
SUBSTITUTE HOUSE BILL 1679

State of Washington

61st Legislature

2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Simpson, Van De Wege, Ericks, Williams, White, Kelley, Sells, Ross, Hope, and Conway; by request of LEOFF Plan 2 Retirement Board)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to access to catastrophic disability medical
2 insurance under plan 2 of the law enforcement officers' and
3 firefighters' retirement system; amending RCW 43.43.040; reenacting and
4 amending RCW 41.26.470; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This act may be known as the Jason McKissack
7 act.

8 **Sec. 2.** RCW 41.26.470 and 2009 c 523 s 6 and 2009 c 95 s 1 are
9 each reenacted and amended to read as follows:

10 (1) A member of the retirement system who becomes totally
11 incapacitated for continued employment by an employer as determined by
12 the director shall be eligible to receive an allowance under the
13 provisions of RCW 41.26.410 through 41.26.550. Such member shall
14 receive a monthly disability allowance computed as provided for in RCW
15 41.26.420 and shall have such allowance actuarially reduced to reflect
16 the difference in the number of years between age at disability and the
17 attainment of age fifty-three, except under subsection (7) of this
18 section.

1 (2) Any member who receives an allowance under the provisions of
2 this section shall be subject to such comprehensive medical
3 examinations as required by the department. If such medical
4 examinations reveal that such a member has recovered from the
5 incapacitating disability and the member is no longer entitled to
6 benefits under Title 51 RCW, the retirement allowance shall be canceled
7 and the member shall be restored to duty in the same civil service
8 rank, if any, held by the member at the time of retirement or, if
9 unable to perform the duties of the rank, then, at the member's
10 request, in such other like or lesser rank as may be or become open and
11 available, the duties of which the member is then able to perform. In
12 no event shall a member previously drawing a disability allowance be
13 returned or be restored to duty at a salary or rate of pay less than
14 the current salary attached to the rank or position held by the member
15 at the date of the retirement for disability. If the department
16 determines that the member is able to return to service, the member is
17 entitled to notice and a hearing. Both the notice and the hearing
18 shall comply with the requirements of chapter 34.05 RCW, the
19 administrative procedure act.

20 (3) Those members subject to this chapter who became disabled in
21 the line of duty on or after July 23, 1989, and who receive benefits
22 under RCW 41.04.500 through 41.04.530 or similar benefits under RCW
23 41.04.535 shall receive or continue to receive service credit subject
24 to the following:

25 (a) No member may receive more than one month's service credit in
26 a calendar month.

27 (b) No service credit under this section may be allowed after a
28 member separates or is separated without leave of absence.

29 (c) Employer contributions shall be paid by the employer at the
30 rate in effect for the period of the service credited.

31 (d) Employee contributions shall be collected by the employer and
32 paid to the department at the rate in effect for the period of service
33 credited.

34 (e) State contributions shall be as provided in RCW 41.45.060 and
35 41.45.067.

36 (f) Contributions shall be based on the regular compensation which
37 the member would have received had the disability not occurred.

1 (g) The service and compensation credit under this section shall be
2 granted for a period not to exceed six consecutive months.

3 (h) Should the legislature revoke the service credit authorized
4 under this section or repeal this section, no affected employee is
5 entitled to receive the credit as a matter of contractual right.

6 (4)(a) If the recipient of a monthly retirement allowance under
7 this section dies before the total of the retirement allowance paid to
8 the recipient equals the amount of the accumulated contributions at the
9 date of retirement, then the balance shall be paid to the member's
10 estate, or such person or persons, trust, or organization as the
11 recipient has nominated by written designation duly executed and filed
12 with the director, or, if there is no such designated person or persons
13 still living at the time of the recipient's death, then to the
14 surviving spouse or domestic partner, or, if there is neither such
15 designated person or persons still living at the time of his or her
16 death nor a surviving spouse or domestic partner, then to his or her
17 legal representative.

18 (b) If a recipient of a monthly retirement allowance under this
19 section died before April 27, 1989, and before the total of the
20 retirement allowance paid to the recipient equaled the amount of his or
21 her accumulated contributions at the date of retirement, then the
22 department shall pay the balance of the accumulated contributions to
23 the member's surviving spouse or, if there is no surviving spouse, then
24 in equal shares to the member's children. If there is no surviving
25 spouse or children, the department shall retain the contributions.

26 (5) Should the disability retirement allowance of any disability
27 beneficiary be canceled for any cause other than reentrance into
28 service or retirement for service, he or she shall be paid the excess,
29 if any, of the accumulated contributions at the time of retirement over
30 all payments made on his or her behalf under this chapter.

31 (6) A member who becomes disabled in the line of duty, and who
32 ceases to be an employee of an employer except by service or disability
33 retirement, may request a refund of one hundred fifty percent of the
34 member's accumulated contributions. Any accumulated contributions
35 attributable to restorations made under RCW 41.50.165(2) shall be
36 refunded at one hundred percent. A person in receipt of this benefit
37 is a retiree.

1 (7) A member who becomes disabled in the line of duty shall be
2 entitled to receive a minimum retirement allowance equal to ten percent
3 of such member's final average salary. The member shall additionally
4 receive a retirement allowance equal to two percent of such member's
5 average final salary for each year of service beyond five.

6 (8) A member who became disabled in the line of duty before January
7 1, 2001, and is receiving an allowance under RCW 41.26.430 or
8 subsection (1) of this section shall be entitled to receive a minimum
9 retirement allowance equal to ten percent of such member's final
10 average salary. The member shall additionally receive a retirement
11 allowance equal to two percent of such member's average final salary
12 for each year of service beyond five, and shall have the allowance
13 actuarially reduced to reflect the difference in the number of years
14 between age at disability and the attainment of age fifty-three. An
15 additional benefit shall not result in a total monthly benefit greater
16 than that provided in subsection (1) of this section.

17 (9) A member who is totally disabled in the line of duty is
18 entitled to receive a retirement allowance equal to seventy percent of
19 the member's final average salary. The allowance provided under this
20 subsection shall be offset by:

21 (a) Temporary disability wage-replacement benefits or permanent
22 total disability benefits provided to the member under Title 51 RCW;
23 and

24 (b) Federal social security disability benefits, if any;
25 so that such an allowance does not result in the member receiving
26 combined benefits that exceed one hundred percent of the member's final
27 average salary. However, the offsets shall not in any case reduce the
28 allowance provided under this subsection below the member's accrued
29 retirement allowance.

30 A member is considered totally disabled if he or she is unable to
31 perform any substantial gainful activity due to a physical or mental
32 condition that may be expected to result in death or that has lasted or
33 is expected to last at least twelve months. Substantial gainful
34 activity is defined as average earnings in excess of eight hundred
35 sixty dollars a month in 2006 adjusted annually as determined by the
36 director based on federal social security disability standards. The
37 department may require a person in receipt of an allowance under this
38 subsection to provide any financial records that are necessary to

1 determine continued eligibility for such an allowance. A person in
2 receipt of an allowance under this subsection whose earnings exceed the
3 threshold for substantial gainful activity shall have their benefit
4 converted to a line-of-duty disability retirement allowance as provided
5 in subsection (7) of this section.

6 Any person in receipt of an allowance under the provisions of this
7 section is subject to comprehensive medical examinations as may be
8 required by the department under subsection (2) of this section in
9 order to determine continued eligibility for such an allowance.

10 (10) In addition to the retirement allowance provided in subsection
11 (9) of this section, the retirement allowance of a member who is
12 totally disabled in the line of duty shall include reimbursement for
13 any payments made by the member after the effective date of this
14 section for premiums on employer-provided medical insurance, insurance
15 authorized by the consolidated omnibus budget reconciliation act of
16 1985 (COBRA), medicare part A (hospital insurance), and medicare part
17 B (medical insurance). The legislature reserves the right to amend or
18 repeal the benefits provided in this subsection in the future and no
19 member or beneficiary has a contractual right to receive any
20 distribution not granted prior to that time.

21 **Sec. 3.** RCW 43.43.040 and 2009 c 549 s 5122 are each amended to
22 read as follows:

23 (1) The chief of the Washington state patrol shall relieve from
24 active duty Washington state patrol officers who, while in the
25 performance of their official duties, or while on standby or available
26 for duty, have been or hereafter may be injured or incapacitated to
27 such an extent as to be mentally or physically incapable of active
28 service: PROVIDED, That:

29 (a) Any officer disabled while performing line duty who is found by
30 the chief to be physically incapacitated shall be placed on disability
31 leave for a period not to exceed six months from the date of injury or
32 the date incapacitated. During this period, the officer shall be
33 entitled to all pay, benefits, insurance, leave, and retirement
34 contributions awarded to an officer on active status, less any
35 compensation received through the department of labor and industries.
36 No such disability leave shall be approved until an officer has been

1 unavailable for duty for more than forty consecutive work hours. Prior
2 to the end of the six-month period, the chief shall either place the
3 officer on disability status or return the officer to active status.

4 For the purposes of this section, "line duty" is active service
5 which encompasses the traffic law enforcement duties and/or other law
6 enforcement responsibilities of the state patrol. These activities
7 encompass all enforcement practices of the laws, accident and criminal
8 investigations, or actions requiring physical exertion or exposure to
9 hazardous elements.

10 The chief shall define by rule the situations where a disability
11 has occurred during line duty;

12 (b) Benefits under this section for a disability that is incurred
13 while in other employment will be reduced by any amount the officer
14 receives or is entitled to receive from workers' compensation, social
15 security, group insurance, other pension plan, or any other similar
16 source provided by another employer on account of the same disability;

17 (c) An officer injured while engaged in willfully tortious or
18 criminal conduct shall not be entitled to disability benefits under
19 this section; and

20 (d) Should a disability beneficiary whose disability was not
21 incurred in line of duty, prior to attaining age fifty, engage in a
22 gainful occupation, the chief shall reduce the amount of his or her
23 retirement allowance to an amount which when added to the compensation
24 earned by him or her in such occupation shall not exceed the basic
25 salary currently being paid for the rank the retired officer held at
26 the time he or she was disabled. All such disability beneficiaries
27 under age fifty shall file with the chief every six months a signed and
28 sworn statement of earnings and any person who shall knowingly swear
29 falsely on such statement shall be subject to prosecution for perjury.
30 Should the earning capacity of such beneficiary be further altered, the
31 chief may further alter his or her disability retirement allowance as
32 indicated above. The failure of any officer to file the required
33 statement of earnings shall be cause for cancellation of retirement
34 benefits.

35 (2)(a) Officers on disability status shall receive one-half of
36 their compensation at the existing wage, during the time the disability
37 continues in effect, less any compensation received through the
38 department of labor and industries. They shall be subject to mental or

1 physical examination at any state institution or otherwise under the
2 direction of the chief of the patrol at any time during such relief
3 from duty to ascertain whether or not they are able to resume active
4 duty.

5 (b) In addition to the compensation provided in (a) of this
6 subsection, the compensation of an officer who is totally disabled
7 during line duty shall include reimbursement for any payments of
8 premiums made after the effective date of this section for employer-
9 provided medical insurance. An officer is considered totally disabled
10 if he or she is unable to perform any substantial gainful activity due
11 to a physical or mental condition that may be expected to result in
12 death or that has lasted or is expected to last at least twelve months.
13 Substantial gainful activity is defined as average earnings in excess
14 of eight hundred sixty dollars a month in 2006 adjusted annually as
15 determined by the department of retirement systems based on federal
16 social security disability standards. An officer in receipt of
17 reimbursement for any payments of premium rates for employer-provided
18 medical insurance under this subsection is required to file with the
19 chief any financial records that are necessary to determine continued
20 eligibility for such reimbursement. The failure of any officer to file
21 the required financial records is cause for cancellation of the
22 reimbursement. The legislature reserves the right to amend or repeal
23 the benefits provided in this subsection (2)(b) in the future and no
24 member or beneficiary has a contractual right to receive any
25 distribution not granted prior to that time.

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