

By: Senator(s) Frazier

To: Judiciary

SENATE BILL NO. 2929  
(As Passed the Senate)

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           (8) This section shall stand repealed on July 1, 2000.

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