

BATH COUNTY SCHOOL BOARD

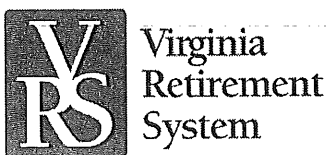
AGENDA ITEM: INFORMATION {    } ACTION { X } CLOSED MEETING {    }

**SUBJECT:** SUPERINTENDENT’S REPORT - ACTION

Consider VRS Virginia Local Disability Program (VLDP)

**BACKGROUND:** The VLDP was created for employees who will be covered under the VRS Hybrid Retirement Plan effective January 1, 2014. Participation is automatic unless the governing body elects to opt out and provide a comparable employer-paid disability program effective January 1, 2014. The decision to participate or opt out is irrevocable.

**RECOMMENDATION:** Recommend to participate in the Virginia Local Disability Program (VLDP).



P.O. Box 2500, Richmond, Virginia 23218-2500  
Toll free: 1-888-VARETIR (827-3847)  
Web site: [www.varetire.org](http://www.varetire.org)  
E-mail: [vrs@varetire.org](mailto:vrs@varetire.org)

February 15, 2013

Dear Employer,

I am pleased to provide this resolution packet to assist you and your local governing body while you consider participation in the Virginia Local Disability Program (VLDP).

The 2012 General Assembly created VLDP for political subdivision and school division employees who will be covered under the VRS Hybrid Retirement Plan effective January 1, 2014. Participation in VLDP by political subdivisions and school divisions is automatic unless your governing body elects to opt out and provide a comparable employer-paid disability program effective January 1, 2014. The comparable coverage must include short-term and long-term disability, but does not have to include the long-term care component provided in VLDP. The decision to participate or opt out is irrevocable. Political subdivisions and schools in the same locality may choose to participate or opt out separately. Schools that decide to opt out will submit one resolution for all employees. Please note that VRS Disability Retirement will not be available to Hybrid Retirement Plan participants.

The deadline to submit an opt-out resolution to VRS is September 1, 2013. Your packet includes:

- An opt-out resolution to return to VRS, if applicable
- Copy of Chapter 11.1 of Title 51.1 of the *Code of Virginia*
- An at-a-glance description of the program and rates

VLDP focuses on assisting employees with their recovery and helping them make a safe return to their full work duties, if possible. Please read the Virginia Local Disability Program Employer Manual at [www.varetire.org/ermanuals](http://www.varetire.org/ermanuals) for program details. In addition, we encourage you to register for the upcoming February 26 VLDP webinar at 1:30 p.m. To register, visit the VLDP web page on the VRS website at [www.varetire.org/vldp](http://www.varetire.org/vldp). Stay tuned to this page for frequently asked questions, which will be posted soon.

We appreciate your efforts to review this information and the Virginia Local Disability Program Employer Manual. If you have any questions about the information in this packet, please contact Ms. ZaeAnne Sferra, Employer Coverage Coordinator, at [zsferra@varetire.org](mailto:zsferra@varetire.org) or (804) 775-3514.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert P. Schultze', written in a cursive style.

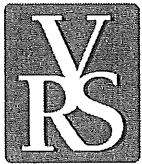
Robert Schultze  
VRS Director

# Virginia Local Disability Program

For Political Subdivisions and Schools

Effective January 1, 2014

## At-a-glance



The 2012 General Assembly created the Virginia Local Disability Program for political subdivision and school division employees who will be covered under the VRS Hybrid Retirement Plan effective January 1, 2014. The

Hybrid Retirement Plan will apply to most new employees

hired on or after January 1, 2014 and current employees who opt to switch to the plan.

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For detailed program information, view the VLDP Employer Manual at [www.varetire.org/ermanuals](http://www.varetire.org/ermanuals).

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Eligibility	This program applies to political subdivision and school employees covered by the VRS Hybrid Retirement Plan that do not submit an opt-out resolution to VRS. Coverage is automatic. VLDP-covered employees are not eligible for VRS Disability Retirement.
Exemptions	Hazardous duty employees covered under enhanced benefits are exempt from the Hybrid Retirement Plan and will continue to be covered under VRS Disability Retirement.
Rates	Rates beginning January 1, 2014 through June 30, 2014: Teachers: 0.39 percent of Hybrid Retirement Plan covered payroll Political Subdivisions: 0.91 percent of Hybrid Retirement Plan covered payroll Schools will pay the teacher rate for teachers and the political subdivision rate for non-administrative employees. New rates will be set each biennium.
Opting Out	Coverage for your employees is automatic under VLDP unless your governing body elects to opt out and provide a comparable employer-paid program. The comparable program does not require you to provide long-term care coverage even though this coverage is included in VLDP. To opt-out, return the VLDP opt-out resolution to VRS by September 1, 2013 (Attn: Susan Keith, P.O. Box 2500, Richmond, VA 23218-2500). The election to opt out of VLDP is irrevocable. Schools that decide to opt out will submit one resolution for all employees (teachers and non-administrative employees).
Program Features	VLDP provides income protection if an employee can't work because of a non-work related or work-related illness, injury or other condition, such as surgery, pregnancy, complications from pregnancy or a catastrophic or major chronic condition. It includes both short-term and long-term disability coverage. The program focuses on assisting employees with their recovery and helping them make a safe return to their full work duties, if possible. Program details are available in the VLDP Employer Manual at <a href="http://www.varetire.org/ermanuals">www.varetire.org/ermanuals</a> .



## Code of Virginia

### § 51.1-1150. 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.

"Continuous service" means an uninterrupted period of service as a participating employee with the same employer.

"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 a person who is (i) not eligible for the disability program pursuant to Chapter 11 (§ 51.1-1100 et seq.) and (ii) participating in the hybrid retirement program described in § 51.1-169.

"Partial disability" means a disability that exists during the first 24 months following the occurrence or commencement of an illness or injury when an employee is earning less than 80 percent of his predisability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis; or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

"Participating employee" means any eligible employee required to participate in the program.

"Program" means the program providing short-term disability and long-term disability benefits for participating employees established pursuant to this chapter.

"Service" means a period of service as a participating employee.

"Total disability" means a disability that exists (i) during the first 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform all of his essential job functions or (ii) after 24 months following the occurrence or commencement of an illness or injury if an employee is unable to perform any job for which he is reasonably qualified based on his training or experience and earning less than 80 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 employer for purposes of the Act is the Commonwealth or other political subdivision through which the participating employee became eligible for the program.

In addition to the definitions listed in this section, the definitions listed in § 51.1-124.3 shall, as the context requires, apply to this chapter except as otherwise provided.

(2012, cc. 701, 823.)

### § 51.1-1151. Sickness and disability program; disability insurance policies.

A. The Board shall develop, implement, and administer a 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 that 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 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.

B. Notwithstanding the provisions of subsection A, the Board may self-insure long-term disability benefits in accordance with the standards set forth in § 51.1-124.30.

(2012, cc. 701, 823.)

§ 51.1-1152. Additional powers of the Board.

In addition to any other powers granted to the Board under this title, the Board shall have the power 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 the Commonwealth or the United States.

(2012, cc. 701, 823.)

§ 51.1-1153. Participation in the program.

A. All eligible employees shall become participants in this program, provided, however, that the governing body of an employer may adopt a resolution on or before January 1, 2014, which shall be submitted to the Board, requesting that its eligible employees not participate in the program because the employer has or will establish, and continue to maintain, comparable disability coverage for such eligible employees. The election by the governing body of an employer not to participate in this program shall be irrevocable. The employer need not consider the provisions of § 51.1-1178 when determining the comparability of its disability coverage to this program.

B. The effective date of participation in the program for participating employees shall be their first day of employment or the effective date of their participation in the hybrid retirement program described in § 51.1-169 as applicable.

C. Notwithstanding any provision to the contrary, no participating employee shall receive benefits under Article 2 (§ 51.1-1154 et seq.) until the participating employee completes one year of continuous participation in the program.

D. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment or (ii) death. 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 suspension pending investigation or outcome of employment-related court or disciplinary action.

(2012, cc. 701, 823.)

§ 51.1-1154. 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.

(2012, cc. 701, 823.)

§ 51.1-1155. Short-term disability benefit.

A. Except as provided in subsection B of § 51.1-1153, short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or 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. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term

disability benefits payable as the result of a catastrophic disability shall not require a waiting period.

B. Except as provided in § 51.1-1171, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous participation in the program and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous participation in the program attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

Months of Continuous Participation	Work Days of 100%	Work Days of 80%	Work Days of 60%
	Replacement of Creditable Compensation	Replacement of Creditable Compensation	Replacement of Creditable Compensation
60-119	25	25	75
120-179	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 covered by short-term disability benefits.

D. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, or (iii) maternity leave.

(2012, cc. 701, 823.)

§ 51.1-1156. 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 45 consecutive calendar days. If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. 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 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability.

C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty.

(2012, cc. 701, 823.)

§ 51.1-1157. Long-term disability benefit.

A. Long-term disability benefits for participating employees shall commence upon the expiration of the maximum period for which the participating employee is eligible to receive short-term disability benefits under § 51.1-1155.

B. Except as provided in § 51.1-1171, 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 long-term disability benefits shall not include salary increases

awarded during the period covered by long-term disability benefits.

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

E. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

(2012, cc. 701, 823.)

§ 51.1-1158. 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 a position on an active employment basis for less than 125 consecutive work 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 a position on an active employment basis for 125 consecutive work days or longer, any succeeding period of disability shall constitute a new period of disability.

(2012, cc. 701, 823.)

§ 51.1-1159. 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 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment multiplied by the creditable compensation replacement percentage;
2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;
3. Disability payments from the Social Security Administration, local government disability benefits, federal civil service disability benefits, 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 to the participating employee by his employer for the purpose of providing income replacement; and
5. Benefits paid under any compulsory benefits law.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, disability benefit payments may be offset by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is deemed eligible by the plan administrator as if the employee received such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim 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, A 4, and 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 or their employer, any overpayment of disability benefits on account of the failure of the employee to provide the Board or its designee 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 or by the employer 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, with interest, either by way of a credit against future payments due the employee, his survivor, and beneficiaries or by an action at law against the employee.

F. Notwithstanding the foregoing, disability benefit payments shall not be offset by military disability benefits payable to a participating employee.

(2012, cc. 701, 823.)

§ 51.1-1160. 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.

(2012, cc. 701, 823.)

§ 51.1-1161. Cessation of disability benefits; service retirement.

A. 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 disability coverage as provided in subsection D of § 51.1-1155 or subsection D of § 51.1-1157;
2. The date of death of the participating employee;
3. The date that the participating employee attains normal retirement age; or
4. The effective date of the participating full-time employee's service retirement under the hybrid retirement program described in § 51.1-169.

Notwithstanding the foregoing, an employee who is approved for disability benefits (i) at age 60 through 64 shall be eligible for five years of disability benefits, (ii) at age 65 through 68 shall be eligible for disability benefits to age 70, and (iii) at age 69 or older shall be eligible for disability benefits for one year. The eligibility periods include short-term disability and long-term disability.

B. A participating full-time employee receiving disability benefits who is a vested member of the retirement system, including the hybrid retirement program described in § 51.1-169, shall be eligible for service retirement under any provision of this title for which the employee is otherwise eligible. 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.

C. The average final compensation of any participating full-time employee taking a service retirement under any provision of this title shall be equal to his creditable compensation on the date of the commencement of the disability increased by an amount recommended by the program actuary and approved by the Board, from the date of the commencement of the disability to the date of retirement.

D. The creditable service of a participating full-time employee taking service retirement pursuant to this section shall include periods during which the employee received disability benefits.

(2012, cc. 701, 823.)

§ 51.1-1162. 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.

(2012, cc. 701, 823.)

§ 51.1-1163. 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 the first day 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. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works 20 hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability shall not require any waiting period.

C. Except as provided in § 51.1-1171, supplemental short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous participation in the program and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous participation in the program attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, as follows:

Months of Continuous Participation	Work Days of 100%	Work Days of 80%	Work Days of 60%
	Replacement of Creditable Compensation	Replacement of Creditable Compensation	Replacement of Creditable Compensation
60 to 119	85	25	15
120 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. Supplemental short-term disability benefits shall be payable only during periods of total disability or partial disability.

(2012, cc. 701, 823.)

§ 51.1-1164. 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 45 consecutive calendar days. If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. 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 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability.

C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty.

(2012, cc. 701, 823.)

§ 51.1-1165. Supplemental long-term disability benefit.

A. Supplemental long-term disability benefits for participating employees shall commence upon the expiration of the maximum period for which the participating employee is eligible to receive short-term disability benefits under § 51.1-1163.

B. Except as provided in § 51.1-1171, 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 not include salary increases awarded during the period covered by long-term disability benefits.

D. 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.

E. Supplemental long-term disability benefits shall be payable only during periods of total disability or partial disability.

F. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

(2012, cc. 701, 823.)

§ 51.1-1166. 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 a position on an active employment basis for less than 125 consecutive work 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 a position on an active employment basis for 125 consecutive work days or longer, any succeeding period of disability shall constitute a new period of disability.

(2012, cc. 701, 823.)

§ 51.1-1167. 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 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment multiplied by the income replacement percentage payable;
2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;
3. Disability payments from the Social Security Administration, local government disability benefits, federal civil service disability benefits, 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 to the participating employee by his employer 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.

Notwithstanding the foregoing, supplemental disability benefit payments shall not be offset by military disability benefits payable to a participating employee.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, supplemental disability benefit payments may be reduced by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is deemed eligible by the plan administrator as if the employee received such amounts. However, if the employee has applied for such benefits, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim 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, A 4, and 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 or the employer any overpayments of supplemental disability benefits on account of the failure of the employee to provide the Board or its designee 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 or by the employer to have been procured on the basis of any false statement or falsification of any record knowingly made by or on behalf of the employee, or the employee's failure to make any required report of change in disability status, may be recovered from the employee by the Board, with interest, either by way of a credit against future payments due the employee or by an action at law against the employee.

F. 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 under the Act.

(2012, cc. 701, 823.)

§ 51.1-1168. 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. Failure to comply with a vocational rehabilitation assessment process at any time the employee is receiving supplemental disability benefits may constitute a failure to cooperate for purposes of this section.

(2012, cc. 701, 823.)

§ 51.1-1169. Cessation of supplemental disability benefits; service retirement.

A. 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 E of § 51.1-1163 or subsection E of § 51.1-1165;
2. The date of death of the participating employee;
3. On the date the employee attains normal retirement age; or
4. The effective date of the participating full-time employee's service retirement under the hybrid retirement program described in §

51.1-169.

Notwithstanding the foregoing, an employee who is approved for supplemental disability benefits (i) at age 60 through 64 shall be eligible for five years of supplemental disability benefits, (ii) at age 65 through 68 shall be eligible for supplemental disability benefits to age 70, and (iii) at age 69 or older shall be eligible for supplemental disability benefits for one year. The eligibility periods include supplemental short-term disability and supplemental long-term disability.

B. Upon the cessation of benefits payable under the Act, a participating full-time employee may take service retirement under any provision of this title for which the employee is otherwise eligible, including the hybrid retirement program described in § 51.1-169. Such employee shall be authorized to elect any option for the payment of his retirement allowance provided under subsection A of § 51.1-165.

C. 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.

D. The creditable service of a participating full-time employee taking service retirement pursuant to this section shall include periods during which the employee received supplemental disability benefits, provided that such creditable service shall not include periods for which (i) the employee received supplemental short-term disability benefits, (ii) the employer did not report such creditable service to the retirement system, and (iii) the employee did not purchase such creditable service.

(2012, cc. 701, 823.)

§ 51.1-1170. Coordination of benefits.

The Board shall 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.

(2012, cc. 701, 823.)

§ 51.1-1171. 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 six activities of daily living 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.

(2012, cc. 701, 823.)

§ 51.1-1172. Employer contributions during disability absences.

Mandatory employer contributions to the defined contribution component of the hybrid retirement program pursuant to subdivision B 2 of § 51.1-169 on behalf of a participating employee shall be made for each employee who is permanently and totally disabled (as defined in § 22(e)(3) of the Internal Revenue Code). The calculation of such contributions shall be based on the full amount of the participating employee's creditable compensation.

(2012, cc. 701, 823.)

§ 51.1-1173. Health insurance coverage during disability absences.

A. Participating employees enrolled in a health insurance plan established pursuant to § 2.2-2818 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 established pursuant to § 2.2-2818 shall have the option of continuing to be covered under such plan, and 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.

(2012, cc. 701, 823.)

§ 51.1-1174. 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.) 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 not include salary increases awarded during the period covered by long-term disability benefits.

(2012, cc. 701, 823.)

§ 51.1-1175. 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 at their own expense during periods of disability.

(2012, cc. 701, 823.)

§ 51.1-1176. Exclusions and limitations.

A. Disability benefits shall not be payable to any participating employee (i) whose disability results from the employee's commission of a felony or (ii) during any period when the employee is incarcerated.

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, unless the employee is actively receiving treatment and, in the judgment of the case manager, is fully complying with the treatment plan and is making substantial progress toward rehabilitation.

C. Disability benefits shall not be payable if the participating employee is determined by the Board or its designee to be noncompliant with the program.

(2012, cc. 701, 823.)

§ 51.1-1177. Appeals.

The Board may elect to develop an alternative to the process set forth in the Administrative Process Act (§ 2.2-4000 et seq.) to allow appeals of case decisions related to the payment of disability benefits under this chapter. This alternative process shall be modeled after the claims provisions as provided for in the federal Employee Retirement Income Security Act of 1974, as amended, and shall (i) provide for adequate notice in writing to any participant whose claim for benefits has been denied setting forth the specific reasons for such denial and (ii) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a review of the decision denying the claim. Articles 3 (§ 2.2-4018 et seq.) and 4 (§ 2.2-4024 et seq.) of the Administrative Process Act shall not apply to any portion of this alternative appeals process.

However, any person aggrieved by, and claiming the unlawfulness of, a final case decision issued pursuant to this alternative appeals

process, whether issued by the Board or by the Board's delegate, shall have a right to seek judicial review thereof. Such judicial review shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

(2012, cc. 701, 823.)

§ 51.1-1178. Board authorized to provide long-term care insurance and benefits.

A. For purposes of this section, "participating employee" means the same as that term is defined in § 51.1-1150.

B. The Board is authorized to develop, implement, and administer a long-term care insurance program for participating employees. The Board may contract for and purchase such long-term care insurance or may self-insure long-term care benefits or may use such other actuarially sound funding necessary to effectuate such long-term care insurance and benefits.

C. Employers of participating employees shall pay to the Board 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 care insurance and benefits for participating employees and (ii) administer the long-term care insurance program, including providing case management and cost containment programs. Contributions shall be deposited in the Hybrid Retirement Program Disability Insurance Trust Fund established under § 51.1-1183.

(2012, cc. 701, 823.)

§ 51.1-1179. Limitation on coverage.

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

(2012, cc. 701, 823.)

§ 51.1-1180. 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.

(2012, cc. 701, 823.)

§ 51.1-1181. 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.

(2012, cc. 701, 823.)

§ 51.1-1182. Policies to provide for accounting to Board; advance premium deposit reserve.

A. Each insurance product purchased by the Board or contract for administrative services related to a self-funded product shall provide for an accounting to the Board not later than 120 days after the end of each product year. For an insurance product, 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 amount of fees accrued under the policy during the year plus the total amount of all claim charges incurred during the policy year. For a self-insured product, the accounting shall include the total amount of all claim charges incurred during the product year, the total amount of third-party administrator expenses, and the total amount of other charges for administrative services.

B. Any portion of the excess of the total of clause (i) of subsection A over clause (iii) of subsection A 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 and its political subdivisions 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.

(2012, cc. 701, 823.)

§ 51.1-1183. Funding of program; Hybrid Retirement Program Disability Insurance Trust Fund established.

A. The costs of providing short-term disability benefits shall be paid by the respective employers of participating employees. Employers that are state agencies shall pay such costs from funds as shall be appropriated by law to state agencies.

B. Employers of participating employees shall pay to the Board 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. Employers that are state agencies shall make such contributions from funds as shall be appropriated by law to state agencies. Contributions shall be deposited in the Hybrid Retirement Program Disability Insurance Trust Fund.

C. There is hereby established the Hybrid Retirement Program Disability Insurance Trust Fund. The costs incurred by the Board in providing policies of long-term disability insurance and administering the Program and in administering the long-term care insurance program established under § 51.1-1178, including the provision of case management and cost containment programs, shall be withdrawn from time to time by the Board from the Hybrid Retirement Program Disability Insurance Trust Fund. The funds of the Hybrid Retirement Program Disability Insurance Trust Fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth and its political subdivisions, 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 Hybrid Retirement Program Disability Insurance Trust Fund.

(2012, c. 701; 2012, c. 823.)

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