

By: Senator(s) Frazier

To: Judiciary

SENATE BILL NO. 2929

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A FINDING OF TOTAL DISABILITY BY THE SOCIAL
3 SECURITY ADMINISTRATION WILL CREATE A REBUTTABLE PRESUMPTION OF
4 DISABILITY; TO PROVIDE THAT CLEAR AND CONVINCING EVIDENCE IS
5 NEEDED TO OVERCOME THE PRESUMPTION; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. Section 25-11-113, Mississippi Code of 1972, is
8 amended as follows:

9 25-11-113. (1) (a) Upon the application of a member or his
10 employer, any active member in state service who has at least four
11 (4) years of membership service credit may be retired by the board
12 of trustees on the first of the month following the date of filing
13 such application on a disability retirement allowance, but in no
14 event shall the disability retirement allowance commence before
15 termination of state service, provided that the medical board,
16 after a medical examination, shall certify that the member is
17 mentally or physically incapacitated for the further performance
18 of duty, that such incapacity is likely to be permanent, and that
19 the member should be retired; however, the board of trustees may
20 accept a disability medical determination from the Social Security
21 Administration in lieu of a certification from the medical board,
22 if the Social Security Administration's finding is supported by
23 substantial evidence. A finding of total disability by the Social
24 Security Administration will create a rebuttable presumption of
25 disability; however, the presumption may be overcome by clear and
26 convincing evidence. For the purposes of disability
27 determination, the medical board shall apply the following

28 definition of disability: the inability to perform the usual
29 duties of employment or the incapacity to perform such lesser
30 duties, if any, as the employer, in its discretion, may assign
31 without material reduction in compensation, or the incapacity to
32 perform the duties of any employment covered by the Public
33 Employees' Retirement System (Section 25-11-101 et seq.) that is
34 actually offered and is within the same general territorial work
35 area, without material reduction in compensation. The employer
36 shall be required to furnish the job description and duties of the
37 member. The employer shall further certify whether the employer
38 has offered the member other duties and has complied with the
39 applicable provisions of the Americans With Disabilities Act in
40 affording reasonable accommodations which would allow the employee
41 to continue employment.

42 (b) Any inactive member with four (4) or more years of
43 membership service credit, who has withdrawn from active state
44 service, is not eligible for a disability retirement allowance
45 unless the disability occurs within six (6) months of the
46 termination of active service and unless satisfactory proof is
47 presented to the board of trustees that the disability was the
48 direct cause of withdrawal from state service.

49 (c) If the medical board certifies that the member is
50 not mentally or physically incapacitated for the future
51 performance of duty, the member may request, within sixty (60)
52 days, a hearing before the hearing officer as provided in Section
53 25-11-120. All hearings shall be held in accordance with rules
54 and regulations adopted by the board of trustees to govern such
55 hearings. Such hearing may be closed upon the request of the
56 member.

57 (d) The medical board may request additional medical
58 evidence and/or other physicians to conduct an evaluation of the
59 member's condition. If the medical board requests additional
60 medical evidence and the member refuses the request, the
61 application shall be considered void.

62 (2) Allowance on disability retirement.

63 (a) Upon retirement for disability, an eligible member
64 shall receive a retirement allowance if he has attained the age of

65 sixty (60) years.

66 (b) Except as provided in paragraph (c) of this
67 subsection (2), an eligible member who is retired for disability
68 and who has not attained sixty (60) years of age shall receive a
69 disability benefit as computed in Section 25-11-111(d)(1) through
70 (d)(4) which shall consist of:

71 (i) A member's annuity which shall be the
72 actuarial equivalent of his accumulated contributions at the time
73 of retirement; and

74 (ii) An employer's annuity equal to the amount
75 that would have been payable as a retirement allowance for both
76 membership service and prior service had the member continued in
77 service to the age of sixty (60) years, which shall apply to the
78 allowance for disability retirement paid to retirees receiving
79 such allowance upon and after April 12, 1977. This employer's
80 annuity shall be computed on the basis of the average "earned
81 compensation" as defined in Section 25-11-103.

82 (c) For persons who become members after June 30, 1992,
83 and for active members on June 30, 1992, who elect benefits under
84 this paragraph (c) instead of those provided under paragraph (b)
85 of this subsection (2), the disability allowance shall consist of
86 two (2) parts: a temporary allowance and a deferred allowance.

87 The temporary allowance shall equal the greater of (i) forty
88 percent (40%) of average compensation at the time of disability,
89 plus ten percent (10%) of average compensation for each of the
90 first two (2) dependent children, as defined in Sections 25-11-103
91 and 25-11-114, or (ii) the accrued benefit based on actual
92 service. It shall be payable for a period of time based on the
93 member's age at disability, as follows:

94 Age at Disability	Duration
95 60 and earlier	to age 65
96 61	to age 66
97 62	to age 66

98	63	to age 67
99	64	to age 67
100	65	to age 68
101	66	to age 68
102	67	to age 69
103	68	to age 70
104	69 and over	one year

105 The deferred allowance shall commence when the temporary
106 allowance ceases and shall be payable for life. The deferred
107 allowance shall equal the greater of (i) the allowance that would
108 have been payable had the member continued in service to the
109 termination age of the temporary allowance, but no more than forty
110 percent (40%) of average compensation, or (ii) the accrued benefit
111 based on actual service at the time of disability. The deferred
112 allowance as determined at the time of disability shall be
113 adjusted in accordance with Section 25-11-112 for the period
114 during which the temporary annuity is payable. In no case shall a
115 member receive less than Ten Dollars (\$10.00) per month for each
116 year of service and proportionately for each quarter year thereof
117 reduced for the option selected.

118 (d) The member may elect to receive the actuarial
119 equivalent of the disability retirement allowance in a reduced
120 allowance payable throughout life under any of the provisions of
121 the options provided under Section 25-11-115.

122 (e) Should a disability retiree who has not selected an
123 option under Section 25-11-115 die before being repaid in
124 disability benefits the sum of his total contributions, then his
125 named beneficiary shall receive the difference in cash, which
126 shall apply to all deceased disability retirees from and after
127 January 1, 1953.

128 (3) Reexamination of retirees retired on account of
129 disability. Except as otherwise provided in this section, once
130 each year during the first five (5) years following retirement of

131 a member on a disability retirement allowance, and once in every
132 period of three (3) years thereafter, the board of trustees may,
133 and upon his application shall, require any disability retiree who
134 has not yet attained the age of sixty (60) years or the
135 termination age of the temporary allowance under paragraph (2)(c)
136 of this section to undergo a medical examination, such examination
137 to be made at the place of residence of said retiree or other
138 place mutually agreed upon by a physician or physicians designated
139 by the board. The board, however, in its discretion, may
140 authorize the medical board to establish reexamination schedules
141 appropriate to the medical condition of individual disability
142 retirees. Should any disability retiree who has not yet attained
143 the age of sixty (60) years or the termination age of the
144 temporary allowance under paragraph (2)(c) of this section refuse
145 to submit to any medical examination provided herein, his
146 allowance may be discontinued until his withdrawal of such
147 refusal; and should his refusal continue for one (1) year, all his
148 rights to a disability benefit shall be revoked by the board of
149 trustees.

150 (4) If the medical board reports and certifies to the board
151 of trustees, after a comparable job analysis or other similar
152 study, that such disability retiree is engaged in, or is able to
153 engage in, a gainful occupation paying more than the difference
154 between his disability allowance, exclusive of cost of living
155 adjustments, and the average compensation, and if the board of
156 trustees concurs in such report, the disability benefit shall be
157 reduced to an amount which, together with the amount earnable by
158 him, shall equal the amount of his average compensation. If his
159 earning capacity be later changed, the amount of the said benefit
160 may be further modified, provided that the revised benefit shall
161 not exceed the amount originally granted. A retiree receiving a
162 disability benefit who is restored to active service at a salary
163 less than the average compensation shall not become a member of

164 the retirement system.

165 (5) Should a disability retiree under the age of sixty (60)
166 years or the termination age of the temporary allowance under
167 paragraph (2)(c) of this section be restored to active service at
168 a compensation not less than his average compensation, his
169 disability benefit shall cease, he shall again become a member of
170 the retirement system, and contributions shall be withheld and
171 reported. Any such prior service certificate, on the basis of
172 which his service was computed at the time of retirement, shall be
173 restored to full force and effect. In addition, upon his
174 subsequent retirement he shall be credited with all creditable
175 service as a member, but the total retirement allowance paid to
176 the retired member in his previous retirement shall be deducted
177 from his retirement reserve and taken into consideration in
178 recalculating the retirement allowance under a new option
179 selected.

180 (6) If following reexamination in accordance with the
181 provisions contained in this section, the medical board determines
182 that a retiree retired on account of disability is physically and
183 mentally able to return to the employment from which he is
184 retired, the board of trustees, upon certification of such
185 findings from the medical board, shall, after a reasonable period
186 of time, terminate the disability allowance, whether or not the
187 retiree is re-employed or seeks such re-employment. In addition,
188 if the board of trustees determines that the retiree is no longer
189 sustaining a loss of income as established by documented evidence
190 of the retiree's earned income, the eligibility for a disability
191 allowance shall terminate and the allowance terminated within a
192 reasonable period of time. In the event the retirement allowance
193 is terminated under the provisions of this section, the retiree
194 may subsequently qualify for a retirement allowance under Section
195 25-11-111 based on actual years of service credit plus credit for
196 the period during which a disability allowance was paid.

197 (7) Any current member as of June 30, 1992, who retires on a
198 disability retirement allowance after June 30, 1992, and who has
199 not elected to receive benefits under paragraph (2)(c) of this
200 section, shall relinquish all rights under the Age Discrimination
201 in Employment Act of 1967, as amended, with regard to the benefits
202 payable under this section.

203 SECTION 2. This act shall take effect and be in force from
204 and after July 1, 1999.