

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1279

5 By: Representative S. Smith  
6

## For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING DISABILITY  
9 RETIREMENT UNDER THE ARKANSAS TEACHER RETIREMENT  
10 SYSTEM; AND FOR OTHER PURPOSES.  
11

## Subtitle

12 TO AMEND THE LAW CONCERNING DISABILITY  
13 RETIREMENT UNDER THE ARKANSAS TEACHER  
14 RETIREMENT SYSTEM.  
15  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 24-7-704 is amended to read as follows:  
22 24-7-704. Disability retirement.

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

30 (B) An active member who is eligible for retirement under  
31 § 24-7-701 is not eligible for disability retirement.

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

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



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

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

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

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

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

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

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

21 (i) The member is physically or mentally  
 22 incapacitated;

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

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

28 (iv) The incapacity will most likely be permanent;  
 29 and

30 (v) The member should be retired.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b)(1) Upon disability retirement as provided in subsection (a) of  
 2 this section, a ~~retirant~~ retiree shall receive an annuity provided for in §  
 3 24-7-705 and shall have the right to elect an option provided for in § 24-7-  
 4 706.

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

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

15 (i) July 1, 2015, when the ~~member's or retirant's~~  
 16 disability retiree's disability retirement effective date is before July 1,  
 17 2015; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36