

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

400V0304

SENATE BILL NO. 43

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 FOR AN ACT ENTITLED, An Act to revise the calculation of disability benefits and certain
2 benefits payable upon death of members of the South Dakota Retirement System.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A contributing member who becomes disabled and who has acquired at least three years of
7 contributory service or noncontributory service as delineated in subsections (b), (e), (g), and (h)
8 of subdivision 3-12-47(24) since the member's most recent entry into active status and prior to
9 becoming disabled, or was disabled by accidental means while performing usual duties for an
10 employer, is eligible for disability benefits if the disability is expected to be of long, continued,
11 and indefinite duration of at least one year and the member is disabled on the date the member's
12 contributory service ends. For purposes of this section, a transfer within a participating unit, or
13 a change in employment from one participating unit to another participating unit if there is no
14 break in contributory service, does not constitute a new entry into active status. The provisions
15 of this section apply to any member whose application for disability benefits is received by the



1 system after June 30, 2015.

2 Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any member seeking disability benefits pursuant to section 1 of this Act shall submit an
5 application to the administrator. Any information required for a complete application must be
6 received within one year after the application for disability benefits was received. If the required
7 information is not received by the system within one year after the application is received, the
8 member may reapply.

9 Any member, who fails to file an application for disability benefits with the administrator
10 within three years after the date on which the member's contributory service ends, forfeits all
11 rights to disability benefits.

12 Section 3. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 No application for disability benefits pursuant to section 1 of this Act may be determined
15 until the member's employer has certified to the system that, within the employer's
16 understanding of the member's medical condition and the employer's knowledge of the
17 member's employment requirements and duties, the employer is unable to provide to the
18 member either effective accommodations in the member's current position or employment in
19 a comparable level position.

20 Section 4. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 No application for disability benefits pursuant to section 1 of this Act may be determined
23 until a health care provider has certified to the system that the employee has a disability.

24 Section 5. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Upon receipt of an application for disability benefits after June 30, 2015, along with
3 statements from a health care provider and the member's employer, the administrator shall
4 determine whether the member is eligible for disability benefits. The administrator may request
5 the advice of the disability advisory committee with respect to any application. The
6 recommendation of the disability advisory committee is not binding on the administrator. The
7 disability advisory committee or the administrator may require an independent medical
8 examination of the member to be conducted by a disinterested health care provider selected by
9 the disability advisory committee or the administrator to evaluate the member's condition. The
10 disability advisory committee or the administrator may require a functional capacity assessment
11 of the member to be conducted by a licensed professional qualified to administer such
12 assessments, and the assessment may be used to evaluate the member's qualification for
13 benefits. Refusal to undergo an examination or assessment pursuant to this section is cause for
14 denying the application.

15 If the administrator determines that the member is not disabled, a notice of the
16 administrator's determination and the reasons for the determination shall be sent, certified mail,
17 to the member's last known address.

18 Section 6. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If the administrator determines that the member whose application was received pursuant
21 to section 5 of this Act, meets the qualifications to receive disability benefits, a notice of the
22 administrator's determination shall be sent, certified mail, to the member's last known address.

23 A member whose application for disability benefits is approved shall receive the benefits
24 beginning with the month following the date on which the member's contributory service

1 terminates. If any member fails to terminate contributory service within one year after receiving
2 notice that the member's application has been approved, the member's application approval
3 expires.

4 Section 7. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The disability benefit approved pursuant to section 6 of this Act is the greater of the
7 following calculations:

- 8 (1) Twenty-five percent of the member's final average compensation at the date of
9 disability; or
- 10 (2) The member's unreduced accrued retirement benefit at the date of disability.

11 The disability benefit shall be paid in monthly installments for the life of the member unless
12 the benefit terminates pursuant to section 11 of this Act.

13 For purposes of determining the eligibility of a surviving spouse benefit, the disability
14 benefit is considered a retirement benefit when the member attains the age of sixty-five.

15 Section 8. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 No member may receive credited service for the period during which the member receives
18 disability benefits pursuant to section 7 of this Act.

19 Section 9. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If a member receiving disability benefits pursuant to section 7 of this Act becomes employed
22 by a participating unit, the member and employer shall make active contributions pursuant to
23 § 3-12-71 during the period of the employment. The contributions required of the member
24 pursuant to § 3-12-71 shall be deposited by the member's employer with the system for the

1 benefit of the member to be transferred to an account within the deferred compensation program
2 established pursuant to chapter 3-13. The contributions shall be governed by § 457 of the
3 Internal Revenue Code. Notwithstanding the provisions of § 3-12-71, the contributions required
4 of the member's employer pursuant to § 3-12-71 shall be deposited into the member trust fund
5 created by chapter 3-12, but without any association with or credit to the member.

6 Section 10. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 A member's disability benefits pursuant to section 7 of this Act terminate if the member is
9 no longer disabled, as certified by a health care provider. Upon receipt of certification the
10 administrator shall determine whether the member meets the qualifications for disability
11 benefits. In making this determination the administrator shall follow the same procedure used
12 in making the initial determination of disability provided in section 5 of this Act. A member's
13 disability benefits shall be suspended and subject to termination if the member refuses to
14 undergo an examination or assessment requested by the disability advisory committee or the
15 administrator. If the administrator finds that the member no longer meets the qualifications for
16 disability benefits, the administrator shall notify the member of this finding by certified mail and
17 the payment of disability benefits shall terminate thirty days after receipt of the notice. Such a
18 finding by the administrator is subject to appeal and review as a contested case.

19 Section 11. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If a member's disability benefits pursuant to section 7 of this Act have terminated and the
22 member returns to covered employment, the member and employer shall make contributions
23 pursuant to § 3-12-71.

24 Section 12. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Upon retirement, a member who received disability benefits pursuant to section 7 of this Act
3 and whose benefits were terminated and who returned to covered employment shall receive a
4 retirement benefit based on the member's credited service prior to receiving disability benefits
5 and after receiving disability benefits. The final average compensation used in the calculation
6 of the retirement benefit is the greater of:

- 7 (1) The member's final average compensation at the date of retirement; or
- 8 (2) The member's final average compensation at the date of disability, increased by the
9 improvement factor from the date of the termination of disability benefits to the date
10 of retirement.

11 Section 13. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Upon retirement, a member who received disability benefits pursuant to section 7 of this Act
14 and whose benefits were terminated and who did not return to covered employment shall receive
15 a retirement benefit based on the member's credited service prior to receiving disability benefits.
16 The final average compensation used in the calculation of the retirement benefit shall be the
17 final average compensation at the date of disability, increased by the improvement factor from
18 the date of the termination of disability benefits to the date of retirement.

19 Section 14. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Upon the death of a member receiving disability benefits pursuant to section 7 of this Act,
22 who dies prior to normal retirement age, a family benefit shall be paid on behalf of any child of
23 the member. The monthly amount of the family benefit is the amount of the monthly disability
24 benefits the member received prior to death. The monthly family benefit shall be equally

1 apportioned among any children of the member and shall be paid on behalf of any child to the
2 conservator or custodian of the child, as applicable. However, if the child is eighteen years of
3 age the benefit is payable directly to the child. As any child becomes ineligible pursuant to
4 subdivision 3-12-47(14), the family benefit shall be reallocated among any remaining children
5 of the deceased member. The family benefit terminates if there are no children of the deceased
6 member pursuant to subdivision 3-12-47(14).

7 Section 15. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 If no family benefit is being paid pursuant to section 14 of this Act, a surviving spouse of
10 a member who received disability benefits pursuant to section 7 of this Act shall, upon attaining
11 the age of sixty-five, receive a monthly benefit, payable for the life of the surviving spouse,
12 equal to one of the following calculations, whichever is applicable:

- 13 (1) If there was a family benefit paid, sixty percent of the family benefit paid at the time
14 the family benefit ended, increased by the improvement factor from the date the last
15 family benefit was paid; or
- 16 (2) If there was no family benefit paid, sixty percent of the deceased member's disability
17 benefit paid at the time of the member's death, increased by the improvement factor
18 from the date of the member's death.

19 Section 16. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If a member dies after normal retirement age while receiving benefits pursuant to section
22 7 of this Act, and no other benefits are being paid on behalf of the member, the member's
23 surviving spouse shall receive a surviving spouse benefit, payable in monthly installments, equal
24 to sixty percent of the monthly disability benefit that the member received prior to death.

1 Section 17. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 On the death of a contributing member after June 30, 2015, who has acquired at least three
4 years of contributory service or noncontributory service as delineated in subsections (b), (e), (g),
5 and (h) of subdivision 3-12-47(24), or who died while performing usual duties for an employer,
6 and prior to the earlier of the member attaining normal retirement age or the member's
7 retirement, a family benefit shall be paid on behalf of any child of such member. The total
8 family benefit is the greater of:

- 9 (1) Twenty-five percent of the member's final average compensation at the time of death;
- 10 or
- 11 (2) The member's unreduced accrued retirement benefit at the time of death.

12 The family benefit, which shall be paid in monthly installments, shall be equally apportioned
13 among any children of the member and shall be paid on behalf of any child to the conservator
14 or custodian of the child, as applicable. However, if the child is eighteen years of age the benefit
15 is payable directly to the child. As any child becomes ineligible pursuant to subdivision
16 3-12-47(14), the family benefit shall be reallocated among any remaining children of the
17 deceased member. The family benefit terminates if there are no children of the deceased
18 member pursuant to subdivision 3-12-47(14).

19 Section 18. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 If no family benefit is being paid pursuant to section 17 of this Act, a surviving spouse of
22 a contributing member who died after June 30, 2015, shall, upon attaining the age sixty-five,
23 receive a surviving spouse benefit calculated as follows, whichever is applicable:

- 24 (1) If a family benefit had been paid, sixty percent of the family benefit paid at the time

1 the family benefit ended, increased by the improvement factor from the date the last
2 family benefit was paid; or

3 (2) If a family benefit had not been paid, sixty percent of the amount calculated pursuant
4 to subsection (a) or (b), whichever is greater, increased by the improvement factor
5 from the date of the member's death:

6 (a) Twenty-five percent of the member's final average compensation at the time
7 of the member's death; or

8 (b) The member's unreduced accrued retirement benefit at the time of the
9 member's death.

10 The surviving spouse benefit shall be paid in monthly installments for the life of the
11 surviving spouse.

12 Section 19. That subdivision (14) of § 3-12-47 be amended to read as follows:

13 (14) "Child," depending on the circumstances, as follows:

14 (a) For purposes of benefits pursuant to ~~§§ 3-12-95 and 3-12-99~~ this chapter, an
15 unmarried dependent child of the member, who has not passed the child's
16 nineteenth birthday and each unmarried dependent child, who is totally and
17 permanently disabled, either physically or mentally, regardless of the child's
18 age, if the disability occurred prior to age nineteen. It includes a stepchild or
19 a foster child who depends on the member for support and lives in the
20 household of the member in a regular parent-child relationship. It also includes
21 any child of the member conceived during the member's lifetime and born
22 after the member's death; or

23 (b) For purposes of beneficiary-type payments pursuant to ~~§§ 3-12-110 and 3-12-~~
24 ~~116~~ this chapter, a person entitled to take as a child via intestate succession

1 pursuant to the provisions of Title 29A;

2 Section 20. That subdivision (26) of § 3-12-47 be amended to read as follows:

3 (26) "Disability" or "disabled," any medically determinable physical or mental impairment
4 ~~which that~~ prevents a member from performing the member's usual duties for the
5 member's employer ~~or the duties of other employment as outlined in § 3-12-141, and,~~
6 even with accommodations, or performing the duties of a comparable level position
7 for the member's employer. The term excludes any condition resulting from willful,
8 self-inflicted injury;

9 Section 21. That § 3-12-47 be amended by adding thereto a NEW SUBDIVISION to read
10 as follows:

11 "Health care provider," a physician or other health care practitioner licensed, registered,
12 certified, or otherwise authorized by law to provide specified health services;

13 Section 22. That subdivision (65) of § 3-12-47 be amended to read as follows:

14 (65) "Spouse," a person who was married to the member at the time of the death of the
15 member and whose marriage was both more than twelve months prior to the death
16 of the member and prior to ~~his~~ the member's retirement;

17 Section 23. That § 3-12-95 be amended to read as follows:

18 3-12-95. On the death of a contributing member ~~after July 1, 1974~~ prior to July 1, 2015, and
19 prior to the earlier of the member attaining normal retirement age or the member's retirement,
20 who has one or more years of contributory service; or if there has been a break in the member's
21 employment of more than one year, one-half year of contributory service having been performed
22 after the end of the last such break; or if the member was receiving a disability ~~allowance~~ benefit
23 which commenced after July 1, 1974, and was based on an application received by the system
24 prior to July 1, 2015, the following benefits shall be paid:

- 1 (1) A surviving spouse having the care of children shall receive an annual amount,
2 payable in monthly installments, equal to forty percent of the member's final average
3 compensation, plus ten percent of such final average compensation for each child to
4 a maximum of six such children;
- 5 (2) The conservator or custodian of each child, on whose account there is no benefit
6 payable under subdivision (1), shall receive on behalf of each child, to a maximum
7 of five such children, an annual amount, payable in monthly installments, equal to
8 twenty percent of the member's final average compensation;
- 9 (3) If the sum of benefits payable under subdivisions (1) and (2) exceeds one hundred
10 percent of the member's final average compensation, the benefits payable under both
11 subdivisions (1) and (2) shall be proportionally reduced so that the total of the
12 benefits is equal to one hundred percent of the member's final average compensation;
- 13 (4) If there are no benefits being paid under subdivision (1) and the member's
14 accumulated contributions have not been withdrawn pursuant to § 3-12-97, the
15 spouse who has reached age sixty-five shall receive a monthly payment equal to sixty
16 percent of the amount which would have been payable to the deceased member at
17 normal retirement age based on the member's credited and projected service and
18 projected compensation. The benefit payable under this subdivision shall be
19 increased by application of the improvement factor commencing each July first for
20 each complete twelve-month period between the date the member would have
21 reached normal retirement age and the date benefits commence to the spouse.

22 Family benefits begin to accrue on the first day of the month following the death of the
23 member.

24 Section 24. That § 3-12-98 be amended to read as follows:

1 3-12-98. A contributing member who becomes disabled and who has acquired at least three
2 years of contributory service or noncontributory service as delineated in subsections (b), (e), (g),
3 and (h) of § subdivision 3-12-47(24) since the member's most recent entry into active status and
4 prior to becoming disabled or was disabled by accidental means while performing usual duties
5 for an employer, is eligible for a disability ~~allowance~~ benefit if the disability is expected to be
6 of long, continued, and indefinite duration of at least one year. In order to be eligible for a
7 disability ~~allowance~~ benefit, a member ~~shall~~ must be disabled on the date the member's
8 contributory service ends. Any member who fails to file ~~with the administrator~~ an application
9 for disability benefits with the administrator within three years of the date on which the
10 member's contributory service ends, forfeits all rights to disability benefits. Any information
11 required for a complete application must be received within one year after the application for
12 disability benefits was received. If the required information is not received by the system within
13 one year after the application is received, the member may reapply. For purposes of this section,
14 a transfer within a participating unit, or a change in employment from one participating unit to
15 another participating unit if there is no break in contributory service, does not constitute a new
16 entry into active status. The provisions of this section apply to any member whose application
17 for disability benefits is received by the system prior to July 1, 2015.

18 Section 25. That § 3-12-99 be amended to read as follows:

19 3-12-99. The disability ~~allowance~~ benefit for the first thirty-six months shall be equal to fifty
20 percent of the member's final average compensation immediately preceding the date of
21 disability, increased by ten percent of such compensation for each child to a maximum of four
22 such children.

23 Starting with the thirty-seventh month, if the member is eligible for and receiving disability
24 benefits from social security, the disability ~~allowance~~ benefit from the system is equal to the

1 greater of the amount paid during the first thirty-six months less the amount of primary social
2 security or the amount of the member's unreduced accrued retirement ~~allowance~~ benefit as of
3 the date of disability. If the member's unreduced accrued retirement ~~allowance~~ benefit is the
4 greater, it is immediately payable by the system notwithstanding any other provisions to the
5 contrary. In no event may the annual amount of a disability ~~allowance~~ benefit be less than
6 twenty percent of the compensation on which the initial disability ~~allowance~~ benefit was based.

7 Starting with the thirty-seventh month, if the member is not eligible for and receiving
8 disability benefits from social security, the disability ~~allowance~~ benefit from the system is equal
9 to the greater of twenty percent of the compensation on which the initial disability ~~allowance~~
10 benefit was based or the amount of the member's unreduced accrued retirement ~~allowance~~
11 benefit as of the date of disability. If the member's unreduced accrued retirement ~~allowance~~
12 benefit is the greater, it is immediately payable by the system notwithstanding any other
13 provisions to the contrary. The disability ~~allowance~~ benefit shall be paid only in the form of
14 monthly installments. The provisions of this section apply to any member whose application for
15 disability benefits is received by the system prior to July 1, 2015.

16 Section 26. That § 3-12-99.1 be amended to read as follows:

17 3-12-99.1. That portion of a disability ~~allowance~~ benefit that is payable on account of
18 children shall be eliminated as each child becomes ineligible pursuant to subdivision 3-12-
19 47(14). However, that portion of a disability ~~allowance~~ benefit that is payable on account of
20 children shall increase if a disabled member gains an additional child who is eligible pursuant
21 to subdivision 3-12-47(14). All other provisions in § 3-12-101 do not apply to members
22 receiving a disability ~~allowance~~ benefit pursuant to this chapter. The provisions of this section
23 apply to any member whose application for disability benefits is received by the system prior
24 to July 1, 2015.

1 Section 27. That § 3-12-101 be amended to read as follows:

2 3-12-101. Disability ~~allowances~~ benefits shall be reduced by an amount equal to the
3 unmodified benefits paid or payable under other public systems. Disability ~~allowances~~ benefits
4 payable on account of children shall be reduced when children become ineligible. In no event
5 may the annual amount of a disability ~~allowance~~ benefit be less than the greater of six percent
6 of the compensation on which the disability ~~allowance~~ benefit is based or six hundred dollars
7 a year.

8 However, any disability ~~allowance~~ benefit effective prior to July 1, 1994, and payable on or
9 after that date may not be reduced by any benefit payable on account of a veteran's disability or
10 from any insured or self-insured short-term disability plan sponsored by an employer and paid
11 for by the employee or paid for under a salary reduction plan. Further, any disability ~~allowance~~
12 benefit effective prior to July 1, 1994, and payable on or after July 1, 1995, may not be reduced
13 by any benefit payable on account of a federal military retirement or a federal national guard
14 retirement. The provisions of this section apply to any member whose application for disability
15 benefits is received by the system prior to July 1, 2015.

16 Section 28. That § 3-12-103 be amended to read as follows:

17 3-12-103. When a person who is receiving a disability ~~allowance~~ benefit reaches age
18 sixty-five, or at such later date ~~when if~~ there are no eligible children, or if over age sixty at the
19 time of commencement of disability, after a period of five years, ~~his~~ the member's disability
20 ~~allowance~~ benefit shall be terminated and thereafter ~~he~~ the member shall receive the ~~allowance~~
21 benefit payable for service retirement at that age, calculated on the projected compensation and
22 projected service. If a person who received a disability ~~allowance~~ benefit returns to employment
23 prior to ~~his~~ normal retirement age, ~~his~~ the member's credited service shall include the time of
24 disability. The provisions of this section apply to any member whose application for disability

1 benefits is received by the system prior to July 1, 2015.

2 Section 29. That § 3-12-103.1 be amended to read as follows:

3 3-12-103.1. A member's disability ~~allowance~~ benefit that was based on an application
4 received by the system prior to July 1, 2015, shall terminate ~~one year~~ thirty days after the earliest
5 of the following:

6 (1) The member no longer is disabled;

7 (2) The member no longer is subject to the medical condition that caused the disability;

8 (3) The member refuses to undergo a medical examination requested by the system for
9 the purpose of reviewing the medical condition that caused the disability;

10 (4) The member returns to continuous employment in the position the member held prior
11 to becoming disabled; or

12 (5) The member returns to continuous employment in a position of comparable level to
13 the position the member held prior to becoming disabled.

14 However, a member's disability ~~allowance~~ benefit shall terminate immediately if the
15 member's disability ~~allowance~~ benefit is converted to a service retirement ~~allowance~~ benefit
16 pursuant to § 3-12-103.

17 Section 30. That § 3-12-110 be amended to read as follows:

18 3-12-110. If the aggregate benefits payable to a member and the member's surviving spouse
19 and minor children pursuant to §§ ~~3-12-75, 3-12-91, 3-12-92, 3-12-92.4, 3-12-92.6, 3-12-94,~~
20 ~~3-12-95, 3-12-99, and 3-12-103~~, after all ~~allowances~~ benefits currently or potentially payable
21 under any provision of this chapter have terminated, do not total to the member's accumulated
22 contributions including one hundred percent of employer contributions if the member died prior
23 to July 1, 2010, or eighty-five percent of employer contributions if the member died on or after
24 July 1, 2010, then the balance equal to the difference between the accumulated contributions and

1 total payments made to date shall be paid in a lump sum as provided in this section.

2 Amounts payable under this section shall be paid as follows:

3 (1) To the beneficiary or entity designated by the member, if any is designated; or

4 (2) If no beneficiary or entity is designated, then to the member's surviving spouse; or

5 (3) If no beneficiary or entity is designated and there is no surviving spouse, then to all
6 surviving children, irrespective of age, on a share alike basis; or

7 (4) If no beneficiary or entity is designated, there is no surviving spouse, and there are
8 no surviving children, then to the member's estate.

9 If no claim for payment due upon the death of a deceased member is made within three years
10 from date of death, the payment shall revert to the system. However, a claim may be honored
11 after the expiration of the three-year reversion period if, in the opinion of the administrator,
12 payment of the claim is warranted by exceptional circumstances.

13 This section does not apply to any member who withdraws accumulated contributions
14 pursuant to ~~§ 3-12-76, 3-12-76.1, or 3-12-77~~ after termination of employment, or to any
15 nonvested member who dies after termination of employment.

16 Section 31. That § 3-12-131 be amended to read as follows:

17 3-12-131. Notwithstanding any provision of this chapter to the contrary, whenever a member
18 withdraws accumulated contributions under § 3-12-76 and becomes a permanent full-time
19 employee within twelve months after withdrawal, contributions must have been made to the
20 system for a period of twelve consecutive months before the member is eligible for benefits
21 pursuant to § 3-12-95. The member shall furthermore be ineligible to apply for additional
22 survivor protection pursuant to § 3-12-104 as a new member of the system ~~and to~~. To be eligible
23 for a disability allowance benefit pursuant to § 3-12-98 or section 1 of this Act, the member
24 must have at least three years of contributory service since the date of the last withdrawal unless

1 the member was disabled by accidental means while performing the usual duties for the
2 employer.

3 Section 32. That § 3-12-141 be amended to read as follows:

4 3-12-141. No application for disability benefits ~~under this chapter~~ pursuant to § 3-12-98 may
5 be determined until the employer has certified to the system that, within the employer's
6 understanding of the member's medical condition and the employer's knowledge of the
7 member's employment requirements and duties, the employer is unable to provide to the
8 member either effective accommodations ~~to the member~~ in the member's current position or
9 comparable level employment in another position ~~to the member~~.

10 Section 33. That § 3-12-143 be amended to read as follows:

11 3-12-143. For the first thirty-six months of a disability ~~allowance~~ benefit provided by ~~this~~
12 ~~chapter~~ § 3-12-99, the maximum amount that a member may receive in any calendar year from
13 the disability ~~allowance~~ benefit and earned income, as defined in § 32(c)(2) of the Internal
14 Revenue Code, is one hundred percent of the member's final average compensation. Starting
15 with the thirty-seventh month of such disability ~~allowance~~ benefit, the maximum amount that
16 a member may receive in any calendar year from disability ~~allowances~~ benefits provided by the
17 federal Social Security Act equal to the primary insurance amount, the disability ~~allowance~~
18 benefit provided by this chapter and earned income, as defined in § 32(c)(2) of the Internal
19 Revenue Code, is one hundred percent of the member's final average compensation. The
20 maximum amount shall be indexed for each full fiscal year during which the member is eligible
21 for such disability ~~allowance~~ benefit by the improvement factor defined in subdivision 3-12-
22 47(41). Any amount exceeding this maximum amount shall reduce each monthly disability
23 ~~allowance~~ benefit payable pursuant to § 3-12-99 in the following fiscal year on a pro rata basis.

24 Any member eligible to receive a disability ~~allowance~~ benefit shall report to the system in

1 writing any earned income of the member. The report shall be filed with the system no later than
2 May thirty-first following the end of each calendar year in which a disability ~~allowance~~ benefit
3 is paid. A disabled member may file a signed copy of the member's individual income tax return
4 in lieu of the report. No report or return need be filed for the calendar year in which the member
5 dies or converts to a normal or early retirement benefit under this chapter. The disability
6 ~~allowance~~ benefit of any member failing to file a report or return as required in this section shall
7 be suspended until the report or return is filed. The reduction may occur, however, only if a
8 disability ~~allowance~~ benefit is being paid by the system, but may not reduce the disability
9 ~~allowance~~ benefit below the minimum provided for in § 3-12-99. ~~For members with a disability~~
10 ~~in effect before July 1, 1995, the first report is due on or before May 31, 1996.~~

11 This section applies to any member receiving or entitled to receive a disability ~~allowance~~
12 benefit pursuant to ~~this chapter § 3-12-98.~~

13 Section 34. That ARSD 62:01:02:06 be amended to read as follows:

14 62:01:02:06. Refund of active contributions made during period of disability -- Granted
15 credited service. If a disabled member receiving credited service pursuant to SDCL 3-12-103
16 and § 62:01:04:05.01 becomes employed by a member employer unit, the member and employer
17 shall make active contributions during the period of such employment pursuant to SDCL
18 3-12-71. Upon the member's conversion of disabled status to retired status, upon the member's
19 termination of disabled status or upon the member's termination of employment, whichever
20 occurs first, the member may request a refund of the member's accumulated contributions made
21 during that period when the member also was receiving credited service due to the disability.
22 The provisions of this section apply to any member whose application for disability benefits is
23 received by the system prior to July 1, 2015.

24 Section 35. That ARSD chapter 62:01:04 be amended by adding thereto a NEW SECTION

1 to read as follows:

2 62:01:04:00. Application of chapter. The provisions of this chapter apply to any member
3 whose application for disability benefits was received by the system prior to July 1, 2015.

4 Section 36. That ARSD 62:01:04:02 be amended to read as follows:

5 62:01:04:02. Disability -- Beginning of benefits. A member whose application for a
6 disability ~~allowance~~ benefit is approved shall receive the ~~allowance~~ benefit beginning on the
7 first day of the month following the date on which the member's contributory service terminates.
8 If any member fails to terminate contributory service within one year after receiving notice that
9 the member's application has been approved, the member's application approval expires.