

# VIRGINIA ACTS OF ASSEMBLY -- 1998 RECONVENED SESSION

## CHAPTER 774

*An Act 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.*

[S 126]

Approved April 22, 1998

**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, (ii) an employee as defined in § 51.1-201, or (iii) 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 predisability 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 predisability 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 participating employees. The policies shall be purchased from and carried with a disability insurance company which is authorized to do business in the Commonwealth. Each policy shall contain a provision stipulating the maximum expense and risk charges that are determined by the Board to be on*

a basis consistent with the general level of charges made by disability insurance companies under policies of long-term disability insurance issued to large employers. The Board may require that the policies have reinsurance with a disability insurance company incorporated or organized under the laws of and authorized to do business in the Commonwealth. This section is not intended to abrogate the final authority of the Director of the Department of Personnel and Training under § 2.1-114.5 (13) to establish and interpret personnel policy and procedures, such as the sick leave policy.

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

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

1. Establish policies and procedures to implement and administer the program and the provisions of this chapter;
2. Contract for the provision of comprehensive case management;
3. Take all other actions necessary for the implementation and administration of the program; and
4. Adopt rules and policies that bring the program into compliance with any applicable law or regulation of this Commonwealth or the United States.

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

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

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

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

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

1. To convert his sick leave balance as of the end of the first pay period in calendar year 1999 to service credit under the retirement system on the basis of one month of service for each 173 hours of sick leave, rounded to the next highest month; or
2. To convert his sick leave balance as of the end of the first pay period in calendar year 1999 to disability credits as provided in subsection F.

E. Any participating employee commencing employment prior to January 1, 1999, who elects to participate in the program and is not a member of the retirement system shall convert his sick leave balance as of the end of the first pay period in calendar year 1999 to disability credits as provided in subsection F.

F. Any participating employee converting his sick leave balance as provided in subdivision D 2 or subsection E shall receive one hour of disability credit for each hour of sick leave. Disability credits shall be used to continue periods for which the participating employee receives income replacement during periods of short-term and long-term disability at 100 percent of creditable compensation. Disability credits shall be reduced by one hour for each hour that the participating employee receives short-term or long-term disability benefits. Upon leaving state service, 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 conversion of sick leave benefits in the employee's agency on December 31, 1998.

G. 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 disciplinary action.

*Article 2.*

*Sick Leave and Family and Personal Leave.*

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

A. On the effective date of participation in the program, and thereafter on each January 1, existing

*participating full-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:*

Months of service	Number of hours
Less than 60	64
60 to 119	72
120 or more	80

*B. Participating full-time employees commencing employment or who are reemployed 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:*

Date employment commenced	Number of hours
January 1 through June 30	64
July 1 through December 31	40

*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:*

Months of service	Number of hours
Less than 120	32
120 or more	40

*D. Participating qualifying part-time employees commencing employment or who are reemployed 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:*

Date employment commenced	Number of hours
January 1 through June 30	32
July 1 through December 31	20

*E. Any partial calendar month during which a participating employee was employed 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 continuing employment on the date of their return to work as provided in subsections A through 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 compensation for each hour of sick leave taken, not to exceed the employee's sick leave balance.

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

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

§ 51.1-1107. Family and personal leave benefit.

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

Months of service	Number of hours
Less than 120	32
120 or more	40

B. Any partial calendar month during which a participating employee was employed prior to January 1, 1999, shall constitute one month of service for purposes of this section.

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

Date employment commenced	Number of hours
January 1 through June 30	32
July 1 through December 31	16

D. Participating employees shall not be paid or otherwise compensated upon leaving employment for any balance of unused family and personal leave provided to them under this section.

E. Unused balances of family and personal leave granted under this section shall not be carried forward beyond the calendar year in which such leave is granted.

F. Employees receiving disability benefits on January 1 of any year shall be granted family and personal leave for such year on the date they return to active employment. The amount of family and personal leave granted for such year shall be determined as if they were continuing employment on the date of their return to work as provided in subsections A, B and C.

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

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

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

### Article 3.

#### Nonwork Related Disability Benefits.

§ 51.1-1109. Applicability of article.

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

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

A. Short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence on the day following the commencement of a disability or a period 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.

B. Except as provided in subsection D 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, based on the number of months of service as an eligible employee, as follows:

	Work days of 100%	Work days of 80%	Work days of 60%
	replacement	replacement	replacement
Months of	of creditable	of creditable	of creditable
service	compensation	compensation	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. Creditable compensation during periods an employee receives short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

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

E. 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. Short-term disability benefits shall be payable for each instance of absence due to a major chronic condition, as defined by the Board or its designee, after the participating employee has satisfied one seven-calendar-day waiting period in each calendar year.

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

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

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

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

A. Long-term disability benefits for participating employees shall commence upon the expiration of a 180-calendar-day waiting period. The waiting period shall commence on the day following the commencement of the disability. If an employee returns to work for fourteen or fewer consecutive calendar days during such 180-calendar-day waiting period and cannot continue to work, the periods worked shall not be deemed to have interrupted the 180-calendar-day waiting period. However, if the

cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, the 180-calendar-day waiting period is cumulative from the day following the commencement of the disability and can be interrupted by periods of active employment.

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

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

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

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

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

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

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

§ 51.1-1114. Adjustments to disability benefits.

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

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

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

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

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

5. Benefits paid under any compulsory benefits law.

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

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

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

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

§ 51.1-1115. Rehabilitation incentive.

Disability benefits payable to a participating employee who fails to cooperate with a rehabilitation program prescribed for the employee shall be decreased by 50 percent of the amounts otherwise payable to such employee.

§ 51.1-1116. Cessation of disability benefits.

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

1. The date of death of the participating employee;

2. (i) The participating employee's normal retirement date if the employee is a member of the

retirement system or (ii) the date the employee attains age sixty-five if the employee is not a member of the retirement system;

3. After the first twelve months of long-term disability benefits, the date the participating employee's wages and salary from any employment exceed 85 percent of his predisability earnings; or

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

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

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

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

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

§ 51.1-1118. Survivor benefits.

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

#### Article 4.

##### Work-Related Disability Benefit.

§ 51.1-1119. Applicability of article.

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

§ 51.1-1120. Initial benefit period.

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

§ 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 on the day following the commencement 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.

C. Except as provided in subsection E 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, based on the number of months of service as an eligible employee, as follows:

	Work days of 100%	Work days of 80%	Work days of 60%
	replacement	replacement	replacement
Months of	of creditable	of creditable	of creditable
service	compensation	compensation	compensation
Less than 60	65	20	35
60 to 119	85	25	15

120 to 179	85	40	0
180 or more	85	40	0

*D. 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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

*§ 51.1-1126. Rehabilitation incentive.*

*Supplemental disability benefits payable to a participating employee who fails to cooperate with a rehabilitation program prescribed for the employee shall be decreased by 50 percent of the amounts otherwise payable to such employee. In determining the amount of any reduction in benefits under this section, the participating employee shall be presumed to continue to receive benefits payable under the Act.*

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

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

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

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

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

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

*7. After the first twelve months of long-term disability benefits, the date the participating employee's wages and salary from any employment exceed 85 percent of his predisability earnings; or*

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

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

*A. Upon the last to occur of (i) the normal retirement date of a participating employee receiving disability benefits who is a vested member of the retirement system or (ii) the date of cessation of benefits payable under the Act, the employee shall be eligible for normal retirement under subsection A*

of § 51.1-153. Such employee shall be authorized to elect any option for the payment of his retirement allowance provided under subsection A of § 51.1-165.

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

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

*§ 51.1-1129. Survivor benefits.*

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

*§ 51.1-1130. Coordination of benefits.*

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

*Article 5.*

*Provisions Applicable to Disability Benefits Generally.*

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

Disability benefits shall be increased to 80 percent of creditable compensation for any disabled participating employee who (i) is unable to perform at least two of the seven activities of daily living for a period of at least 90 days 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.

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

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

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

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

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

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

B. During periods of absence covered by short-term disability benefits, the amount of the life insurance benefit shall be based on the annual salary of the participating employee at the commencement of the disability and shall be adjusted to include salary increases awarded during the period covered by short-term disability benefits.

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

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

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

*§ 51.1-1135. Exclusions and limitations.*

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

B. Long-term disability benefits shall not be payable to any participating employee whose disability

results from the abuse of alcohol, the misuse of any prescribed medication, or the misuse of any controlled substance.

Article 6.

Administration of Program.

§ 51.1-1136. Limitation on coverage.

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

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

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

§ 51.1-1138. Benefits exempt from process.

The benefits provided for in this chapter and all proceeds therefrom shall be exempt from levy, garnishment, attachment, and other legal process.

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

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

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

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

§ 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, 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 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 § 51.1-513 of the Code of Virginia is repealed.**