

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.