

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1279

By: Representative S. Smith

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING DISABILITY  
RETIREMENT UNDER THE ARKANSAS TEACHER RETIREMENT  
SYSTEM; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE LAW CONCERNING DISABILITY  
RETIREMENT UNDER THE ARKANSAS TEACHER  
RETIREMENT SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 24-7-704 is amended to read as follows:  
24-7-704. Disability retirement.

(a)(1)(A) An active member in employer service with five (5) or more years of actual and reciprocal service who becomes totally and permanently physically or mentally incapacitated for his or her job duties as a result of a personal injury or disease may be retired by the Board of Trustees of the Arkansas Teacher Retirement System upon a determination of disability consistent with this section and approval of a written application filed with the Arkansas Teacher Retirement System.

(B) An active member who is eligible for retirement under § 24-7-701 is not eligible for disability retirement.

(C)(i) An active member who has met the eligibility requirement of subdivision (a)(1)(A) of this section shall meet the termination of covered employment requirements under § 24-7-502 to be eligible for disability retirement benefits.

(ii) For eligibility under this section, a member is



considered active for an additional fiscal year following the last fiscal year that the member renders actual service to a covered employer and obtains at least one-fourth ( $\frac{1}{4}$ ) year of service credit.

(iii) Service credit used in calculating any benefits paid under this section means days of service, including paid sick leave covered by the employer.

(D)(i) A member has six (6) calendar months from the date of his or her application for disability retirement to submit a completed application and accompanying documentation.

(ii) If a member does not provide all accompanying documentation requested by the system within the six (6) calendar months, the system shall:

(a) Submit the application to the medical committee for review as complete; or

(b) Withdraw the application at the request of the member unless an extension is granted by the system.

(E) The member is qualified to receive disability retirement benefits if, by majority opinion, the medical committee reports to the board in writing that ~~its~~ upon review of the member's application and accompanying documentation the medical committee finds:

(i) The member is physically or mentally incapacitated;

(ii) The member exhibits symptoms of physical or mental incapacitation while the member is employed by a system employer as an active member;

(iii) The member is unable to perform his or her current work duties;

(iv) The incapacity will most likely be permanent;

and

(v) The member should be retired.

(F) A favorable determination letter from the Social Security Administration finding that the member is unable to perform his or her current work duties shall create a rebuttable presumption that the member qualifies to receive disability retirement benefits.

(G) If the medical committee requests additional documentation upon initial review, a member has six (6) calendar months from

the date of a medical committee requests to submit any additional accompanying documentation unless an extension is granted by the system.

(H)(i) If the medical committee finds that a member is not qualified to receive disability benefits, the member may request a second review provided the member submits additional medical documentation.

(ii) A second review may be requested one (1) time.

(iii) The member has six (6) calendar months to submit additional medical documentation unless an extension is granted by the system.

(2) The disability retirement is effective from the date the written application is filed with the system and the member is no longer employed by an employer.

(3)(A) Upon finding a member qualified to receive disability retirement benefits, the member shall submit all documents and election forms required to begin annuity payments including without limitation tax withholdings, direct deposit, and choice of option, if any.

~~(B) A If a member shall does not submit a complete disability application with the supporting documentation required by the system application within six (6) calendar months of the effective date of benefits~~ the required documents within six (6) calendar months after the date on which the medical committee finds that the member qualifies to receive disability benefits, the member's application shall be void unless an extension has been granted by the system.

~~(B) An application is void when a complete application and supporting documentation are not submitted to the system within six (6) calendar months of the effective date of benefits, unless an extension has been granted by the system.~~

(4) To begin receiving disability retirement, a member shall not:

(A) Be employed by a system-covered employer; or

(B) Be indirectly employed by or through an independent contractor, limited liability company, partnership, corporation, or legal entity that is employed by a system-covered employer if the member has substantial control of the employer-employee relationship, including without limitation the ability to negotiate rates of pay with the system-covered employer or assign work and work hours to the member.

(b)(1) Upon disability retirement as provided in subsection (a) of this section, a ~~retirant~~ retiree shall receive an annuity provided for in § 24-7-705 and shall have the right to elect an option provided for in § 24-7-706.

(2) In addition to the requirements of this subsection, the member's disability retirement is subject to the provisions of ~~subsections (e) and (d)~~ subsection (c) of this section.

(3)(A) A ~~member or retirant~~ disability retiree may continue to receive a disability retirement benefit under this section when the ~~member or retirant~~ disability retiree provides the system with a Social Security Administration determination letter finding the ~~member or retirant~~ disability retiree is ~~disabled~~ unable to perform his or her work duties as described in subdivision (a)(1)(E)(iii) of this section within thirty-six (36) months from:

(i) July 1, 2015, when the ~~member's or retirant's~~ disability retiree's disability retirement effective date is before July 1, 2015; or

(ii) The effective date of disability retirement when the ~~member's or retirant's~~ disability retiree's disability retirement effective date is on or after July 1, 2015.

(B) The ~~member or retirant~~ disability retiree may apply for an extension of the thirty-six-month deadline when:

(i) The ~~member or retirant~~ disability retiree can demonstrate through an administrative or judicial confirmation of an active Social Security Administration disability claim that the claim is still under review and is a part of a continuous claim without voluntary dismissal or withdrawal; and

(ii) The Social Security Administration disability claim was filed and remained active for at least twenty-four (24) months prior to the thirty-six-month deadline under ~~subdivision (a)(3)(B)~~ subdivision (b)(3)(A) of this section.

(C) The system shall terminate disability retirement benefits to a ~~member or retirant~~ disability retiree when the ~~member or retirant~~ disability retiree fails to:

(i) Provide a Social Security Administration determination letter finding that the ~~member or retirant~~ disability retiree

is ~~disabled~~ unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section to the system within the thirty-six-month period under ~~subdivision (a)(3)(A)~~ subdivision (b)(3)(A) of this section;

(ii) Receive an extension of time under ~~subdivision (a)(3)(B)~~ subdivision (b)(3)(B) of this section to provide the system with a letter from the Social Security Administration finding that the ~~member or retiree~~ disability retiree is disabled unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section; or

(iii) Apply for a review by the system's medical committee within three (3) months of disability benefits ceasing due to the lack of a Social Security Administration determination letter finding that the ~~member or retiree~~ disability retiree is disabled unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section.

(D)(i) A ~~member or retiree~~ disability retiree who seeks and fails to receive a determination letter finding the ~~member or retiree~~ disabled disability retiree is unable to perform his or her former work duties as described in subdivision (a)(1)(E)(iii) of this section by the Social Security Administration may seek a review permitted under subdivision (b)(3)(C)(iii) of this section no earlier than three (3) months before the date on which the member's disability retirement would otherwise end and no later than three (3) months after termination of disability retirement.

(ii) The system's medical committee shall hear all applications for review permitted under subdivision (b)(3)(C)(iii) of this section and render decisions consistent with the definition of disability under ~~subdivision (a)(1)(D)~~ subdivision (a)(1)(E) of this section.

(iii) The medical committee's recommendation after its review of an application permitted under subdivision (b)(3)(C)(iii) of this section shall be presented to the board for a final order.

(iv) After receiving the medical committee's recommendation under subdivision (b)(3)(D)(iii) of this section, the board shall issue a final order consistent with the provisions of this chapter and the system's rules for initial disability retirement.

(v) The board's approval of the medical committee's recommendation shall be a final disposition of the matter by the system under

the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1)(A) If a disability retiree returns to covered employment before attaining sixty (60) years of age, his or her disability retirement shall terminate unless the retiree meets the requirements to return to covered employment under ~~subsection (e)~~ subsection (d) of this section.

(B) If a disability ~~retirant~~ retiree returns to covered employment after attaining sixty (60) years of age and is otherwise eligible for retirement under § 24-7-707, the ~~retirant~~ retiree shall be treated as if he or she retired under § 24-7-701.

(2)(A) ~~If~~ Except as provided in subsection (d) of this section, ~~if~~ a disability ~~retirant~~ retiree under sixty (60) years of age returns to covered employment, he or she shall become an active member of the system immediately, and his or her credited service at the time of his or her disability retirement shall be restored to his or her credit in the members' deposit account.

(B) The ~~retirant's~~ retiree's disability retirement and his or her accumulated contributions shall be treated as if he or she returned to service on the date of the full-time employment.

(3) Except as provided under subdivision (c)(2) of this section, a disability ~~retirant~~ retiree shall not earn or be given service credit for the period he or she was receiving a disability retirement annuity.

~~(d)(1) A member has six (6) calendar months from the date of application for disability retirement to submit a completed application and accompanying documentation.~~

~~(2) If a member does not provide all the accompanying documentation requested by the system within the six (6) calendar months, the system will submit the application to the medical committee for review as complete or withdraw the application at the request of the member unless an extension is granted by the system.~~

~~(e)(1)~~(d)(1) A disability retiree may be employed by a covered employer and also receive a monthly disability retirement if the disability retiree provides the covered employer with less than eighty (80) days of actual service during a fiscal year.

(2)(A) A disability retiree who meets the requirements of this subsection shall continue to receive his or her monthly disability retirement annuity from the system and shall not accrue additional service credit.

(B) A covered employer who employs a disability retiree under this subsection shall remit contributions on all salary paid to the disability retiree in an amount equal to the employer contribution rate applicable to an active member.

**APPROVED: 3/2/21**