

**§ 127A-40. Pensions for the members of the North Carolina National Guard.**

(a) Every member and former member of the North Carolina National Guard who meets the requirements of this section shall receive, commencing at age 60, a pension of one hundred five dollars (\$105.00) per month for 20 years' creditable military service with an additional ten dollars and fifty cents (\$10.50) per month for each additional year of such service; provided, however, that the total pension shall not exceed two hundred ten dollars (\$210.00) per month. The requirements for a pension are that each member shall:

- (1) Have served and qualified for at least 20 years' creditable military service, including National Guard, reserve and active duty, under the same requirement specified for entitlement to retired pay for nonregular service under Chapter 67, Title 10, United States Code.
- (2) Have at least 15 years of the aforementioned service as a member of the North Carolina National Guard.
- (3) Have received an honorable discharge from the North Carolina National Guard.

(b) Payment to a retired member of the North Carolina National Guard under the provisions of this section will cease at the death of the individual and no payment will be made to beneficiaries or to the decedent's estate, except that the legal representative of a retired member who dies shall be entitled to a full check for the month in which the death occurred.

(c) No individual receiving retired pay as a result of length of service, age or physical disability retirement from any of the regular components of the Armed Forces of the United States will be eligible for benefits under this section.

(d) Nothing contained in this section shall preclude or in any way affect the benefits that an individual may be entitled to from State, federal or private retirement systems.

(e) Repealed by Session Laws 1989, c. 792, s. 2.3.

(f) The Board of Trustees of the Teachers' and State Employees' Retirement System shall administer the provisions of this section. The Secretary of Public Safety shall determine the eligibility of North Carolina National Guard members for the benefits provided in this section and shall certify those eligible to the Board of Trustees. In addition, the Department of Public Safety shall, on and after July 1, 1983, provide the Board of Trustees with an annual census population, by age and the number of years of creditable service, for all former members of the North Carolina National Guard in receipt of a pension as well as for all active members of the North Carolina National Guard who are not in receipt of a pension and who have seven and more years of creditable service. The Department of Public Safety shall also provide the Board of Trustees an annual census population of all former members of the North Carolina National Guard who are not in receipt of a pension and who have 15 and more years of creditable service. The Department of State Treasurer shall make pension payments to those persons certified from the North Carolina National Guard Pension Fund.

(g) The provisions of this section shall apply to any member or former member of the North Carolina National Guard who is qualified for the above retirements with eligibility commencing at age 60 or July 1, 1974, whichever is the later date.

(h) If, for any reason, the North Carolina National Guard Pension Fund shall be insufficient to pay in full any pension benefits, or other charges, then all benefits or payments shall be reduced pro rata, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a pension or benefit payment shall have been reduced.

(h1) Any member or former member of the North Carolina National Guard who is qualified for benefits under this section and who is a member of a domiciled employees' or retirees' association that has at least 2,000 members, the majority of whom are active or retired employees of the State or public school employees, may authorize, in writing, the periodic deduction from the member's retirement benefits a designated lump sum to be paid to the

employees' or retirees' association. The authorization shall remain in effect until revoked by the member. A plan of deductions pursuant to this subsection shall become void if the employees' or retirees' association engages in collective bargaining with the State, any political subdivision of the State, or any local school administrative unit.

(i) Pensions for members of the North Carolina National Guard shall be subject to future legislative change or revision.

(j) Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the pensions provided are not subject to attachment, garnishments, or judgments against the member or former member of the National Guard entitled to them, nor are any rights in the fund or the pensions or benefits assignable. Notwithstanding any provisions to the contrary, any overpayment of benefits or erroneous payment to a member in a State-administered retirement system, the Disability Salary Continuation Plan, or the Disability Income Plan of North Carolina, including any benefits paid to, or State Health Plan premiums or claims paid on behalf of, any member who is later determined to have been ineligible for those benefits or unentitled to those amounts, may be offset against any retirement allowance, return of contributions, or any other right accruing under this Article to the same person, the person's estate, or designated beneficiary. (1973, c. 625, s. 1; c. 1241, ss. 1-3; 1975, c. 604, s. 2; 1977, c. 70, s. 2; 1979, c. 870; 1983, c. 761, ss. 250, 251; 1989, c. 792, s. 2.3; 2002-126, s. 6.4(g); 2005-276, s. 29.27; 2006-66, s. 22.20; 2007-323, s. 28.21A; 2009-66, s. 10; 2009-281, s. 1; 2009-451, s. 26.21; 2011-145, s. 19.1(g); 2011-195, s. 1(a); 2013-287, s. 3; 2014-100, s. 35.15C; 2015-241, s. 30.24; 2017-135, s. 9(d); 2020-48, s. 1.7(a).)