

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Mar 28, 2019
S.B. 408
PRINCIPAL CLERK

S

D

SENATE BILL DRS35166-MRp-77A

Short Title: Pensions Benefits Revision.

(Public)

Sponsors: Senators Krawiec, Hise, and Wells (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT
3 SYSTEM'S AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
4 SYSTEM'S ABILITIES TO COLLECT REIMBURSEMENTS FOR OVERPAYMENTS
5 MADE TO REEMPLOYED BENEFICIARIES, TO EXTEND THE LEGISLATIVE
6 ENACTMENT IMPLEMENTATION ARRANGEMENT UNDER THE TEACHERS' AND
7 STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL
8 EMPLOYEES' RETIREMENT SYSTEM, TO ALLOW THE STATE TREASURER TO
9 PERFORM CRIMINAL BACKGROUND CHECKS, AND TO MAKE CHANGES
10 RELATED TO THE NORTH CAROLINA STATE HEALTH PLAN.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.(a)** G.S. 135-3(8)c1 reads as rewritten:

13 "c1. Within 90 days of the end of each month in which a beneficiary is
14 reemployed under the provisions of sub subdivision c. of this
15 subdivision, each employer shall provide a report for that month on
16 each reemployed beneficiary, including the terms of the
17 reemployment, the date of the reemployment, and the amount of the
18 monthly compensation. If ~~such a~~ the required report is not received
19 within the required 90 days, the Board may ~~assess~~ do any or all of the
20 following:

- 21 1. Assess the employer with a penalty of ten percent (10%) of the
22 compensation of the unreported reemployed beneficiaries
23 during the months for which the employer did not report the
24 reemployed beneficiaries, with a minimum penalty of twenty
25 five dollars (\$25.00). If after being assessed a penalty, an
26 employer provides clear and convincing evidence that the
27 failure to report resulted from a lack of oversight or some other
28 event beyond the employer's control and was not a deliberate
29 attempt to omit the reporting of reemployed beneficiaries, the
30 Board may reduce the penalty to not less than two percent (2%)
31 of the compensation of the unreported reemployed
32 beneficiaries during the months for which the employer failed
33 to report, with a minimum penalty of twenty five dollars
34 (\$25.00).
- 35 2. Require the employer to reimburse the Retirement System for
36 any retirement allowance paid to the beneficiary during a



* D R S 3 5 1 6 6 - M R P - 7 7 A *

1 period when the allowance would have been suspended under
 2 sub-subdivision c. of this subdivision had the report been
 3 received within the required 90 days.

- 4 3. Require the employer to pay any amounts that the beneficiary
 5 would have been required to pay to the Retirement System
 6 under sub-subdivision f. of this subdivision had the report been
 7 received within the required 90 days.

8 Upon receipt by the employer of notice that ~~a penalty has been~~
 9 ~~assessed under this sub-subdivision, any payment is due to the~~
 10 Retirement System under this sub-subdivision, the employer shall
 11 remit the payment of the ~~penalty amount due~~ to the Retirement
 12 System, in one lump sum, no later than 90 days from the date of the
 13 notice.

14 If an employer is required to make payments to the Retirement System
 15 under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this
 16 sub-subdivision, then (i) the beneficiary shall have no obligation to
 17 reimburse the Retirement System for related amounts under
 18 sub-subdivisions c. or f. of this subdivision, (ii) the provisions of
 19 G.S. 135-9(b) relating to offsetting overpayments against payments
 20 made from the Retirement System to the member or beneficiary shall
 21 not apply, (iii) the Retirement System shall have no duty under
 22 G.S. 143-64.80 to pursue repayment of overpayments from the
 23 beneficiary, (iv) the overpayments shall not be considered a debt of
 24 the beneficiary under Chapter 105A of the General Statutes, and (v)
 25 the beneficiary's effective date of retirement shall be adjusted if the
 26 adjustment is required under sub-subdivision f. of this subdivision."

27 **SECTION 1.(b)** G.S. 128-24(5)c1 reads as rewritten:

28 "c1. Within 90 days of the end of each month in which a beneficiary is
 29 reemployed under the provisions of sub-subdivision c. of this
 30 subdivision, each employer shall provide a report for that month on
 31 each reemployed beneficiary, including the terms of the
 32 reemployment, the date of the reemployment, and the amount of the
 33 monthly compensation. If ~~such a the required~~ report is not received
 34 within the required 90 days, the Board may ~~assess~~ do any or all of the
 35 following:

- 36 1. Assess the employer with a penalty of ten percent (10%) of the
 37 compensation of the unreported reemployed beneficiaries
 38 during the months for which the employer did not report the
 39 reemployed beneficiaries, with a minimum penalty of
 40 twenty-five dollars (\$25.00). If after being assessed a penalty,
 41 an employer provides clear and convincing evidence that the
 42 failure to report resulted from a lack of oversight or some other
 43 event beyond the employer's control and was not a deliberate
 44 attempt to omit the reporting of reemployed beneficiaries, the
 45 Board may reduce the penalty to not less than two percent (2%)
 46 of the compensation of the unreported reemployed
 47 beneficiaries during the months for which the employer failed
 48 to report, with a minimum penalty of twenty-five dollars
 49 (\$25.00).
- 50 2. Require the employer to reimburse the Retirement System for
 51 any retirement allowance paid to the beneficiary during a

1 period when the allowance would have been suspended under
 2 sub-subdivision c. of this subdivision had the report been
 3 received within the required 90 days.

4 3. Require the employer to pay any amounts that the beneficiary
 5 would have been required to pay to the Retirement System
 6 under sub-subdivision f. of this subdivision had the report been
 7 received within the required 90 days.

8 Upon receipt by the employer of notice that ~~a penalty has been~~
 9 ~~assessed under this sub-subdivision, any payment is due to the~~
 10 Retirement System under this sub-subdivision, the employer shall
 11 remit the payment of the ~~penalty amount due~~ to the Retirement
 12 System, in one lump sum, no later than 90 days from the date of the
 13 notice.

14 If an employer is required to make payments to the Retirement System
 15 under sub-sub-subdivision 2. or sub-sub-subdivision 3. of this
 16 sub-subdivision, then (i) the beneficiary shall have no obligation to
 17 reimburse the Retirement System for related amounts under
 18 sub-subdivisions c. or e. of this subdivision, (ii) the provisions of
 19 G.S. 128-31(b) relating to offsetting overpayments against payments
 20 made from the Retirement System to the member or beneficiary shall
 21 not apply, (iii) the Retirement System shall have no duty under
 22 G.S. 143-64.80 to pursue repayment of overpayments from the
 23 beneficiary, (iv) the overpayments shall not be considered a debt of
 24 the beneficiary under Chapter 105A of the General Statutes, and (v)
 25 the beneficiary's effective date of retirement shall be adjusted if the
 26 adjustment is required under sub-subdivision e. of this subdivision."

27 **SECTION 1.(c)** This section is effective July 1, 2020, and applies to reports required
 28 to be made on or after that date.

29 **SECTION 2.(a)** G.S. 135-7(h) reads rewritten:

30 "(h) Legislative Enactment Implementation Arrangement. – The Legislative Enactment
 31 Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under
 32 the management of the Board of Trustees. The purpose of the LEIA is to provide for timely
 33 administrative implementation of legislative provisions regarding the retirement of, or payment
 34 of retirement benefits to, public officers or public employees. The LEIA shall have the following
 35 parameters:

36 ...
 37 (2) Funding of the LEIA. – In the event that the General Assembly creates or
 38 modifies any provision for the retirement of, or payment of retirement benefits
 39 to, public officers or public employees that has a cost savings as measured by
 40 actuarial note required by Article 15 of Chapter 120 of the General Statutes,
 41 the Board of Trustees may direct up to one hundredth percent (0.01%) of the
 42 required contributions to fund the LEIA. These funds must be deposited in a
 43 separate fund from the fund into which regular employer contributions are
 44 deposited for the Retirement System. The Board of Trustees shall not direct
 45 any employer contributions into the LEIA after November 1, ~~2021-2026.~~

46"

47 **SECTION 2.(b)** G.S. 128-29(g) reads as rewritten:

48 "(g) Legislative Enactment Implementation Arrangement. – The Legislative Enactment
 49 Implementation Arrangement (LEIA) is established effective October 1, 2017, and placed under
 50 the management of the Board of Trustees. The purpose of the LEIA is to provide for timely
 51 administrative implementation of legislative provisions regarding the retirement of, or payment

1 of retirement benefits to, public officers or public employees. The LEIA shall have the following
2 parameters:

3 ...

- 4 (2) Funding of the LEIA. – In the event that the General Assembly creates or
5 modifies any provision for the retirement of, or payment of retirement benefits
6 to, public officers or public employees that has a cost savings as measured by
7 actuarial note required by Article 15 of Chapter 120 of the General Statutes,
8 the Board of Trustees may direct up to one hundredth percent (0.01%) of the
9 required contributions to fund the LEIA. These funds must be deposited in a
10 separate fund from the fund into which regular employer contributions are
11 deposited for the Retirement System. The Board of Trustees shall not direct
12 any employer contributions into the LEIA after November 1, ~~2021~~2026.

13"

14 **SECTION 3.** Article 6 of Chapter 147 of the General Statutes is amended by adding
15 a new section to read:

16 "**§ 147-75.1. Criminal record checks for the Department of State Treasurer.**

17 (a) The Department of State Treasurer may obtain from the State and National
18 Repositories of Criminal Histories or from any other lawful source the criminal history of any of
19 the following individuals:

- 20 (1) A current or prospective permanent or temporary employee of the Department
21 of State Treasurer.
22 (2) A contractor with the Department of State Treasurer.
23 (3) An employee or agent of a contractor with the Department of State Treasurer
24 who is performing or will perform work for the Department of State Treasurer.
25 (4) A volunteer of the Department of State Treasurer.
26 (5) Any other individual otherwise engaged by the Department of State Treasurer
27 who will have access to health or financial information or data maintained by
28 the Department of State Treasurer that is confidential or otherwise nonpublic.

29 (b) The Department of State Treasurer may deny employment to or dismiss any
30 individual identified under subdivisions (1), (2), (4), and (5) of subsection (a) of this section who
31 refuses to consent to a criminal history record check or to the use of fingerprints or other
32 identifying information required by the State or National Repositories of Criminal Histories. Any
33 refusal shall constitute just cause for the employment denial or the dismissal from employment.

34 (c) The Department of State Treasurer may extend a conditional offer of employment
35 pending the results of a criminal history record check authorized by this section."

36 **SECTION 4.(a)** Part 3 of Article 3B of Chapter 135 of the General Statutes is
37 amended by adding a new section to read:

38 "**§ 135-48.37B. Attachment and garnishment of overpayments and unpaid premiums from**
39 **individuals no longer employed by employing units.**

40 (a) Applicability. – This section applies to an individual who is no longer employed by
41 an employing unit and to whom any of the following circumstances apply:

- 42 (1) An overpayment or erroneous payment of benefits, claims, or other amounts
43 has been paid on behalf of the individual or individual's dependent by the Plan
44 and the amount owed had not been repaid to the Plan.
45 (2) Unpaid premiums are owed by the individual for coverage provided by the
46 Plan to the individual or the individual's dependent.

47 (b) Notice of Amount Due. – The Plan shall provide notice to an individual of the
48 amounts owed and provide the individual with at least 30 calendar days to respond to the notice
49 and either (i) repay the amount owed in full or (ii) enter into a payment plan approved by the
50 Plan for the amount owed.

1 (c) Attachment and Garnishment. – Intangible property that belongs to an individual, is
2 owed to an individual, or has been transferred by an individual under circumstances that would
3 permit it to be levied upon if it were tangible property is subject to attachment and garnishment
4 in payment of an overpayment or erroneous payment or unpaid premium that is due from the
5 individual and is collectible under this Article. Intangible personal property includes bank
6 deposits, rent, salaries, wages, property held in the Escheat Fund, and any other property
7 incapable of manual levy or delivery.

8 A person who is in possession of intangible property that is subject to attachment and
9 garnishment is the garnishee and is liable for the amount the individual owes. The liability applies
10 only to the amount of the individual's property in the garnishee's possession, reduced by any
11 amount the individual owes the garnishee.

12 Provided any amount due remains unpaid and provided the individual has not entered into a
13 payment plan approved by the Plan, upon the expiration of the 30 calendar days required by
14 subsection (b) of this section, the Plan may submit to a financial institution, as defined in
15 G.S. 53B-2, information that identifies an individual who owes an overpayment or erroneous
16 payment or an unpaid premium that is collectible under this section and the amount due. The
17 Plan may submit the information on a quarterly basis or, with the agreement of the financial
18 institution, on a more frequent basis. A financial institution that receives the information must
19 determine the amount, if any, of intangible property it holds that belongs to the individual and
20 must inform the Plan of its determination. The Plan must reimburse a financial institution for its
21 costs in providing the information, not to exceed the amount payable to the financial institution
22 under G.S. 110-139 for providing information for use in locating a noncustodial parent.

23 No more than ten percent (10%) of an individual's wages or salary is subject to attachment
24 and garnishment. The wages or salary of an employee of the United States, the State, or a political
25 subdivision of the State are subject to attachment and garnishment.

26 (d) Notice to Garnishee. – Before the Plan attaches and garnishes intangible property in
27 payment of an overpayment or erroneous payment or unpaid premium, the Plan must send the
28 garnishee a notice of garnishment. The notice must be sent either in person, by certified mail with
29 a return receipt requested, or, with the agreement of the garnishee, by electronic means. The
30 notice must contain all of the following information:

31 (1) The individual's name.

32 (2) The last four digits of the individual's social security number or federal
33 identification number.

34 (3) The amount of money the individual owes the Plan.

35 (4) An explanation of the liability of a garnishee for the amounts owed.

36 (5) An explanation of the garnishee's responsibility concerning the notice.

37 (e) Action. – A garnishee must comply with a notice of garnishment or file a written
38 response to the notice within the time set in this subsection. A garnishee that is a financial
39 institution must comply or file a response within 20 days after receiving a notice of garnishment.
40 All other garnishees must comply or file a response within 30 days after receiving a notice of
41 garnishment. A written response must explain why the garnishee is not subject to garnishment
42 and attachment.

43 Upon receipt of a written response, the Plan must contact the garnishee and schedule a
44 conference to discuss the response or inform the garnishee of the Plan's position concerning the
45 response. If the Plan does not agree with the garnishee on the garnishee's liability, the Plan may
46 proceed to enforce the garnishee's liability any amounts owed under this section by civil action.

47 (f) Limitations. – Nothing in this Part shall be construed to limit the Plan's ability to
48 pursue alternative judicial remedies against an individual, including the pursuit of a judgment
49 and lien against real property."

50 **SECTION 4.(b)** This section is effective October 1, 2019, and applies to notices of
51 amounts due sent by the Plan on or after that date.

1 **SECTION 5.(a)** G.S. 135-48.1(9) reads as rewritten:

2 "(9) Dependent child. – Subject to the eligibility requirements of subsections (a)
3 and ~~(b)-(c)~~ of G.S. 135-48.41, and except as provided in subsection (b) of
4 G.S. 135-48.41, any of the following individuals, up to the first month
5 following the dependent child's individual's 26th birthday:

- 6 a. A natural or legally adopted child or children of the employee, whether
7 or not the child is living with the employee.
8 b. A foster child or children of the employee, whether or not the child is
9 living with the employee.
10 c. A child for which an employee is a court-appointed guardian.
11 d. A stepchild of a member who is married to the stepchild's natural
12 parent.
13 e. Repealed by Session Laws 2011-96, s. 3(a), effective July 1, 2011."

14 **SECTION 5.(b)** G.S. 135-48.41 read as rewritten:

15 "**§ 135-48.41. Additional eligibility provisions.**

16 ...

17 (b) ~~A dependent child shall not be eligible for coverage under the Plan if the dependent~~
18 ~~child is eligible for employer based health care outside of the State Health Plan for Teachers and~~
19 ~~State Employees, other than a parent's claim. Coverage~~ Notwithstanding the age requirement
20 under G.S. 135-48.1(9), coverage of a dependent child may be extended continued beyond the
21 dependent child's 26th birthday if the dependent child is physically or mentally incapacitated to
22 the extent that he or she is incapable of earning a living and (i) such handicap developed or began
23 to develop before the dependent's 19th birthday, or (ii) such handicap developed or began to
24 develop before the dependent's 26th birthday disabled and if the dependent child was covered by
25 the Plan in accordance with G.S. 135-48.40(d)(7) on the dependent child's 26th birthday.
26 Verification of the dependent child's disability must be provided to the Plan no later than 60 days
27 after the dependent child's 26th birthday.

28 (c) No person shall be eligible for coverage as a dependent if eligible as an employee or
29 retired employee, except when a spouse is eligible on a fully contributory ~~basis~~ basis or when
30 the person is a dependent child. In addition, no person shall be eligible for coverage as a
31 dependent of more than one employee or retired employee at the same time.

32 "

33 **SECTION 5.(c)** This section is effective when it becomes law and applies to all new
34 enrollment or reenrollment in the State Health Plan on and after that date.

35 **SECTION 6.(a)** G.S. 135-48.37 reads as rewritten:

36 "**§ 135-48.37. Liability of third person; right of subrogation; right of first recovery.**

37 (a) ~~The Plan shall have the right of subrogation upon all of the Plan member's right to~~
38 ~~recover from a liable third party for payment made under the Plan, Notwithstanding any other~~
39 ~~provisions of law to the contrary, the Plan shall be subrogated to all Plan member rights of~~
40 recovery, contractual or otherwise, including first-party underinsured or MedPay coverage or
41 third-party insurance coverage, for all medical expenses, including provider, hospital, surgical,
42 or prescription drug expenses, to the extent these payments are the recovery is related to an injury
43 caused by a liable third party. A personal injury or wrongful death claim brought by a Plan
44 member or a Plan member's representative or estate against a third party shall include a claim for
45 all medical assistance payments for health care items or services furnished to the Plan member
46 as a result of the injury. Any personal injury or wrongful death claim brought by a Plan member
47 or Plan member's representative or estate against a third party that does not include the Plan's
48 claim shall be deemed to include the Plan's claim. The Plan's claim shall be a lien upon any
49 recovery that a Plan member or Plan member's representative or estate obtains.

50 (a1) The Plan member shall do nothing to prejudice ~~these rights~~ the Plan's rights under
51 this section. The Plan has the right to first recovery recovery over all nongovernmental medical

1 liens and rights, on any amounts so recovered, recovered that are related to an injury caused by
2 a liable third party regardless of (i) whether the nongovernmental medical liens and rights arose
3 prior to or arise subsequent to the Plan's lien, (ii) whether the amount was recovered by the Plan
4 or Plan, the Plan member, or the Plan member's representative or estate, and (iii) whether the
5 amount was recovered by litigation, arbitration, mediation, settlement, or otherwise.
6 Notwithstanding any other provision of law to the contrary, the recovery limitation set forth in
7 G.S. 28A-18-2 shall not apply to the Plan's right of subrogation of Plan members.

8 (b) If the Plan is precluded from exercising its right of subrogation, it may exercise its
9 rights of recovery against any third party who was overpaid. If the Plan recovers damages from
10 a liable third party in excess of the claims paid, any excess will be paid to the member, less a
11 proportionate share of the costs of collection.

12 (c) In the event a Plan member or a Plan member's representative or estate recovers any
13 amounts from a liable third party to which the Plan is entitled under this section, the Plan may
14 recover the amounts directly from the Plan ~~member.~~ member, the Plan member's representative
15 or estate, or the insurance company. If, prior to the Plan exercising its rights under this section, a
16 Plan member or the Plan member's representative or estate utilizes or otherwise disposes of any
17 amounts that were recovered from a liable third party to which the Plan is entitled under this
18 section, then the Plan may pursue alternative judicial remedies against the Plan member or Plan
19 member's representative or estate to recover the amount to which the Plan is entitled, including
20 the pursuit of a judgment and lien against real property.

21 (c1) The Plan has a lien, for not more than the value of claims paid related to the liability
22 of the third party, on any damages subsequently recovered by a Plan member or a Plan member's
23 representative or estate against any liable third party. If the Plan member or Plan member's
24 representative or estate fails to pursue the remedy against a liable third party, the Plan is
25 subrogated to the rights of the Plan member and is entitled to enforce liability in the Plan's own
26 name or in the name of the Plan member for the amount paid by the Plan.

27 (c2) Within 14 days of receipt of the proceeds of a settlement or judgment related to a
28 claim under this section, the Plan member, the Plan member's representative or estate, or the
29 insurance company shall notify the Plan of the receipt of proceeds.

30 (c3) Within 30 days of receipt of the proceeds of a settlement or judgment related to a
31 claim under this section, the Plan member, the Plan member's representative or estate, or the
32 insurance company shall distribute to the Plan an amount sufficient to fully satisfy the Plan's lien
33 as required by this section. If that amount is not distributed to the Plan member within 30 days,
34 then the Plan may recover the amount directly from the Plan member or the Plan member's estate
35 or Plan member's representative through any remedy available to the Plan.

36 (d) In no event shall the Plan's lien exceed fifty percent (50%) of the total damages
37 recovered by the Plan member, exclusive of the Plan member's reasonable and proportionate
38 costs of collection as determined by the Plan in the Plan's sole discretion. The decision by the
39 Plan as to the reasonable ~~cost~~ and proportionate costs of collection is conclusive and is not a
40 "final agency decision" for purposes of a contested case under Chapter 150B of the General
41 Statutes. Notice of the Plan's lien or right to recovery shall be presumed when a Plan member is
42 represented by an attorney, and the attorney shall disburse proceeds pursuant to this section.

43 (e) ~~The priority of any lien held by the State Health Plan for Teachers and State~~
44 ~~Employees shall be superior to all nongovernmental liens and rights, whether such liens and~~
45 ~~rights are prior or subsequent to the lien.~~

46 (f) Any liens having priority over the Plan's right to first recovery shall be deducted from
47 the total damages recovered by the Plan member or Plan member's representative or estate before
48 satisfying the Plan's lien. In no event shall other liens be deducted from the Plan's right to
49 recovery under this section. If insufficient funds remain to fully satisfy the Plan's lien after
50 deducting the Plan member's or the Plan member's representative's or estate's costs of collection
51 and any priority liens from the total damages recovered, then the Plan shall be entitled to receive

1 the remaining balance of the total damages recovered by the Plan member or Plan member's
2 representative or estate."

3 **SECTION 6.(b)** 44-49(a) reads as rewritten:

4 "(a) From and after March 26, 1935, there is hereby created a lien upon any sums
5 recovered as damages for personal injury in any civil action in this State. This lien is in favor of
6 any person, corporation, State entity, municipal corporation or county to whom the person so
7 recovering, or the person in whose behalf the recovery has been made, may be indebted for any
8 drugs, medical supplies, ambulance services, services rendered by any physician, dentist, nurse,
9 or hospital, or hospital attention or services rendered in connection with the injury in
10 compensation for which the damages have been recovered. Where damages are recovered for
11 and in behalf of minors or persons non compos mentis, the liens shall attach to the sum recovered
12 as fully as if the person were sui juris. The priority of a lien held by the State Health Plan for
13 Teachers and State Employees shall be superior to all nongovernmental medical liens and rights,
14 whether ~~such~~ those medical liens and rights are prior or subsequent to the lien."

15 **SECTION 6.(c)** G.S. 44-50 reads as rewritten:

16 "**§ 44-50. Receiving person charged with duty of retaining funds for purpose stated;
17 evidence; attorney's fees; charges.**

18 A lien as provided under G.S. 44-49 shall also attach upon all funds paid to any person in
19 compensation for or settlement of the injuries, whether in litigation or otherwise. If an attorney
20 represents the injured person, the lien is perfected as provided under G.S. 44-49. Before their
21 disbursement, any person that receives those funds shall retain out of any recovery or any
22 compensation so received a sufficient amount to pay the just and bona fide claims for any drugs,
23 medical supplies, ambulance services, services rendered by any physician, dentist, nurse, or
24 hospital, or hospital attention or services, after having received notice of those claims. Evidence
25 as to the amount of the charges shall be competent in the trial of the action. Subject to
26 G.S. 135-48.37, the priority of a lien held by the State Health Plan for Teachers and State
27 Employees shall be superior to all nongovernmental medical liens and rights, whether ~~such~~ those
28 medical liens and rights are prior or subsequent to the lien. Nothing in this section or in
29 G.S. 44-49 shall be construed so as to interfere with any amount due for attorney's services. The
30 lien provided for shall in no case, exclusive of attorneys' fees, exceed fifty percent (50%) of the
31 amount of damages recovered. Except as provided in G.S. 44-51, a client's instructions for the
32 disbursement of settlement or judgment proceeds are not binding on the disbursing attorney to
33 the extent that the instructions conflict with the requirements of this Article."

34 **SECTION 6.(d)** This section is effective when it becomes law and applies to claims
35 brought by Plan members or Plan members' representatives or estates on or after that date, as
36 well as liens arising on or after that date.

37 **SECTION 7.(a)** G.S. 135-48.41 is amended by adding a new subsection to read:

38 "(l) If an employee or retiree withdraws his or her accumulated contributions and then
39 later is reemployed as an employee, then the date of reemployment will be considered the first
40 hired date for purposes of membership eligibility in the Plan. Any rights granted under this
41 Article relating to the hire date associated with the withdrawn contributions shall be void ab initio
42 as a matter of law."

43 **SECTION 8.** G.S. 135-48.33(a) reads as rewritten:

44 "(a) The Board of Trustees must approve all Plan contracts in excess of ~~five hundred~~
45 ~~thousand dollars (\$500,000), one million dollars (\$1,000,000)~~ including contracts with an initial
46 cost of less than ~~five hundred thousand dollars (\$500,000), one million dollars (\$1,000,000),~~
47 ~~but that may exceed five hundred thousand dollars (\$500,000) one million dollars (\$1,000,000)~~
48 during the term of the contract."

49 **SECTION 9.** G.S. 135-48.25 reads as rewritten:

50 "**§ 135-48.25. Rules.**

1 (a) The State Treasurer, in consultation with the Board of Trustees, may adopt rules to
2 implement this Article. ~~The State Treasurer shall provide to all employing units, all health benefit~~
3 ~~representatives, all relevant health care providers affected by a rule, and to any other persons~~
4 ~~requesting a written description and approved by the State Treasurer written notice and an~~
5 ~~opportunity to comment not later than 30 days prior to adopting, amending, or rescinding a rule,~~
6 ~~unless immediate adoption of the rule without notice is necessary in order to fully effectuate the~~
7 ~~purpose of the rule. Rules of the Board of Trustees shall remain in effect until amended or~~
8 ~~repealed by the State Treasurer. The State Treasurer shall provide a written description of the~~
9 ~~rules adopted under this section to all employing units, all health benefit representatives, all~~
10 ~~relevant health care providers affected by a rule, and to any other persons requesting a written~~
11 ~~description and approved by the State Treasurer on a timely basis. Rules adopted by the State~~
12 ~~Treasurer to implement this Article are not subject to Article 2A of Chapter 150B of the General~~
13 ~~Statutes.~~

14 (b) The State Treasurer shall provide at least 30 calendar days for interested parties to
15 comment prior to adopting, amending, or repealing a rule, unless immediate adoption,
16 amendment, or repealing of the rule without notice is necessary in order to fully effectuate the
17 purpose of the rule. A rule remains in effect until amended or repealed by the State Treasurer.
18 Upon request and in a timely manner, the State Treasurer shall provide a written description of a
19 rule adopted under this section.

20 (c) Benefit booklets published by the Department of State Treasurer on its Web site shall
21 have the force and effect of rules for the applicable benefit year. This subsection applies, but is
22 not limited in its application, to contested cases brought by employees, retired employees,
23 dependents of employees, and dependents of retired employees under Article 3 of Chapter 150B
24 of the General Statutes regarding (i) an eligibility, premium credit, or other enrollment-related
25 determination made by the Plan or (ii) the administration of Plan benefit offerings and
26 exclusions."

27 **SECTION 9.(b)** This section is effective when it becomes law and applies to rules
28 adopted on or after that date and contested cases brought on or after that date.

29 **SECTION 10.(a)** G.S. 135-48.22(3) is repealed.

30 **SECTION 10.(b)** G.S. 135-48.24 reads as rewritten:

31 "**§ 135-48.24. Administrative review.**

32 (a) If, after exhaustion of internal appeal handling as outlined in the contract with the
33 Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the
34 attention of the Executive Administrator ~~and Board of Trustees, which who~~ shall promptly decide
35 whether the subject matter of the appeal is a determination subject to external review under Part
36 4 of Article 50 of Chapter 58 of the General Statutes. The Executive Administrator ~~and Board of~~
37 ~~Trustees~~ shall inform the aggrieved person and the aggrieved person's provider of the decision
38 and shall provide the aggrieved person notice of the aggrieved person's right to appeal that
39 decision as provided in this subsection. If the Executive Administrator ~~and Board of Trustees~~
40 ~~decide~~ finds that the subject matter of the appeal is not a determination subject to external review,
41 then the Executive Administrator ~~and Board of Trustees~~ may make a binding decision on the
42 matter in accordance with procedures established by the Executive Administrator ~~and Board of~~
43 ~~Trustees~~. ~~The Executive Administrator and Board of Trustees shall provide a written summary~~
44 ~~of the decisions made pursuant to this section to all employing units, all health benefit~~
45 ~~representatives, all relevant health care providers affected by a decision, and to any other parties~~
46 ~~requesting a written summary and approved by the Executive Administrator and Board of~~
47 ~~Trustees to receive a summary immediately following the issuance of a decision. Administrator.~~
48 A decision by the Executive Administrator ~~and Board of Trustees~~ that a matter raised on internal
49 appeal is a determination subject to external review as provided in subsection (b) of this section
50 may be contested by the aggrieved person under Chapter 150B of the General Statutes. The

1 person contesting the decision may proceed with external review pending a decision in the
2 contested case under Chapter 150B of the General Statutes.

3 (b) The State Treasurer, in consultation with the Board of Trustees, shall adopt and
4 implement utilization review and internal grievance procedures that are substantially equivalent
5 to those required under G.S. 58-50-61 and G.S. 58-50-62. External review of determinations
6 shall be conducted in accordance with Part 4 of Article 50 of Chapter 58 of the General Statutes.
7 As used in this section, "determination" is a decision by the State Treasurer, or the Plan's
8 designated utilization review organization administrated by or under contract with the Plan that
9 an admission, availability of care, continued stay, or other health care service has been reviewed
10 and, based upon information provided, does not meet the Plan's benefit offerings or requirements
11 for medical necessity, appropriateness, health care setting, or level of care or effectiveness, and
12 the requested service is therefore denied, reduced, or terminated."

13 **SECTION 10.(c)** G.S. 150B-1(e) reads as rewritten:

14 "(e) Exemptions From Contested Case Provisions. – The contested case provisions of this
15 Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The
16 contested case provisions of this Chapter do not apply to the following:

17 ...

18 (13) The State Health Plan for Teachers and State Employees with respect to
19 determinations by the Executive Administrator ~~and or the~~ Board of Trustees,
20 the Plan's designated utilization review organization, or a self-funded health
21 maintenance organization under contract with the Plan that an admission,
22 availability of care, continued stay, or other health care service has been
23 reviewed and, based upon the information provided, does not meet the Plan's
24 benefit offering or requirements for medical necessity, appropriateness, health
25 care setting, or level of care or effectiveness, and the requested service is
26 therefore denied, reduced, or terminated.

27"

28 **SECTION 10.(d)** This section is effective when it becomes law and applies to
29 administrative reviews and appeals requested or filed on or after that date.

30 **SECTION 11.(a)** G.S. 135-48.2(a) reads as rewritten:

31 **"§ 135-48.2. Undertaking.**

32 (a) The State of North Carolina undertakes to make available a State Health Plan
33 (~~hereinafter called the "Plan"~~) exclusively for the benefit of eligible employees, eligible retired
34 employees, and certain of their eligible dependents, ~~which that~~ will pay benefits in accordance
35 with the terms of this Article. The Plan shall have all the powers and privileges of a corporation
36 and shall be known as the State Health Plan for Teachers and State Employees. The State
37 Treasurer, Executive Administrator, and Board of Trustees shall carry out their duties and
38 responsibilities as fiduciaries for the Plan. The Plan shall administer one or more group health
39 plans that are comprehensive in coverage. The State Treasurer may operate group plans as a
40 preferred provider option, or health maintenance, point-of-service, or other organizational
41 arrangement. The State Treasurer may also operate a flexible compensation plan for eligible
42 retired employees, and certain of their eligible dependents, including dental and vision health
43 benefit offerings paid for at full contribution by retired employees."

44 **SECTION 11.(b)** G.S. 135-48.1(2b) reads as rewritten:

45 "(2b) Claim Payment Data. – Data fields within a Claims Data Feed that reflect the
46 provider and the amount the provider billed for services provided to a Plan
47 member, the allowed amount applied to the claim by the Claims Processor,
48 ~~and the amount paid by the Plan on the claim.~~ claim, and the rate negotiated
49 with or agreed to by the provider. The term "Claim Payment Data" includes
50 any document, material, or other work, whether tangible or electronic, that is
51 derived from, is based on, or reflects any of the foregoing data fields or

1 information contained therein. If the Claims Processor designates Claim
2 Payment Data as a trade secret, the Claim Payment Data shall be treated as a
3 trade secret as defined in G.S. 66-152(3)."

4 **SECTION 11.(c)** G.S. 135-48.32 reads as rewritten:

5 "**§ 135-48.32. Contracts to provide benefits.**

6 (a) The Plan benefits shall be provided under contracts between the Plan and the claims
7 processors selected by the Plan. The contracts necessarily will conform to applicable State law.

8 (b) Unless otherwise directed by the Plan, each Claims Processor shall provide the Plan
9 with a Claims Data Feed, which includes all Claim Payment Data, at a frequency agreed to by
10 the Plan and the Claims Processor. The frequency shall be no less than monthly. The Claims
11 Processor is ~~not~~ required to disclose Claim Payment Data that reflects rates negotiated with or
12 agreed to by a ~~noncontracted third party but, upon request, shall provide to the Plan sufficient~~
13 ~~documentation to support the payment of claims for which Claim Payment Data is withheld on~~
14 ~~such basis.provider.~~

15 (c) Any provision of any contract between a Claims Processor and a health care provider,
16 subcontractor, or third party that would prevent or prohibit the Claims Processor from disclosing
17 Claim Payment Data to the Plan, in accordance with this section, shall be void and unenforceable,
18 but only to the extent the provision prevents and prohibits disclosure to the Plan.

19 (d) The Plan may use and disclose Claim Payment Data solely for the purpose of
20 administering and operating the State Health Plan for Teachers and State Employees in
21 accordance with G.S. 135-48.2 and the provisions of this Article. The Plan shall not make any
22 use or disclosure of Claim Payment Data that would compromise the proprietary nature of the
23 data or, as applicable, its status as a trade secret, or otherwise misappropriate the data.

24 ~~(e) The Plan may not use a provider's Claim Payment Data to negotiate rates, fee~~
25 ~~schedules, or other master charges with that provider or any other provider.~~

26 (f) The Plan may disclose Claim Payment Data to a third party to use on the Plan's behalf
27 as agreed upon between the Plan and the Claims Processor. The Plan must ~~obtain the agreement~~
28 ~~of provide notice to~~ the Claims Processor for each third party to whom the Plan seeks to disclose
29 Claim Payment Data and for each use the third party will make of the data. The Plan may not
30 disclose Claim Payment Data to any third party without first entering into a contract with the
31 third party that contains restrictions on the use and disclosure of the Claim Payment Data by the
32 third party that are at least as restrictive as the provisions of this section.

33 (g) A Claims Processor who discloses Claim Payment Data in accordance with this
34 section shall not incur any civil liability and shall not be subject to equitable relief in connection
35 for the disclosure."

36 **SECTION 12.** If any provision of this act or its application is held invalid, the
37 invalidity does not affect other provisions or applications of this act that can be given effect
38 without the invalid provisions or application, and to this end the provisions of this act are
39 severable.

40 **SECTION 13.** Except as otherwise provided, this act is effective when it becomes
41 law.