

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 1099  
May 26, 2022  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40744-MGp-204A

Short Title: Judicial Retirement/Survivor Benefits Parity.-AB

(Public)

Sponsors: Representative C. Smith.

Referred to:

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A SURVIVOR'S ALTERNATE BENEFIT UNDER THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM THAT IS ON PAR WITH THE SURVIVOR'S ALTERNATE BENEFIT PROVIDED UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 135-63 reads as rewritten:

"§ 135-63. **Benefits on death before retirement.**

(a) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member in ~~service, service who earned the first month of membership service credit prior to July 1, 2023,~~ and had not withdrawn contributions for such membership service in the Retirement System, there shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with the Board of Trustees, if such person is living at the time of the member's death, otherwise to the member's legal representatives, a death benefit equal to the sum of (i) the member's accumulated contributions, plus (ii) the member's final compensation; provided, however, that if the member has attained his or her fiftieth birthday with at least five years of membership service at the member's date of death, and if the designated recipient of the death benefits is the member's spouse who survives him or her, and if the spouse so elects, then the lump-sum death benefit provided for herein shall consist only of a payment equal to the member's final compensation and there shall be paid to the surviving spouse an annual retirement allowance, payable monthly, which shall commence on the first day of the calendar month coinciding with or next following the death of the member and shall be continued on the first day of each month thereafter until the remarriage or death of the spouse. The amount of any such retirement allowance shall be equal to one half of the amount of the retirement allowance to which the member would have been entitled had the member retired under the provisions of ~~G.S. 135-57(a) subsection (a) of G.S. 135-57~~ on the first day of the calendar month coinciding with or next following the member's date of death, reduced by two percent (2%) thereof for each full year, if any, by which the age of the member at his or her date of death exceeds that of the member's spouse. If the retirement allowance to the spouse shall terminate on the remarriage or death of the spouse before the total of the retirement allowance payments made equals the amount of the member's accumulated contributions at date of death, the excess of such accumulated contributions over the total of the retirement allowances paid to the spouse shall be paid in a lump sum to such person as the member shall have nominated by electronic submission in a form approved by the Board of Trustees or by written designation duly acknowledged and filed with



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1 the Board of Trustees, if such person is living at the time such payment falls due, otherwise to  
2 the former member's legal representatives.

3 (a1) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member  
4 or former member who earned the first month of membership service credit on or after July 1,  
5 2023, or forfeited all creditable service in the Retirement System earned prior to July 1, 2023, by  
6 receiving a return of contributions, there shall be paid to such person or persons as the member  
7 or former member shall have nominated by electronic submission in a form approved by the  
8 Board of Trustees or by written designation duly acknowledged and filed with the Board of  
9 Trustees, if such person or persons are living at the time of the member's death, otherwise to the  
10 member's legal representatives, the amount of the member's accumulated contributions at the  
11 time of the member's death, unless the beneficiary elects to receive the alternate benefit provided  
12 under subsection (a2) of this section.

13 (a2) Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member  
14 in service who earned the first month of membership credit service on or after July 1, 2023, or  
15 forfeited all creditable service in the Retirement System earned prior to July 1, 2023, by receiving  
16 a return of contributions, the beneficiary entitled to receive a return of the member's accumulated  
17 contributions under subsection (a1) of this section may instead elect to receive the reduced  
18 retirement allowance under the provisions of Option 2 prescribed by subsection (g) of G.S. 135-5.  
19 The election of Option 2 shall provide for a retirement allowance computed by assuming that the  
20 member retired on the first day of the month following the date of the member's death, provided  
21 that all four of the following conditions apply:

22 (1) The member had either:

23 a. Attained such age or creditable service, or both, to be eligible to  
24 commence retirement with an early or service retirement allowance;

25 or

26 b. Attained 16 years of creditable service, in which case the retirement  
27 allowance shall be computed in accordance with subsection (b) of  
28 G.S. 135-58, notwithstanding the requirement of obtaining age 50.

29 (2) At the time of the member's death, only one beneficiary was eligible to receive  
30 a return of accumulated contributions under subsection (a1) of this section.

31 (3) The member had not instructed the Board of Trustees, in writing, that the  
32 member did not wish for the provisions of this subsection to apply.

33 (4) The member had not begun receiving a retirement allowance as provided  
34 under this Article.

35 (a3) All of the following apply to the alternate survivor benefit described in subsection  
36 (a2) of this section:

37 (1) A member is considered to be in service on the date of death if the death occurs  
38 within 180 days from the last date of actual service.

39 (2) The last date of actual service means:

40 a. When employment has been terminated, the last date the member  
41 actually worked.

42 b. When employment has not been terminated, the date on which an  
43 absent member's sick and annual leave expire, unless the member is  
44 on an approved leave of absence. An approved leave of absence means  
45 any period when a member is on leave of absence and is receiving less  
46 than the member's full compensation. The member will be deemed to  
47 be in service only if the member is contributing to the Retirement  
48 System. If the member is so contributing, the annual rate of  
49 compensation paid to the member immediately prior to the  
50 commencement of the leave of absence will be deemed to be the actual  
51 compensation rate of the employee during the leave of absence.

1                   c.     When a member's employment is interrupted by reason of service in  
2                   the Uniformed Services, as that term is defined in section 4303(16) of  
3                   the Uniformed Services Employment and Reemployment Rights Act,  
4                   P.L. 103-353, and the member does not return immediately after that  
5                   service to employment with a covered employer in the Retirement  
6                   System, the date on which the member was first eligible to be  
7                   separated or released from involuntary military service.

8                   (3)    Any terminal payments made after the member's date of death that meet the  
9                   definition of compensation shall be credited to the month prior to the  
10                  member's month of death. These terminal payments do not include salary or  
11                  wages paid for work performed during the month of the member's death.

12                  ...

13                  (f)    Upon the death of a member who earned the first month of membership service credit  
14                  on or after July 1, 2023, or forfeited all creditable service in the Retirement System earned prior  
15                  to July 1, 2023, by receiving a return of contributions, if a retirement allowance becomes payable  
16                  to the principal beneficiary who is designated to receive a return of accumulated contributions  
17                  pursuant to subsection (a2) of this section, and that beneficiary dies before the total of the  
18                  retirement allowances paid equals the amount of the accumulated contributions of the member at  
19                  the date of the member's death, the excess of those accumulated contributions over the total of  
20                  the retirement allowances paid to the beneficiary shall be paid in a lump sum to the person or  
21                  persons the member has designated as a contingent beneficiary for the return of accumulated  
22                  contributions, if the person or persons are living at the time the payment becomes payable. If no  
23                  contingent beneficiary is living at the time the lump sum becomes payable, the lump sum shall  
24                  be paid to the principal beneficiary's legal representative.

25                  In the event that a retirement allowance becomes payable to the contingent beneficiary  
26                  designated to receive a return of accumulated contributions pursuant to subsection (a2) of this  
27                  section and that beneficiary dies before the total of the retirement allowances paid equals the  
28                  amount of the accumulated contributions of the member at the date of the member's death, the  
29                  excess of those accumulated contributions over the total of the retirement allowances paid to the  
30                  beneficiary shall be paid in a lump sum to the contingent beneficiary's legal representative.

31                  In the event that a retired member dies without having designated a beneficiary to receive a  
32                  benefit under the provisions of this subsection, any such benefit that becomes payable shall be  
33                  paid to the retired member's legal representative.

34                  (g)    Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a member  
35                  in service who earned the first month of membership service credit on or after July 1, 2023, or  
36                  forfeited all creditable service in the Retirement System earned prior to July 1, 2023, by receiving  
37                  a return of contributions and had completed at least one full calendar year of membership in the  
38                  Retirement System, there shall be paid to such person as the member shall have nominated by  
39                  electronic submission in a form approved by the Board of Trustees or by written designation duly  
40                  acknowledged and filed with the Board of Trustees, if such person is living at the time of the  
41                  member's death, otherwise to the member's legal representatives, a death benefit equal to the sum  
42                  of fifty thousand dollars (\$50,000). Such death benefit shall be payable apart and separate from  
43                  the payment of the member's accumulated contributions pursuant to subsection (a1) of this  
44                  section. A member shall be deemed to be in service at the date of death if the member's death  
45                  occurs within 180 days from the member's last date of actual service. The last date of actual  
46                  service means:

47                  (1)    When employment has been terminated, the last date the member actually  
48                  worked.

49                  (2)    When employment has not been terminated, the date on which an absent  
50                  member's sick and annual leave expire, unless the member is on an approved  
51                  leave of absence and is contributing to the Retirement System.

1           (3) When a member's employment is interrupted by reason of service in the  
2 Uniformed Services, as that term is defined in section 4303(16) of the  
3 Uniformed Services Employment and Reemployment Rights Act, P.L.  
4 103-353, and the member does not return immediately after that service to  
5 employment with a covered employer in the Retirement System, the date on  
6 which the member was first eligible to be separated or released from  
7 involuntary military service."

8           **SECTION 2.** G.S. 135-64 reads as rewritten:

9           **"§ 135-64. Benefits on death after retirement.**

10          (a) In the event of the death of a former member who earned the first month of  
11 membership service credit prior to July 1, 2023, and had not withdrawn contributions for such  
12 membership service in the Retirement System, dies while in receipt of a retirement allowance  
13 pursuant to his retirement under the provisions of G.S. 135-57, or after a former member's  
14 sixty-fifth birthday while in receipt of a retirement allowance pursuant to his retirement under  
15 the provisions of G.S. 135-59, there shall be paid to the former member's surviving spouse, if  
16 any, an annual retirement allowance, payable monthly, which shall commence on the first day of  
17 the calendar month next following the date of death of the former member and shall be continued  
18 on the first day of each month thereafter until the remarriage or death of the spouse. The amount  
19 of any such allowance shall be equal to one half of the allowance that was payable to the former  
20 member for the month immediately prior to his month of death, or which would have been so  
21 payable had an optional mode of payment not been elected under the provisions of G.S. 135-61,  
22 reduced by two percent (2%) thereof for each full year, if any, by which the age of the former  
23 member at date of death exceeds that of his spouse.

24          (b) In the event of the death of a that a former member vested as of July 1, 2023, dies  
25 prior to his the member's sixty-fifth birthday while in receipt of a retirement allowance pursuant  
26 to his retirement under the provisions of G.S. 135-59, there shall be paid to the former member's  
27 surviving spouse, if any, an annual retirement allowance, payable monthly, which shall  
28 commence on the first day of the calendar month next following the date of death of the former  
29 member and shall be continued on the first day of each month thereafter until the remarriage or  
30 death of the spouse. The amount of any such allowance shall be equal to one half of the allowance  
31 to which the former member would have been entitled under the provisions of G.S. 135-58 if he  
32 had remained in service from his disability retirement date to his date of death with no change in  
33 his final compensation or status and had then retired, reduced by two percent (2%) thereof for  
34 each full year, if any, by which the age of the former member at date of death exceeds that of his  
35 spouse.

36          (c) In the event of the death of a former member who earned the first month of  
37 membership service credit prior to July 1, 2023, and had not withdrawn contributions for such  
38 membership service in the Retirement System, dies while in receipt of a retirement allowance  
39 under the provisions of G.S. 135-58, 135-60, or 135-61, if such former member is not survived  
40 by a spouse to whom a retirement allowance is payable under the provisions of subsection (a) or  
41 subsection (b) above, nor survived by a beneficiary to whom a monthly survivorship benefit is  
42 payable under one of the optional modes of payment under G.S. 135-61, there shall be paid to  
43 such person as the member shall have nominated by electronic submission in a form approved  
44 by the Board of Trustees or by written designation duly acknowledged and filed with the Board  
45 of Trustees, if such person is living at the time of the member's death, otherwise to the member's  
46 legal representatives, a death benefit equal to the excess, if any, of the accumulated contributions  
47 of the member at his date of retirement over the total of the retirement allowances paid to him  
48 prior to his death.

49          (d) In the event that a retirement allowance becomes payable to the spouse of a former  
50 member who earned the first month of membership service credit prior to July 1, 2023, and had  
51 not withdrawn contributions for such membership service in the Retirement System, becomes

1 entitled to a retirement allowance under the provisions of subsection (a) or subsection (b) ~~above,~~  
2 of this section, or ~~to~~ the designated survivor of such a former member becomes entitled to  
3 payment under one of the optional modes of payment under G.S. 135-61, and such retirement  
4 allowance to the spouse shall terminate on the remarriage or death of the spouse, or on the death  
5 of the designated survivor, before the total of the retirement allowances paid to the former  
6 member and his spouse or designated survivor combined equals the amount of the member's  
7 accumulated contributions at his date of retirement, the excess of such accumulated contributions  
8 over the total of the retirement allowances paid to the former member and his spouse or  
9 designated survivor combined shall be paid in a lump sum to such person as the member shall  
10 have nominated by electronic submission in a form approved by the Board of Trustees or by  
11 written designation duly acknowledged and filed with the Board of Trustees, if such person is  
12 living at the time such payment falls due, otherwise to the former member's legal representatives.

13 (e) ~~In the event of the death of a retired former judge who earned the first month of~~  
14 membership service credit prior to July 1, 2023, and had not withdrawn contributions for such  
15 membership service in the Retirement System, dies while in receipt of a retirement allowance  
16 under the provisions of G.S. 135-58(d), there shall be paid to the former judge's surviving spouse,  
17 if any, an annual retirement allowance payable monthly, which shall commence on the first day  
18 of the calendar month next following the date of death of the former judge and shall be continued  
19 on the first day of each month thereafter until the remarriage or death of the spouse. The amount  
20 of any such allowance shall be equal to one half of the allowance that was payable to the former  
21 judge for the month immediately prior to his month of death, reduced by two percent (2%) thereof  
22 for each full year, if any, by which the age of the former judge at date of death exceeds that of  
23 his spouse.

24 (e1) In the event a retired member who earned the first month of membership service credit  
25 on or after July 1, 2023, or forfeited all creditable service in the Retirement System earned prior  
26 to July 1, 2023, by receiving a return of contributions, dies while that retired member was in  
27 receipt of a retirement allowance under the provisions of this Article, there shall be paid to such  
28 person or persons as the retired member shall have nominated by electronic submission in a form  
29 approved by the Board of Trustees or by written designation duly acknowledged and filed with  
30 the Board of Trustees, if such person or persons are living at the time of the retired member's  
31 death, otherwise to the retired member's legal representatives, a death benefit equal to the excess,  
32 if any, of the accumulated contributions of the retiree at the date of retirement over the total of  
33 the retirement allowances paid prior to the death of the retired member.

34 In the event that a retirement allowance becomes payable to the designated survivor of a  
35 retired member under G.S. 135-61 and such retirement allowance to the survivor shall terminate  
36 upon the death of the survivor before the total of the retirement allowances paid to the retiree and  
37 the designated survivor combined equals the amount of the accumulated contributions of the  
38 retiree at the date of retirement, the excess, if any, of such accumulated contributions over the  
39 total of the retirement allowances paid to the retiree and the survivor combined shall be paid in a  
40 lump sum to such person or persons as the retiree nominated by electronic submission in a form  
41 approved by the Board of Trustees or by written designation duly acknowledged and filed with  
42 the Board of Trustees, if such person or persons are living at the time such payment falls due,  
43 otherwise to the retiree's legal representative.

44 ...."

45 **SECTION 3.** This act becomes effective July 1, 2022.