

DRAFT ENGROSSMENT OF SF 2546 with AMENDMENT S2546-1A

1.1 A bill for an act

1.2 relating to retirement; Minnesota State Retirement System, Public Employees

1.3 Retirement Association, Teachers Retirement Association, and St. Paul Teachers

1.4 Retirement Fund Association; authorizing advanced practice registered nurses

1.5 (APRNs) to provide disability assessments; amending Minnesota Statutes 2020,

1.6 sections 352.01, by adding a subdivision; 352.113, subdivision 4; 352.95,

1.7 subdivision 4; 352B.011, by adding a subdivision; 352B.10, subdivision 4; 353.01,

1.8 by adding a subdivision; 353.031, subdivisions 3, 8; 354.05, by adding a

1.9 subdivision; 354.48, subdivisions 4, 6, 6a; 354A.011, by adding subdivisions;

1.10 354A.36, subdivisions 4, 6, by adding a subdivision.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. Minnesota Statutes 2020, section 352.01, is amended by adding a subdivision

1.13 to read:

1.14 Subd. 27. **APRN.** "APRN" means an individual licensed as an advanced practice

1.15 registered nurse by the board of nursing as defined in section 148.171, subdivision 3. The

1.16 APRN must practice within the scope of the individual's professional licensure.

1.17 Sec. 2. Minnesota Statutes 2020, section 352.113, subdivision 4, is amended to read:

1.18 Subd. 4. **Medical or psychological examinations; authorization for payment of**

1.19 **benefit.** (a) Any physician, psychologist, chiropractor, physician assistant, podiatrist, or

1.20 ~~nurse practitioner~~ APRN providing any service specified in this section must be licensed.

1.21 (b) An applicant shall provide a detailed report signed by a physician, and at least one

1.22 additional report signed by a physician, psychologist, chiropractor, physician assistant,

1.23 podiatrist, or ~~nurse practitioner~~ APRN with evidence to support an application for total and

1.24 permanent disability. The reports must include an expert opinion regarding whether the

2.1 employee is permanently and totally disabled within the meaning of section 352.01,
2.2 subdivision 17, and that the disability arose before the employee was placed on any paid or
2.3 unpaid leave of absence or terminated public service.

2.4 (c) If there is medical evidence that supports the expectation that at some point the person
2.5 applying for the disability benefit will no longer be disabled, the decision granting the
2.6 disability benefit may provide for a termination date upon which the total and permanent
2.7 disability can be expected to no longer exist. When a termination date is part of the decision
2.8 granting benefits, prior to the benefit termination the executive director shall review any
2.9 evidence provided by the disabled employee to show that the disabling condition for which
2.10 benefits were initially granted continues. If the benefits cease, the disabled employee may
2.11 follow the appeal procedures described in section 356.96 or may reapply for disability
2.12 benefits using the process described in this subdivision.

2.13 (d) Any claim to disability must be supported by a report from the employer indicating
2.14 that there is no available work that the employee can perform with the disabling condition
2.15 and that all reasonable accommodations have been considered. Upon request of the executive
2.16 director, an employer shall provide evidence of the steps the employer has taken to attempt
2.17 to provide reasonable accommodations and continued employment to the claimant.

2.18 (e) The director shall also obtain written certification from the employer stating whether
2.19 the employment has ceased or whether the employee is on sick leave of absence because
2.20 of a disability that will prevent further service to the employer and that the employee is not
2.21 entitled to compensation from the employer.

2.22 (f) The medical adviser shall consider the reports of the physician, psychologist,
2.23 chiropractor, physician assistant, podiatrist, or ~~nurse practitioner~~ APRN and any other
2.24 evidence supplied by the employee or other interested parties. If the medical adviser finds
2.25 the employee totally and permanently disabled, the adviser shall make appropriate
2.26 recommendation to the director in writing together with the date from which the employee
2.27 has been totally disabled. The director shall then determine if the disability occurred while
2.28 still in the employment of the state and constitutes a total and permanent disability as defined
2.29 in section 352.01, subdivision 17.

2.30 (g) A terminated employee may apply for a disability benefit within 18 months of
2.31 termination as long as the disability occurred while in the employment of the state. The fact
2.32 that an employee is placed on leave of absence without compensation because of disability
2.33 does not bar that employee from receiving a disability benefit.

3.1 (h) Upon appeal, the board of directors may extend the disability benefit application
3.2 deadline in paragraph (g) by an additional 18 months if the terminated employee is
3.3 determined by the board of directors to have a cognitive impairment that made it unlikely
3.4 that the terminated employee understood that there was an application deadline or that the
3.5 terminated employee was able to meet the application deadline.

3.6 (i) Unless the payment of a disability benefit has terminated because the employee is
3.7 no longer totally disabled, or because the employee has reached normal retirement age as
3.8 provided in this section, the disability benefit must cease with the last payment received by
3.9 the disabled employee or which had accrued during the lifetime of the employee unless
3.10 there is a spouse surviving. In that event, the surviving spouse is entitled to the disability
3.11 benefit for the calendar month in which the disabled employee died.

3.12 Sec. 3. Minnesota Statutes 2020, section 352.95, subdivision 4, is amended to read:

3.13 Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide medical,
3.14 chiropractic, or psychological evidence to support an application for disability benefits. The
3.15 director shall have the employee examined by at least one additional licensed physician,
3.16 APRN, chiropractor, or psychologist who is designated by the medical adviser. The
3.17 physicians, APRNs, chiropractors, or psychologists with respect to a mental impairment,
3.18 shall make written reports to the director concerning the question of the employee's disability,
3.19 including their expert opinions as to whether the employee has an occupational disability
3.20 within the meaning of section 352.01, subdivision 17a, and whether the employee has a
3.21 duty disability, physical or psychological, under section 352.01, subdivision 17b, or has a
3.22 regular disability, physical or psychological, under section 352.01, subdivision 17c. The
3.23 director shall also obtain written certification from the employer stating whether or not the
3.24 employee is on sick leave of absence because of a disability that will prevent further service
3.25 to the employer performing normal duties as defined in section 352.01, subdivision 17d, or
3.26 performing less frequent duties as defined in section 352.01, subdivision 17e, and as a
3.27 consequence, the employee is not entitled to compensation from the employer.

3.28 (b) If, on considering the reports by the physicians, APRNs, chiropractors, or
3.29 psychologists and any other evidence supplied by the employee or others, the medical
3.30 adviser finds that the employee has an occupational disability within the meaning of section
3.31 352.01, subdivision 17a, the ~~adviser~~ adviser shall make the appropriate recommendation
3.32 to the director, in writing, together with the date from which the employee has been disabled.
3.33 The director shall then determine the propriety of authorizing payment of a duty disability
3.34 benefit or a regular disability benefit as provided in this section.

4.1 (c) Unless the payment of a disability benefit has terminated because the employee no
4.2 longer has an occupational disability, or because the employee has reached either age 55
4.3 or the five-year anniversary of the effective date of the disability benefit, whichever is later,
4.4 the disability benefit must cease with the last payment which was received by the disabled
4.5 employee or which had accrued during the employee's lifetime. While disability benefits
4.6 are paid, the director has the right, at reasonable times, to require the disabled employee to
4.7 submit proof of the continuance of an occupational disability. If any examination indicates
4.8 to the medical adviser that the employee no longer has an occupational disability, the
4.9 disability payment must be discontinued upon the person's reinstatement to state service or
4.10 within 60 days of the finding, whichever is sooner.

4.11 Sec. 4. Minnesota Statutes 2020, section 352B.011, is amended by adding a subdivision
4.12 to read:

4.13 Subd. 3a. **APRN.** "APRN" means an individual licensed as an advanced practice
4.14 registered nurse by the board of nursing as defined in section 148.171, subdivision 3. The
4.15 APRN must practice within the scope of the individual's professional licensure.

4.16 Sec. 5. Minnesota Statutes 2020, section 352B.10, subdivision 4, is amended to read:

4.17 Subd. 4. **Proof of disability.** (a) No disability benefits may be paid unless the member
4.18 provides adequate proof is furnished to the executive director of the existence of the
4.19 disability.

4.20 (b) Adequate proof of a disability must include a written expert report by a licensed
4.21 physician, ~~by a~~ APRN, or licensed chiropractor, or with respect to a mental impairment, by
4.22 a licensed psychologist.

4.23 (c) Following the commencement of benefit payments, the executive director has the
4.24 right, at reasonable times, to require the ~~disability~~ disability benefit recipient to submit
4.25 proof of the continuance of the disability claimed.

4.26 Sec. 6. Minnesota Statutes 2020, section 353.01, is amended by adding a subdivision to
4.27 read:

4.28 Subd. 50. **APRN.** "APRN" means an individual licensed as an advanced practice
4.29 registered nurse by the board of nursing as defined in section 148.171, subdivision 3. The
4.30 APRN must practice within the scope of the individual's professional licensure.

5.1 Sec. 7. Minnesota Statutes 2020, section 353.031, subdivision 3, is amended to read:

5.2 Subd. 3. **Procedure to determine eligibility; generally.** (a) Every claim for a disability
5.3 benefit must be initiated in writing on an application form and in the manner prescribed by
5.4 the executive director and filed with the executive director. An application for disability
5.5 benefits must be made within 18 months following termination of public service as defined
5.6 under section 353.01, subdivision 11a.

5.7 (b) All medical reports must support a finding that the disability arose before the employee
5.8 was placed on any paid or unpaid leave of absence or terminated public service, as defined
5.9 under section 353.01, subdivision 11a.

5.10 (c) An applicant for disability shall provide a detailed report signed by a licensed medical
5.11 doctor and at least one additional report signed by a medical doctor, psychologist, APRN,
5.12 or chiropractor. The applicant shall authorize the release of all medical and health care
5.13 evidence, including all medical records and relevant information from any source, to support
5.14 the application for initial, or the continuing payment of, disability benefits.

5.15 (d) All reports must contain an opinion regarding the claimant's prognosis, the duration
5.16 of the disability, and the expectations for improvement. Any report that does not contain
5.17 and support a finding that the disability will last for at least one year may not be relied upon
5.18 to support eligibility for benefits.

5.19 (e) Where the medical evidence supports the expectation that at some point in time the
5.20 claimant will no longer be disabled, any decision granting disability may provide for a
5.21 termination date upon which disability can be expected to no longer exist. In the event a
5.22 termination date is made part of the decision granting benefits, prior to the actual termination
5.23 of benefits, the claimant shall have the opportunity to show that the disabling condition for
5.24 which benefits were initially granted continues. In the event the benefits terminate in
5.25 accordance with the original decision, the claimant may petition for a review by the board
5.26 of trustees under section 353.03, subdivision 3, or may reapply for disability in accordance
5.27 with these procedures and section 353.33, 353.656, or 353E.06, as applicable.

5.28 (f) Any claim to disability must be supported by a report from the employer indicating
5.29 that there is no available work that the employee can perform in the employee's disabled
5.30 condition and that all reasonable accommodations have been considered. Upon request of
5.31 the executive director, an employer shall provide evidence of the steps the employer has
5.32 taken to attempt to provide reasonable accommodations and continued employment to the
5.33 claimant. The employer shall also provide a certification of the member's past public service;
5.34 the dates of any paid sick leave, vacation, or any other employer-paid salary continuation

6.1 plan beyond the last working day; and whether or not any sick or annual leave has been
6.2 allowed.

6.3 (g) An employee who is placed on leave of absence without compensation because of
6.4 a disability is not barred from receiving a disability benefit.

6.5 (h) An applicant for disability benefits may file a retirement annuity application under
6.6 section 353.29, subdivision 4, simultaneously with an application for disability benefits. If
6.7 the application for disability benefits is approved, the retirement annuity application is
6.8 canceled. If disability benefits are denied, the retirement annuity application must be
6.9 processed upon the request of the applicant. No member of the public employees general
6.10 plan, the public employees police and fire plan, or the local government correctional service
6.11 retirement plan may receive a disability benefit and a retirement annuity simultaneously
6.12 from the same plan.

6.13 Sec. 8. Minnesota Statutes 2020, section 353.031, subdivision 8, is amended to read:

6.14 Subd. 8. **Proof of continuing disability.** (a) A disability benefit payment must not be
6.15 made except upon adequate proof furnished to the executive director of the association that
6.16 the person remains disabled.

6.17 (b) During the time when disability benefits are being paid, the executive director of the
6.18 association has the right, at reasonable times, to require the disabled member to submit
6.19 proof of the continuance of the disability claimed.

6.20 (c) Adequate proof of a disability must include a written expert report by a licensed
6.21 physician, a APRN, or licensed chiropractor, or, with respect to a mental impairment, a
6.22 licensed psychologist.

6.23 Sec. 9. Minnesota Statutes 2020, section 354.05, is amended by adding a subdivision to
6.24 read:

6.25 Subd. 43. **APRN.** "APRN" means an individual licensed as an advanced practice
6.26 registered nurse by the board of nursing as defined in section 148.171, subdivision 3. The
6.27 APRN must practice within the scope of the individual's professional licensure.

6.28 Sec. 10. Minnesota Statutes 2020, section 354.48, subdivision 4, is amended to read:

6.29 Subd. 4. **Determination by executive director.** (a) The executive director shall have
6.30 the member examined by at least two licensed physicians, licensed chiropractors, or licensed
6.31 psychologists.

7.1 (b) These physicians, chiropractors, APRNs, or psychologists with respect to a mental
7.2 impairment, shall make written reports to the executive director concerning the member's
7.3 disability, including expert opinions as to whether or not the member is permanently and
7.4 totally disabled within the meaning of section 354.05, subdivision 14.

7.5 (c) The executive director shall also obtain written certification from the last employer
7.6 stating whether or not the member was separated from service because of a disability which
7.7 would reasonably prevent further service to the employer and as a consequence the member
7.8 is not entitled to compensation from the employer.

7.9 (d) If, upon the consideration of the reports of the physicians, chiropractors, APRNs, or
7.10 psychologists and any other evidence presented by the member or by others interested
7.11 therein, the executive director finds that the member is totally and permanently disabled,
7.12 the executive director shall grant the member a disability benefit.

7.13 (e) An employee who is placed on leave of absence without compensation because of
7.14 disability is not barred from receiving a disability benefit.

7.15 Sec. 11. Minnesota Statutes 2020, section 354.48, subdivision 6, is amended to read:

7.16 Subd. 6. **Regular physical examinations.** At least once each year during the first five
7.17 years following the allowance of a disability benefit to any member, and at least once in
7.18 every three-year period thereafter, the executive director may require the disability benefit
7.19 recipient to undergo an expert examination by a physician or physicians, by a chiropractor
7.20 or chiropractors, by an APRN or APRNs, or by one or more psychologists with respect to
7.21 a mental impairment, engaged by the executive director. If an examination indicates that
7.22 the member is no longer permanently and totally disabled or that the member is engaged
7.23 or is able to engage in a substantial gainful occupation, payments of the disability benefit
7.24 by the association must be discontinued. The payments must be discontinued as soon as the
7.25 member is reinstated to the payroll following sick leave, but payment may not be made for
7.26 more than 60 days after the physicians, ~~the~~ chiropractors, APRNs, or ~~the~~ psychologists
7.27 engaged by the executive director find that the person is no longer permanently and totally
7.28 disabled.

7.29 Sec. 12. Minnesota Statutes 2020, section 354.48, subdivision 6a, is amended to read:

7.30 Subd. 6a. **Medical adviser; duties.** The executive director may contract with an
7.31 accredited independent organization specializing in disability determinations, licensed
7.32 physicians, or physicians on the staff of the commissioner of health as designated by the
7.33 commissioner, to be the medical adviser to the executive director. The medical adviser shall

8.1 designate licensed physicians, ~~licensed chiropractors, or licensed psychologists with respect~~
8.2 ~~to a mental impairment~~, who shall examine applicants for disability benefits. The medical
8.3 adviser shall pass upon all expert reports based on any examinations performed in order to
8.4 determine whether a teacher is totally and permanently disabled as defined in section 354.05,
8.5 subdivision 14. The medical adviser shall also investigate all health and medical statements
8.6 and certificates by or on behalf of a teacher in connection with a disability benefit, and shall
8.7 report in writing to the director setting forth any conclusions and recommendations on all
8.8 matters referred to the medical adviser.

8.9 Sec. 13. Minnesota Statutes 2020, section 354A.011, is amended by adding a subdivision
8.10 to read:

8.11 Subd. 6a. **APRN.** "APRN" means an individual licensed as an advanced practice
8.12 registered nurse by the board of nursing as defined in section 148.171, subdivision 3. The
8.13 APRN must practice within the scope of the individual's professional licensure.

8.14 Sec. 14. Minnesota Statutes 2020, section 354A.011, is amended by adding a subdivision
8.15 to read:

8.16 Subd. 14b. **Medical expert.** "Medical expert," for purposes of section 354A.36, means
8.17 a licensed physician, licensed chiropractor, APRN, or licensed psychologist, in each case
8.18 working within the scope of the individual's professional licensure.

8.19 Sec. 15. Minnesota Statutes 2020, section 354A.36, subdivision 4, is amended to read:

8.20 Subd. 4. **Determination of disability.** (a) The board of the teachers retirement fund
8.21 association shall make the final determination of the existence of a permanent and total
8.22 disability. The board shall have the coordinated member examined by at least two ~~licensed~~
8.23 ~~physicians, licensed chiropractors, or licensed psychologists who are selected by the board~~
8.24 medical experts. After making ~~any a required examinations~~ examination, each ~~physician,~~
8.25 ~~chiropractor, or psychologist with respect to a mental impairment,~~ medical expert shall
8.26 make a written report to the board concerning the coordinated member, which shall include
8.27 ~~a statement~~ an opinion of the medical expert ~~opinion of the physician, chiropractor, or~~
8.28 ~~psychologist~~ as to whether or not the member is permanently and totally disabled within
8.29 the meaning of section 354A.011, subdivision 14. The board shall also obtain a written
8.30 statement from the employer as to whether or not the coordinated member was terminated
8.31 or separated from active employment due to a disability which is deemed by the employer
8.32 to reasonably prevent further service by the member to the employer and which caused the
8.33 coordinated member not to be entitled to further compensation from the employer for services

9.1 rendered by the member. If, after consideration of the reports of the ~~physicians, chiropractors,~~
 9.2 ~~or psychologists with respect to a mental impairment~~ medical experts and any medical
 9.3 advisor retained by the board under subdivision 4a, the employer statement, and any evidence
 9.4 presented by the member or by any other interested parties, the board determines that the
 9.5 coordinated member is totally and permanently disabled within the meaning of section
 9.6 354A.011, subdivision 14, ~~it~~ the board shall grant the coordinated member a disability
 9.7 benefit. A member who is placed on a leave of absence without compensation as a result
 9.8 of the disability is not barred from receiving a disability benefit under this section.

9.9 (b) The executive director shall reject an application for disability benefits under section
 9.10 354A.36 if the member is applying only because an employer-sponsored provider of private
 9.11 disability insurance benefits requires the application and the member would not have applied
 9.12 for disability benefits in the absence of the requirement. The member shall submit a copy
 9.13 of the disability insurance policy that requires an application for disability benefits from
 9.14 the plan if the member wishes to assert that the application is only being submitted because
 9.15 of the disability insurance policy requirement.

9.16 Sec. 16. Minnesota Statutes 2020, section 354A.36, is amended by adding a subdivision
 9.17 to read:

9.18 Subd. 4a. **Medical advisor; duties.** The executive director may contract with an
 9.19 independent medical expert or an accredited organization specializing in disability
 9.20 determinations to serve as a medical advisor to the board. The medical advisor shall review
 9.21 all expert reports based on any examinations performed in order to determine whether a
 9.22 coordinated member is totally and permanently disabled as defined in section 354A.11,
 9.23 subdivision 14. The medical advisor shall also investigate all health and medical statements
 9.24 and certificates by or on behalf of a member in connection with a disability benefit and shall
 9.25 report in writing to the board, setting forth any conclusions and recommendations on all
 9.26 matters referred to the medical advisor. The board shall have sole discretion to select the
 9.27 appropriate licensed medical professional or organization to serve as the medical advisor.

9.28 Sec. 17. Minnesota Statutes 2020, section 354A.36, subdivision 6, is amended to read:

9.29 Subd. 6. **Requirement for regular physical examinations.** At least once each year
 9.30 during the first five years following the granting of a disability benefit to a coordinated
 9.31 member ~~by the board~~ and at least once in every three-year period thereafter, the board may
 9.32 require the disability benefit recipient to undergo an expert examination ~~as a condition for~~
 9.33 ~~continued entitlement of the benefit recipient to receive a disability benefit. If the board~~

10.1 ~~requires an examination, the expert examination must be made at the place of residence of~~
10.2 ~~the disability benefit recipient or at any other place mutually agreeable to the disability~~
10.3 ~~benefit recipient and the board. The expert examination must be made by a physician or~~
10.4 ~~physicians, by a chiropractor or chiropractors, or by one or more psychologists medical~~
10.5 ~~expert engaged by the board, in its sole discretion. The physician or physicians, the~~
10.6 ~~chiropractor or chiropractors, or the psychologist or psychologists with respect to a mental~~
10.7 ~~impairment, medical expert conducting the expert examination shall make a written report~~
10.8 ~~to the board concerning the disability benefit recipient and the recipient's disability, including~~
10.9 ~~a statement of the expert medical expert's opinion of the physician, chiropractor, or~~
10.10 ~~psychologist as to whether or not the member remains permanently and totally disabled~~
10.11 ~~within the meaning of section 354A.011, subdivision 14. If the board determines from~~
10.12 ~~consideration of the written expert examination medical expert's report of the physician, of~~
10.13 ~~the chiropractor, or of the psychologist, with respect to a mental impairment, that the~~
10.14 ~~disability benefit recipient is no longer permanently and totally disabled or if the board~~
10.15 ~~determines that the benefit recipient is engaged or is able to engage in a gainful occupation,~~
10.16 ~~unless the disability benefit recipient is partially employed under subdivision 7, then further~~
10.17 ~~disability benefit payments from the fund must be discontinued within 60 days of the~~
10.18 ~~determination by the board. The discontinuation of disability benefits must occur immediately~~
10.19 ~~if the disability recipient is reinstated to the district payroll following sick leave and within~~
10.20 ~~60 days of the determination by the board following the expert examination and report of~~
10.21 ~~the physician or physicians, chiropractor or chiropractors, or psychologist or psychologists~~
10.22 ~~engaged by the board that the disability benefit recipient is no longer permanently and totally~~
10.23 ~~disabled within the meaning of section 354A.011, subdivision 14.~~

10.24 Sec. 18. **EFFECTIVE DATE.**

10.25 Sections 1 to 17 are effective the day following final enactment.