

By: Representatives Lane, Clarke,
Fredericks, Mayo, Thomas

To: Appropriations

HOUSE BILL NO. 815

1 AN ACT TO AMEND SECTION 25-11-113, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A DETERMINATION OF DISABILITY BY THE SOCIAL
3 SECURITY ADMINISTRATION CREATES A REBUTTABLE PRESUMPTION OF
4 DISABILITY IN CASES BEFORE THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM
5 AND TO REQUIRE THE SYSTEM TO REIMBURSE A DISABILITY APPLICANT
6 ORDERED TO RECEIVE A MEDICAL EXAMINATION MORE THAN 50 MILES FROM
7 THE MEMBER'S HOME FOR MILEAGE AND LODGING EXPENSES; TO AMEND
8 SECTION 25-11-119, MISSISSIPPI CODE OF 1972, TO DELETE THE
9 AUTHORITY OF THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES'
10 RETIREMENT SYSTEM TO CONTRACT FOR DISABILITY DETERMINATION
11 SERVICES AND TO REQUIRE THE PHYSICIANS APPOINTED TO THE SYSTEM'S
12 MEDICAL BOARD TO BE BOARD CERTIFIED IN CERTAIN SPECIALTIES; TO
13 AMEND SECTIONS 25-11-114 AND 25-13-13, MISSISSIPPI CODE OF 1972,
14 IN CONFORMITY THERETO; TO AMEND SECTION 25-11-120, MISSISSIPPI
15 CODE OF 1972, TO TRANSFER THE DUTY OF APPOINTING HEARING OFFICERS
16 FOR DISABILITY DETERMINATION APPEALS FROM THE BOARD OF TRUSTEES OF
17 THE PUBIC EMPLOYEES' RETIREMENT SYSTEM TO THE EMPLOYEE APPEALS
18 BOARD OF THE STATE PERSONNEL BOARD, TO AUTHORIZE CLAIMANTS ON
19 APPEAL TO SUBPOENA WITNESSES AND DOCUMENTS AND TO TRANSFER
20 JURISDICTION FOR HEARING APPEALS FROM THE BOARD OF TRUSTEES OF THE
21 PUBLIC EMPLOYEES' RETIREMENT SYSTEM FROM THE CIRCUIT COURT OF THE
22 FIRST JUDICIAL DISTRICT OF HINDS COUNTY TO THE COUNTY OR JUDICIAL
23 DISTRICT IN WHICH THE CLAIMANT RESIDES; AND FOR RELATED PURPOSES.

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

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

27 25-11-113. (1) (a) Upon the application of a member or his
28 employer, any active member in state service who has at least four
29 (4) years of membership service credit may be retired by the board
30 of trustees on the first of the month following the date of filing
31 such application on a disability retirement allowance, but in no
32 event shall the disability retirement allowance commence before
33 termination of state service, provided that the medical board,
34 after an evaluation of medical evidence that may or may not
35 include an actual physical examination by the medical board, shall
36 certify that the member is mentally or physically incapacitated
37 for the further performance of duty, that such incapacity is

38 likely to be permanent, and that the member should be retired;
39 however, the board of trustees may accept a disability medical
40 determination from the Social Security Administration in lieu of a
41 certification from the medical board. For purposes of
42 determination by the board of trustees as to whether or not a
43 member is eligible for a disability retirement allowance, a
44 disability medical determination by the Social Security
45 Administration creates a rebuttable presumption of disability
46 which may be overcome only by clear and convincing evidence. In
47 making a disability determination, the medical board shall apply
48 the following definition of disability: the inability to perform
49 the usual duties of employment or the incapacity to perform such
50 lesser duties, if any, as the employer, in its discretion, may
51 assign without material reduction in compensation, or the
52 incapacity to perform the duties of any employment covered by the
53 Public Employees' Retirement System (Section 25-11-101 et seq.)
54 that is actually offered and is within the same general
55 territorial work area, without material reduction in compensation.
56 The employer shall be required to furnish the job description and
57 duties of the member. The employer shall further certify whether
58 the employer has offered the member other duties and has complied
59 with the applicable provisions of the Americans With Disabilities
60 Act in affording reasonable accommodations which would allow the
61 employee to continue employment.

62 (b) Any inactive member with four (4) or more years of
63 membership service credit, who has withdrawn from active state
64 service, is not eligible for a disability retirement allowance
65 unless the disability occurs within six (6) months of the
66 termination of active service and unless satisfactory proof is
67 presented to the board of trustees that the disability was the
68 direct cause of withdrawal from state service.

69 (c) Any member who is or becomes eligible for service
70 retirement benefits under Section 25-11-111 while pursuing a

71 disability retirement allowance under this section or Section
72 25-11-114 may elect to receive a service retirement allowance
73 pending a final determination on eligibility for a disability
74 retirement allowance or withdrawal of the application for the
75 disability retirement allowance. In such a case, an application
76 for a disability retirement allowance must be on file with the
77 system before the commencement of a service retirement allowance.
78 If the application is approved, the option selected and
79 beneficiary designated on the retirement application shall be used
80 to determine the disability retirement allowance. If the
81 application is not approved or if the application is withdrawn,
82 the service retirement allowance shall continue to be paid in
83 accordance with the option selected. No person may apply for a
84 disability retirement allowance after the person begins to receive
85 a service retirement allowance.

86 (d) If the medical board certifies that the member is
87 not mentally or physically incapacitated for the future
88 performance of duty, the member may request, within sixty (60)
89 days, a hearing before the hearing officer as provided in Section
90 25-11-120. All hearings shall be held in accordance with rules
91 and regulations adopted by the board to govern such hearings.
92 Such hearing may be closed upon the request of the member.

93 (e) The medical board may request additional medical
94 evidence and/or other physicians to conduct an evaluation of the
95 member's condition. If the medical board or board of trustees
96 orders a member to receive a medical examination and the member
97 must travel more than fifty (50) miles from the member's residence
98 to the site of the medical examination, the system must reimburse
99 the member for documented mileage and necessary lodging expenses
100 incurred in traveling to the medical examination location. If the
101 medical board requests additional medical evidence and the member
102 refuses the request, the application shall be considered void.

103 (2) Allowance on disability retirement.

104 (a) Upon retirement for disability, an eligible member
105 shall receive a retirement allowance if he has attained the age of
106 sixty (60) years.

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

112 (i) A member's annuity which shall be the
113 actuarial equivalent of his accumulated contributions at the time
114 of retirement; and

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

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

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

135 Age at Disability	Duration
136 60 and earlier	to age 65

137	61	to age 66
138	62	to age 66
139	63	to age 67
140	64	to age 67
141	65	to age 68
142	66	to age 68
143	67	to age 69
144	68	to age 70
145	69 and over	one year

146 The deferred allowance shall commence when the temporary
147 allowance ceases and shall be payable for life. The deferred
148 allowance shall equal the greater of (i) the allowance that would
149 have been payable had the member continued in service to the
150 termination age of the temporary allowance, but no more than forty
151 percent (40%) of average compensation, or (ii) the accrued benefit
152 based on actual service at the time of disability. The deferred
153 allowance as determined at the time of disability shall be
154 adjusted in accordance with Section 25-11-112 for the period
155 during which the temporary annuity is payable. In no case shall a
156 member receive less than Ten Dollars (\$10.00) per month for each
157 year of service and proportionately for each quarter year thereof
158 reduced for the option selected.

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

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

169 (3) Reexamination of retirees retired on account of
170 disability. Except as otherwise provided in this section, once
171 each year during the first five (5) years following retirement of
172 a member on a disability retirement allowance, and once in every
173 period of three (3) years thereafter, the board of trustees may,
174 and upon his application shall, require any disability retiree who
175 has not yet attained the age of sixty (60) years or the
176 termination age of the temporary allowance under subsection (2)(c)
177 of this section to undergo a medical examination, such examination
178 to be made at the place of residence of the retiree or other place
179 mutually agreed upon by a physician or physicians designated by
180 the board. The board, however, in its discretion, may authorize
181 the medical board to establish reexamination schedules appropriate
182 to the medical condition of individual disability retirees.
183 Should any disability retiree who has not yet attained the age of
184 sixty (60) years or the termination age of the temporary allowance
185 under subsection (2)(c) of this section refuse to submit to any
186 medical examination provided herein, his allowance may be
187 discontinued until his withdrawal of such refusal; and should his
188 refusal continue for one (1) year, all his rights to a disability
189 benefit shall be revoked by the board of trustees.

190 (4) If the medical board reports and certifies to the board
191 of trustees, after a comparable job analysis or other similar
192 study, that such disability retiree is engaged in, or is able to
193 engage in, a gainful occupation paying more than the difference
194 between his disability allowance, exclusive of cost of living
195 adjustments, and the average compensation, and if the board of
196 trustees concurs in such report, the disability benefit shall be
197 reduced to an amount which, together with the amount earnable by
198 him, shall equal the amount of his average compensation. If his
199 earning capacity be later changed, the amount of the benefit may
200 be further modified, provided that the revised benefit shall not
201 exceed the amount originally granted. A retiree receiving a

202 disability benefit who is restored to active service at a salary
203 less than the average compensation shall not become a member of
204 the retirement system.

205 (5) Should a disability retiree under the age of sixty (60)
206 years or the termination age of the temporary allowance under
207 subsection (2)(c) of this section be restored to active service at
208 a compensation not less than his average compensation, his
209 disability benefit shall cease, he shall again become a member of
210 the retirement system, and contributions shall be withheld and
211 reported. Any such prior service certificate, on the basis of
212 which his service was computed at the time of retirement, shall be
213 restored to full force and effect. In addition, upon his
214 subsequent retirement he shall be credited with all creditable
215 service as a member, but the total retirement allowance paid to
216 the retired member in his previous retirement shall be deducted
217 from his retirement reserve and taken into consideration in
218 recalculating the retirement allowance under a new option
219 selected.

220 (6) If following reexamination in accordance with the
221 provisions contained in this section, the medical board determines
222 that a retiree retired on account of disability is physically and
223 mentally able to return to the employment from which he is
224 retired, the board of trustees, upon certification of such
225 findings from the medical board, shall, after a reasonable period
226 of time, terminate the disability allowance, whether or not the
227 retiree is reemployed or seeks such reemployment. In addition, if
228 the board of trustees determines that the retiree is no longer
229 sustaining a loss of income as established by documented evidence
230 of the retiree's earned income, the eligibility for a disability
231 allowance shall terminate and the allowance terminated within a
232 reasonable period of time. In the event the retirement allowance
233 is terminated under the provisions of this section, the retiree
234 may subsequently qualify for a retirement allowance under Section

235 25-11-111 based on actual years of service credit plus credit for
236 the period during which a disability allowance was paid.

237 (7) Any current member as of June 30, 1992, who retires on a
238 disability retirement allowance after June 30, 1992, and who has
239 not elected to receive benefits under subsection (2)(c) of this
240 section, shall relinquish all rights under the Age Discrimination
241 in Employment Act of 1967, as amended, with regard to the benefits
242 payable under this section.

243 **SECTION 2.** Section 25-11-119, Mississippi Code of 1972, is
244 amended as follows:

245 25-11-119. (1) The board shall keep such data as shall be
246 necessary for actuarial valuation of the assets and liabilities of
247 the system and for checking its operating experience.

248 (2) The board shall keep minutes which shall be open to
249 public inspection. It shall have the accounts of the system
250 audited annually by the State Audit Department and shall publish
251 as of the end of each fiscal year a report showing the fiscal
252 transactions of the system for the preceding fiscal year, the
253 amount of the accumulated cash and securities of the system, a
254 statement of income and expenditures, a statement of investments
255 acquired and disposed of, and a balance sheet showing the
256 financial condition of the system by means of an actuarial
257 valuation of its assets and liabilities. It shall also publish a
258 synopsis of the report.

259 (3) The board shall establish a general office for the
260 meeting of the board and for the administrative personnel; provide
261 for the installation of an adequate system of books, accounts, and
262 records which will give effect to all requirements of Articles 1
263 and 3; and credit all assets received by the funds according to
264 the purposes for which they are held. All books, accounts and
265 records shall be kept in the general office of the board and shall
266 be public records except for individual member records. The
267 system shall not disclose the name, address or contents of any

268 individual member records without the prior written consent of the
269 individual to whom the record pertains.

270 (4) The board shall hold regular meetings at least quarterly
271 in each year and such special meetings as may be deemed necessary.
272 All meetings shall be open to the public.

273 (5) The board shall have power to make contracts, and to sue
274 and be sued, under the name of the Board of Trustees of the Public
275 Employees' Retirement System of Mississippi.

276 (6) Legal advisor. The Attorney General shall be the legal
277 advisor of the board; and the board may employ counsel when
278 needed.

279 (7) Medical board. The board shall designate a medical
280 board to be composed of three (3) physicians who are board
281 certified in family practice, internal medicine, psychiatry,
282 orthopedic surgery or neurosurgery. A physician selected for the
283 medical board may not be a member of the system. If required,
284 other physicians may be engaged to report on special cases. The
285 medical board * * * shall arrange for, and pass upon, all medical
286 examinations required under the provisions of this article; shall
287 investigate all essential statements and certificates by or on
288 behalf of a member in connection with an application for
289 disability retirement; and shall report in writing to the board of
290 trustees its conclusions and recommendations upon all the matters
291 referred to it.

292 (8) Duties of actuary. The board of trustees shall
293 designate an actuary who shall be the technical advisor of the
294 board on matters regarding the operation of the system, and shall
295 perform such other duties as are required in connection therewith.

296 (9) At least once in each two-year period, the actuary shall
297 make an actuarial survey of the mortality, service, withdrawal and
298 compensation experience of the members and beneficiaries of the
299 retirement system, and shall make a valuation of the assets and
300 liabilities of the system. Taking into account the result of such

301 investigation and valuation, the board of trustees shall adopt for
302 the retirement system such mortality, service, and other tables as
303 shall be deemed necessary. On the basis of such tables as the
304 board of trustees shall adopt, the actuary shall make valuations
305 of the assets and liabilities of the funds of the system.

306 **SECTION 3.** Section 25-11-114, Mississippi Code of 1972, is
307 amended as follows:

308 25-11-114. (1) The applicable benefits provided in
309 subsections (2) and (3) of this section shall be paid to eligible
310 beneficiaries of any member who has completed four (4) or more
311 years of creditable service and who dies before retirement and who
312 has not filed a Pre-Retirement Optional Retirement Form as
313 provided in Section 25-11-111.

314 (2) (a) The member's surviving spouse who has been married
315 to the member for not less than one (1) year immediately preceding
316 his death shall receive an annuity computed in accordance with
317 paragraph (d) of this subsection (2) as if the member:

318 (i) Had retired on the date of his death with
319 entitlement to an annuity provided for in Section 25-11-111,
320 notwithstanding that he might not have attained age sixty (60) or
321 acquired twenty-five (25) years of creditable service;

322 (ii) Had nominated his spouse as beneficiary; and

323 (b) If, at the time of the member's death, there are no
324 dependent children, and the surviving spouse, who otherwise would
325 receive the annuity under this subsection (2), has filed with the
326 system a signed written waiver of his or her rights to the annuity
327 and that waiver was in effect at the time of the member's death, a
328 lump sum distribution of the deceased member's accumulated
329 contributions shall be refunded in accordance with Section
330 25-11-117.

331 (c) The spouse annuity shall begin on the first day of
332 the month following the date of the member's death, but in case of

333 late filing, retroactive payments will be made for a period of not
334 more than one (1) year.

335 (d) The spouse annuity shall be payable for life and
336 shall be the greater of twenty percent (20%) of the deceased
337 member's average compensation as defined in Section 25-11-103 at
338 the time of death or Fifty Dollars (\$50.00) monthly. Surviving
339 spouses of deceased members who previously received spouse
340 retirement benefits under this paragraph (d) from and after July
341 1, 1992, and whose benefits were terminated before July 1, 2004,
342 because of remarriage, may again receive the retirement benefits
343 authorized under this paragraph (d) by making application with the
344 board to reinstate those benefits. Any reinstatement of the
345 benefits shall be prospective only and shall begin after the first
346 of the month following the date of the application for
347 reinstatement, but no earlier than July 1, 2004.

348 (e) However, the spouse may elect by an irrevocable
349 agreement on a form prescribed by the board of trustees to receive
350 a monthly allowance as computed under either paragraph (d) or this
351 paragraph. The irrevocable agreement shall constitute a waiver by
352 the spouse to any current and future monthly allowance under the
353 paragraph not elected, and the waiver shall be a complete and full
354 discharge of all obligations of the retirement system under that
355 paragraph.

356 Any member who has completed four (4) or more years of
357 creditable service and who dies before retirement and leaves a
358 spouse who has been married to the member for not less than one
359 (1) year immediately preceding his death and has not exercised any
360 other option shall be deemed to have exercised Option 2 under
361 Section 25-11-115 for the benefit of his spouse, which spouse
362 shall be paid Option 2 settlement benefits under this article
363 beginning on the first of the month following the date of death,
364 but in case of late filing, retroactive payments will be made for
365 a period of not more than one (1) year. The method of calculating

366 the retirement benefits shall be on the same basis as provided in
367 Section 25-11-111(d). However, if the member dies before being
368 qualified for full unreduced benefits, then the benefits shall be
369 reduced by three percent (3%) per year for the lesser of either
370 the years of service or age required for full unreduced benefits
371 in Section 25-11-111(d).

372 (3) (a) Subject to the maximum limitation provided in this
373 paragraph, the member's dependent children each shall receive an
374 annuity of the greater of ten percent (10%) of the member's
375 average compensation as defined in Section 25-11-103 at the time
376 of the death of the member or Fifty Dollars (\$50.00) monthly;
377 however, if there are more than three (3) dependent children, each
378 dependent child shall receive an equal share of a total annuity
379 equal to thirty percent (30%) of the member's average
380 compensation, provided that the total annuity shall not be less
381 than One Hundred Fifty Dollars (\$150.00) per month for all
382 children.

383 (b) A child shall be considered to be a dependent child
384 until marriage, or the attainment of age nineteen (19), whichever
385 comes first; however, this age limitation shall be extended beyond
386 age nineteen (19), but in no event beyond the attainment of age
387 twenty-three (23), as long as the child is a student regularly
388 pursuing a full-time course of resident study or training in an
389 accredited high school, trade school, technical or vocational
390 institute, junior or community college, college, university or
391 comparable recognized educational institution duly licensed by a
392 state. A student child whose birthday falls during the school
393 year (September 1 through June 30) is considered not to reach age
394 twenty-three (23) until the July 1 following the actual
395 twenty-third birthday. A full-time course of resident study or
396 training means a day or evening noncorrespondence course that
397 includes school attendance at the rate of at least thirty-six (36)
398 weeks per academic year or other applicable period with a subject

399 load sufficient, if successfully completed, to attain the
400 educational or training objective within the period generally
401 accepted as minimum for completion, by a full-time day student, of
402 the academic or training program concerned. Any child who is
403 physically or mentally incompetent, as adjudged by either a
404 Mississippi court of competent jurisdiction or by the board, shall
405 receive benefits for as long as the incompetency exists.

406 (c) If there are more than three (3) dependent
407 children, upon a child's ceasing to be a dependent child, his
408 annuity shall terminate and there shall be a redetermination of
409 the amounts payable to any remaining dependent children.

410 (d) Annuities payable under this subsection (3) shall
411 begin the first day of the month following the date of the
412 member's death or in case of late filing, retroactive payments
413 will be made for a period of not more than one (1) year. Those
414 benefits may be paid to a surviving parent or the lawful custodian
415 of a dependent child for the use and benefit of the child without
416 the necessity of appointment as guardian.

417 (4) (a) Death benefits in the line of duty. Regardless of
418 the number of years of the member's creditable service, the spouse
419 and/or the dependent children of an active member who is killed in
420 the line of performance of duty or dies as a direct result of an
421 accident occurring in the line of performance of duty shall
422 qualify, on approval of the board, for a retirement allowance on
423 the first of the month following the date of death, but in the
424 case of late filing, retroactive payments will be made for a
425 period of not more than one (1) year. The spouse shall receive a
426 retirement allowance for life equal to one-half (1/2) of the
427 average compensation as defined in Section 25-11-103. In addition
428 to the retirement allowance for the spouse, or if there is no
429 surviving spouse, the member's dependent child shall receive a
430 retirement allowance in the amount of one-fourth (1/4) of the
431 member's average compensation as defined in Section 25-11-103;

432 however, if there are two (2) or more dependent children, each
433 dependent child shall receive an equal share of a total annuity
434 equal to one-half (1/2) of the member's average compensation. If
435 there are more than two (2) dependent children, upon a child's
436 ceasing to be a dependent child, his annuity shall terminate and
437 there shall be a redetermination of the amounts payable to any
438 remaining dependent children. Those benefits shall cease to be
439 paid for the support and maintenance of each child upon the child
440 attaining the age of nineteen (19) years; however, the spouse
441 shall continue to be eligible for the aforesaid retirement
442 allowance. Those benefits may be paid to a surviving parent or
443 lawful custodian of the children for the use and benefit of the
444 children without the necessity of appointment as guardian. Any
445 spouse who received spouse retirement benefits under this
446 paragraph (a) from and after April 4, 1984, and whose benefits
447 were terminated before July 1, 2004, because of remarriage, may
448 again receive the retirement benefits authorized under this
449 paragraph (a) by making application with the board to reinstate
450 those benefits. Any reinstatement of the benefits shall be
451 prospective only and shall begin after the first of the month
452 following the date of the application for reinstatement, but not
453 earlier than July 1, 2004.

454 (b) A child shall be considered to be a dependent child
455 until marriage, or the attainment of age nineteen (19), whichever
456 comes first; however, this age limitation shall be extended beyond
457 age nineteen (19), but in no event beyond the attainment of age
458 twenty-three (23), as long as the child is a student regularly
459 pursuing a full-time course of resident study or training in an
460 accredited high school, trade school, technical or vocational
461 institute, junior or community college, college, university or
462 comparable recognized educational institution duly licensed by a
463 state. A student child whose birthday falls during the school
464 year (September 1 through June 30) is considered not to reach age

465 twenty-three (23) until the July 1 following the actual
466 twenty-third birthday. A full-time course of resident study or
467 training means a day or evening noncorrespondence course that
468 includes school attendance at the rate of at least thirty-six (36)
469 weeks per academic year or other applicable period with a subject
470 load sufficient, if successfully completed, to attain the
471 educational or training objective within the period generally
472 accepted as minimum for completion, by a full-time day student, of
473 the academic or training program concerned. Any child who is
474 physically or mentally incompetent, as adjudged by either a
475 Mississippi court of competent jurisdiction or by the board, shall
476 receive benefits for as long as the incompetency exists.

477 (5) If all the annuities provided for in this section
478 payable on account of the death of a member terminate before there
479 has been paid an aggregate amount equal to the member's
480 accumulated contributions standing to the member's credit in the
481 annuity savings account at the time of the member's death, the
482 difference between the accumulated contributions and the aggregate
483 amount of annuity payments shall be paid to the person that the
484 member has nominated by written designation duly executed and
485 filed with the board. If there is no designated beneficiary
486 surviving at termination of benefits, the difference shall be
487 payable pursuant to Section 25-11-117.1(1).

488 (6) Regardless of the number of years of creditable service
489 upon the application of a member or employer, any active member
490 who becomes disabled as a direct result of an accident or
491 traumatic event resulting in a physical injury occurring in the
492 line of performance of duty, provided that the medical board * * *
493 after a medical examination certifies that the member is mentally
494 or physically incapacitated for the further performance of duty
495 and the incapacity is likely to be permanent, may be retired by
496 the board of trustees on the first of the month following the date
497 of filing the application but in no event shall the retirement

498 allowance begin before the termination of state service. The
499 retirement allowance shall equal the allowance on disability
500 retirement as provided in Section 25-11-113 but shall not be less
501 than fifty percent (50%) of average compensation.

502 Permanent and total disability resulting from a
503 cardiovascular, pulmonary or musculo-skeletal condition that was
504 not a direct result of a traumatic event occurring in the
505 performance of duty shall be deemed an ordinary disability. A
506 mental disability based exclusively on employment duties occurring
507 on an ongoing basis shall be deemed an ordinary disability.

508 (7) If the deceased or disabled member has less than four
509 (4) years of creditable service, the average compensation as
510 defined in Section 25-11-103 shall be the average of all annual
511 earned compensation in state service for the purposes of benefits
512 provided in this section.

513 (8) In case of death or total and permanent disability under
514 subsection (4) or subsection (6) of this section and before the
515 board shall consider any application for a retirement allowance,
516 the employer must certify to the board that the member's death or
517 disability was a direct result of an accident or a traumatic event
518 occurring during and as a result of the performance of the regular
519 and assigned duties of the employee and that the death or
520 disability was not the result of the willful negligence of the
521 employee.

522 (9) The application for the retirement allowance must be
523 filed within one (1) year after death of an active member who is
524 killed in the line of performance of duty or dies as a direct
525 result of an accident occurring in the line of performance of duty
526 or traumatic event; but the board of trustees may consider an
527 application for disability filed after the one-year period if it
528 can be factually demonstrated to the satisfaction of the board of
529 trustees that the disability is due to the accident and that the
530 filing was not accomplished within the one-year period due to a

531 delayed manifestation of the disability or to circumstances beyond
532 the control of the member. However, in case of late filing,
533 retroactive payments will be made for a period of not more than
534 one (1) year only.

535 (10) Notwithstanding any other section of this article and
536 in lieu of any payments to a designated beneficiary for a refund
537 of contributions under Section 25-11-117, the spouse and/or
538 children shall be eligible for the benefits payable under this
539 section, and the spouse may elect, for both the spouse and/or
540 children, to receive benefits in accordance with either
541 subsections (2) and (3) or subsection (4) of this section;
542 otherwise, the contributions to the credit of the deceased member
543 shall be refunded in accordance with Section 25-11-117.

544 (11) If the member has previously received benefits from the
545 system to which he was not entitled and has not repaid in full all
546 amounts payable by him to the system, the annuity amounts
547 otherwise provided by this section shall be withheld and used to
548 effect repayment until the total of the withholdings repays in
549 full all amounts payable by him to the system.

550 **SECTION 4.** Section 25-13-13, Mississippi Code of 1972, is
551 amended as follows:

552 25-13-13. (1) Upon the death of any highway patrolman who
553 has retired for service or disability and who has not elected any
554 other option under Section 25-13-16, his or her spouse shall
555 receive one-half (1/2) the benefit that he or she was receiving
556 and each child not having attained his nineteenth birthday shall
557 receive one-fourth (1/4) of the benefit, but not more than
558 one-half (1/2) of the benefits shall be paid for the support and
559 maintenance of two (2) or more children. Upon each child's
560 attaining the age of nineteen (19) years, the child shall no
561 longer be eligible for the benefit, and when all of the children
562 have attained their nineteenth birthday, only the spouse shall be
563 eligible for one-half (1/2) the amount of the benefit. The spouse

564 shall continue to be eligible for the benefit in the amount of
565 fifty percent (50%) of his or her retirement benefit so long as
566 the spouse may live. Surviving spouses of deceased members who
567 previously received spouse retirement benefits under this
568 subsection from and after July 1, 1958, and whose benefits were
569 terminated before July 1, 2004, because of remarriage, may again
570 receive the retirement benefits authorized under this subsection
571 by making application with the board to reinstate the benefits.
572 Any reinstatement of the benefits shall be prospective only and
573 shall begin after the first of the month following the date of the
574 application for reinstatement, but no earlier than July 1, 2004.

575 (2) Upon the death of any highway patrolman who has served
576 the minimum retirement period required for eligibility for this
577 retirement program, his or her spouse and family shall receive all
578 the benefits payable to the highway patrolman's beneficiaries as
579 if he or she had retired at the time of his or her death. Those
580 benefits continue to be paid to the spouse for life. The benefits
581 are payable on a monthly basis. Surviving spouses of deceased
582 members who previously received spouse retirement benefits under
583 this subsection from and after July 1, 1958, and whose benefits
584 were terminated before July 1, 2004, because of remarriage, may
585 again receive the retirement benefits authorized under this
586 subsection by making application with the board to reinstate the
587 benefits. Any reinstatement of the benefits shall be prospective
588 only and shall begin after the first of the month following the
589 date of the application for reinstatement, but no earlier than
590 July 1, 2004.

591 (3) The spouse and/or the dependent children of an active
592 member who is killed in the line of performance of duty or dies as
593 a direct result of an accident occurring in the line of
594 performance of duty shall qualify, on approval of the board, for a
595 retirement allowance on the first of the month following the date
596 of death, but not before receipt of application by the board. The

597 spouse shall receive a retirement allowance equal to one-half
598 (1/2) of the average compensation of the deceased highway
599 patrolman. In addition to the retirement allowance for the
600 spouse, or if there is no surviving spouse, a retirement allowance
601 shall be paid in the amount of one-fourth (1/4) of the average
602 compensation for the support and maintenance of one (1) child or
603 in the amount of one-half (1/2) of the average compensation for
604 the support and maintenance of two (2) or more children. Those
605 benefits shall cease to be paid for the support and maintenance of
606 each child upon the child attaining the age of nineteen (19)
607 years; however, the spouse shall continue to be eligible for the
608 aforesaid retirement allowance. Benefits may be paid to a
609 surviving parent or lawful custodian of the children for the use
610 and benefit of the children without the necessity of appointment
611 as guardian. The retirement allowance shall continue to be paid
612 to the spouse for life. Surviving spouses of deceased members who
613 previously received spouse retirement benefits under this
614 subsection from and after July 1, 1958, and whose benefits were
615 terminated before July 1, 2004, because of remarriage, may again
616 receive the retirement benefits authorized under this subsection
617 by making application with the board to reinstate the benefits.
618 Any reinstatement of the benefits shall be prospective only and
619 shall begin after the first of the month following the date of the
620 application for reinstatement, but no earlier than July 1, 2004.

621 (4) All benefits accruing to any child under the provisions
622 of this chapter shall be paid to the parent custodian of the
623 children or the legal guardian.

624 (5) Children receiving the benefits provided in this section
625 who are permanently or totally disabled shall continue to receive
626 the benefits for as long as the medical board * * * certifies that
627 the disability continues. The age limitation for benefits payable
628 to a child under any provision of this section shall be extended
629 beyond age nineteen (19), but in no event beyond the attainment of

630 age twenty-three (23), as long as the child is a student regularly
631 pursuing a full-time course of resident study or training in an
632 accredited high school, trade school, technical or vocational
633 institute, junior or community college, college, university or
634 comparable recognized educational institution duly licensed by a
635 state. A student child whose birthday falls during the school
636 year (September 1 through June 30) is considered not to reach age
637 twenty-three (23) until the July 1 following the actual
638 twenty-third birthday. A full-time course of resident study or
639 training means a day or evening noncorrespondence course that
640 includes school attendance at the rate of at least thirty-six (36)
641 weeks per academic year or other applicable period with a subject
642 load sufficient, if successfully completed, to attain the
643 educational or training objective within the period generally
644 accepted as minimum for completion, by a full-time day student, of
645 the academic or training program concerned.

646 (6) If all the annuities provided for in this section
647 payable on the account of the death of a member terminate before
648 there has been paid an aggregate amount equal to the member's
649 accumulated contributions standing to the member's credit in the
650 annuity savings account at the time of the member's death, the
651 difference between the accumulated contributions and the aggregate
652 amount of annuity payments shall be paid to the person as the
653 member has nominated by written designation duly executed and
654 filed with the board of trustees in the office of the Public
655 Employees' Retirement System. If there is no designated
656 beneficiary surviving at termination of benefits, the difference
657 shall be payable pursuant to Section 25-13-21.1(1).

658 (7) All benefits paid to a spouse or child due to the death
659 of a member before or after retirement shall be paid in accordance
660 with the statutory provisions set forth as of the date of death.

661 **SECTION 5.** Section 25-11-120, Mississippi Code of 1972, is
662 amended as follows:

663 25-11-120. (1) Any individual aggrieved by an
664 administrative determination, including a determination of the
665 medical board, relating to the eligibility for or payment of
666 benefits, or the calculation of creditable service or other
667 similar matters relating to the Public Employees' Retirement
668 System or any other retirement system or program administered by
669 the board, may request a hearing before a hearing officer
670 appointed by the Employee Appeals Board of the State Personnel
671 Board. The hearing officer must be an attorney licensed to
672 practice in the State of Mississippi. Such hearings shall be
673 conducted in accordance with rules and regulations adopted by the
674 board and formal rules of evidence shall not apply. The hearing
675 officer is authorized to administer oaths, hear testimony of
676 witnesses and receive documentary and other evidence. In case of
677 disability appeals, the hearing officer shall have the authority
678 to defer a decision in order to request a medical evaluation or
679 test or additional existing medical records not previously
680 furnished by the claimant. The claimant may subpoena witnesses to
681 testify on the claimant's behalf and documents for use in the
682 presentation of the claimant's case. After the hearing and the
683 receipt of any additional medical evidence requested by the
684 hearing officer, the hearing officer shall certify the record to
685 the board, which shall include the hearing officer's proposed
686 statement of facts, conclusions of law and recommendation. The
687 record may include a taped recording of the proceedings of the
688 hearing in lieu of a transcribed copy of the proceedings. The
689 board shall receive the record and make its determination based
690 solely on matters contained therein.

691 (2) Any individual aggrieved by the determination of the
692 board may appeal to the circuit court of the county or judicial
693 district in which the individual resides, in accordance with the
694 Uniform Circuit Court Rules governing appeals to the circuit court
695 in civil cases. Such appeal shall be made solely on the record

696 before the board and this procedure shall be the exclusive method
697 of appealing determinations of the board.

698 (3) The board is authorized to appoint a committee of the
699 board to serve as hearing officer or to employ or contract with
700 qualified personnel to perform the duties of hearing officer and
701 court reporter as may be necessary for conducting, recording and
702 transcribing such hearings. The board may assess and collect fees
703 to offset costs related to such hearings. Those fees shall be
704 deposited to the credit of the Public Employees' Retirement
705 System.

706 **SECTION 6.** This act shall take effect and be in force from
707 and after July 1, 2007.