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

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

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

C. Except as provided in subsections D and F and §§ 9.1-401.1 and 51.1-1131, supplemental 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 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	65	25	35
60 to 119	85	25	15
120 or more	85	40	0

D. For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsection F and §§ 9.1-401.1 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, based on the number of months of continuous state service attained by an employee who 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	85	25	15
120 or more	85	40	0

*Notwithstanding any other provision of this section and only for purposes of short-term disability income replacement, any employee vested prior to participating in the program shall, upon commencing employment on or after July 1, 2009, as a participating employee, be deemed to have a beginning balance of months of state service equal to the number of months of creditable service credited to him, as of such beginning employment date, under the Virginia Retirement System or while earning the benefits permitted by § 51.1-138.*

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

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

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

**2. That the provisions of this act shall in no way affect disability income replacement payments or eligibility for the same pursuant to Chapter 11 (§ 51.1-1100 et seq.) of Title 51.1 of the Code of Virginia for any illness or injury occurring or commencing prior to July 1, 2016.**