# SENATE BILL 408

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| Short Title: | Pensions Benefits Revision. | (Public) |
| Sponsors: | Senators Krawiec, Hise, and Wells (Primary Sponsors). | |
| Referred to: | Rules and Operations of the Senate | |

April 1, 2019

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM'S AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM'S ABILITIES TO COLLECT REIMBURSEMENTS FOR OVERPAYMENTS MADE TO REEMPLOYED BENEFICIARIES, TO EXTEND THE LEGISLATIVE ENACTMENT IMPLEMENTATION ARRANGEMENT UNDER THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, TO ALLOW THE STATE TREASURER TO PERFORM CRIMINAL BACKGROUND CHECKS, AND TO MAKE CHANGES RELATED TO THE NORTH CAROLINA STATE HEALTH PLAN.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

1. Assess the employer with a penalty of ten percent (10%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer did not report the reemployed beneficiaries, with a minimum penalty of twenty-five dollars ($25.00). If after being assessed a penalty, an employer provides clear and convincing evidence that the failure to report resulted from a lack of oversight or some other event beyond the employer's control and was not a deliberate attempt to omit the reporting of reemployed beneficiaries, the Board may reduce the penalty to not less than two percent (2%) of the compensation of the unreported reemployed beneficiaries during the months for which the employer failed to report, with a minimum penalty of twenty-five dollars ($25.00).

2. Require the employer to reimburse the Retirement System for any retirement allowance paid to the beneficiary during a

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

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

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

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

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

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

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

…

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

…."

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

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

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

…

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

…."

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

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

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

(1) A current or prospective permanent or temporary employee of the Department of State Treasurer.

(2) A contractor with the Department of State Treasurer.

(3) An employee or agent of a contractor with the Department of State Treasurer who is performing or will perform work for the Department of State Treasurer.

(4) A volunteer of the Department of State Treasurer.

(5) Any other individual otherwise engaged by the Department of State Treasurer who will have access to health or financial information or data maintained by the Department of State Treasurer that is confidential or otherwise nonpublic.

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

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

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

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

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

(1) An overpayment or erroneous payment of benefits, claims, or other amounts has been paid on behalf of the individual or individual's dependent by the Plan and the amount owed had not been repaid to the Plan.

(2) Unpaid premiums are owed by the individual for coverage provided by the Plan to the individual or the individual's dependent.

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

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

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

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

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

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

(1) The individual's name.
(2) The last four digits of the individual's social security number or federal identification number.
(3) The amount of money the individual owes the Plan.
(4) An explanation of the liability of a garnishee for the amounts owed.
(5) An explanation of the garnishee's responsibility concerning the notice.

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

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

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

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

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

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

a. A natural or legally adopted child or children of the employee, whether or not the child is living with the employee.

b. A foster child or children of the employee, whether or not the child is living with the employee.

c. A child for which an employee is a court-appointed guardian.

d. A stepchild of a member who is married to the stepchild's natural parent.

e. Repealed by Session Laws 2011-96, s. 3(a), effective July 1, 2011."

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

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

…

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

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

…."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**§ 135-48.25. Rules.**

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

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

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

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

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

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

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

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

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

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

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

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

…

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

…."

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

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

"**§ 135-48.2. Undertaking.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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