

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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HOUSE BILL 1099

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

Sponsors: Representatives C. Smith and McNeill (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Pensions and Retirement, if favorable, Rules, Calendar, and Operations of the House

May 27, 2022

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in ~~service~~, service who earned the first month of membership service credit prior to July 1, 2023, and had not withdrawn contributions for such membership service in the Retirement System, there shall be paid in a lump sum to such person as the member shall have nominated by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



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1 approved by the Board of Trustees or by written designation duly acknowledged and filed with  
2 the Board of Trustees, if such person is living at the time such payment falls due, otherwise to  
3 the former member's legal representatives.

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

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

23 (1) The member had either:

- 24 a. Attained such age or creditable service, or both, to be eligible to  
25 commence retirement with an early or service retirement allowance;  
26 or  
27 b. Attained 16 years of creditable service, in which case the retirement  
28 allowance shall be computed in accordance with subsection (b) of  
29 G.S. 135-58, notwithstanding the requirement of obtaining age 50.

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

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

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

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

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

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

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

1 commencement of the leave of absence will be deemed to be the actual  
2 compensation rate of the employee during the leave of absence.

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

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

14 ...

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

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

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

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

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

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

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

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

12          **"§ 135-64. Benefits on death after retirement.**

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

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

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

1 (d) In the event ~~that a retirement allowance becomes payable to the spouse of a former~~  
2 ~~member who earned the first month of membership service credit prior to July 1, 2023, and had~~  
3 ~~not withdrawn contributions for such membership service in the Retirement System, becomes~~  
4 ~~entitled to a retirement allowance under the provisions of subsection (a) or subsection (b) above,~~  
5 ~~of this section, or to the designated survivor of such a former member becomes entitled to~~  
6 ~~payment under one of the optional modes of payment under G.S. 135-61, and such retirement~~  
7 ~~allowance to the spouse shall terminate on the remarriage or death of the spouse, or on the death~~  
8 ~~of the designated survivor, before the total of the retirement allowances paid to the former~~  
9 ~~member and his spouse or designated survivor combined equals the amount of the member's~~  
10 ~~accumulated contributions at his date of retirement, the excess of such accumulated contributions~~  
11 ~~over the total of the retirement allowances paid to the former member and his spouse or~~  
12 ~~designated survivor combined shall be paid in a lump sum to such person as the member shall~~  
13 ~~have nominated by electronic submission in a form approved by the Board of Trustees or by~~  
14 ~~written designation duly acknowledged and filed with the Board of Trustees, if such person is~~  
15 ~~living at the time such payment falls due, otherwise to the former member's legal representatives.~~

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

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

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

47 ...."

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