

1 **ENROLLED**

2 **Senate Bill No. 394**

3 (BY SENATORS KESSLER (MR. PRESIDENT), BARNES, BEACH, BLAIR, BOLEY, CANN,
4 CARMICHAEL, CHAFIN, COLE, COOKMAN, EDGELL, FACEMIRE, FITZSIMMONS, GREEN, D.
5 HALL, M. HALL, JENKINS, KIRKENDOLL, LAIRD, MCCABE, MILLER, NOHE, PALUMBO,
6 PLYMALE, PREZIOSO, SNYDER, STOLLINGS, SYPOLT, TUCKER, UNGER, WALTERS, WELLS,
7 WILLIAMS AND YOST)

8 _____
9 [Passed April 13, 2013; to take effect July 1, 2013.]
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12
13 AN ACT to amend and reenact §5-10-27 of the Code of West Virginia,
14 1931, as amended; to amend and reenact §7-14D-20 of said code;
15 to amend and reenact §8-22A-22 of said code; to amend and
16 reenact §15-2-33 of said code; and to amend and reenact §15-
17 2A-12 of said code, all relating to providing scholarships for
18 dependent children of law-enforcement officers who die in
19 performance of duty; modifying scholarship benefits for
20 certain dependents; and establishing scholarship benefits for
21 certain dependents.

22 *Be it enacted by the Legislature of West Virginia:*

23 That §5-10-27 of the Code of West Virginia, 1931, as amended,
24 be amended and reenacted; that §7-14D-20 of said code be amended
25 and reenacted; that §8-22A-22 of said code be amended and
26 reenacted; that §15-2-33 of said code be amended and reenacted; and

1 that §15-2A-12 of said code be amended and reenacted, all to read
2 as follows:

3 **CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR,**
4 **SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;**
5 **MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.**
6 **ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

7 **§5-10-27. Preretirement death annuities.**

8 (a) (1) Except as otherwise provided in this section, in the
9 event any member who has ten or more years of credited service or
10 any former member with ten or more years of credited service and
11 who is entitled to a deferred annuity, pursuant to section twenty-
12 one of this article, may at any time prior to the effective date of
13 his or her retirement, by written declaration duly executed and
14 filed with the board of trustees, in the same manner as if he or
15 she were then retiring from the employ of a participating public
16 employer, elect option A provided in section twenty-four of this
17 article and nominate a beneficiary whom the board finds to have had
18 an insurable interest in the life of the member. Prior to the
19 effective date of his or her retirement, a member may revoke his or
20 her election of option A and nomination of beneficiary and he or
21 she may again prior to his or her retirement elect option A and
22 nominate a beneficiary as provided in this subsection. Upon the
23 death of a member who has an option A election in force, his or her
24 beneficiary, if living, shall immediately receive an annuity
25 computed in the same manner in all respects as if the same member

1 had retired the day preceding the date of his or her death,
2 notwithstanding that he or she might not have attained age sixty
3 years, and elected the said option A. If at the time of his or her
4 retirement a member has an option A election in force, his or her
5 election of option A and nomination of beneficiary shall thereafter
6 continue in force. As an alternative to annuity option A, a member
7 or former member may elect to have the preretirement death benefit
8 paid as a return of accumulated contributions in a lump sum amount
9 to any beneficiary or beneficiaries he or she chooses.

10 (2) In the event any member or former member, who first became
11 a member of the Public Employees Retirement System after the
12 effective date of amendments made to this section during the 2006
13 regular legislative session and who has ten or more years of
14 credited service and who is entitled to a deferred annuity,
15 pursuant to section twenty-one of this article: Dies without
16 leaving a surviving spouse; but leaves surviving him or her a child
17 who is financially dependent on the member by virtue of a permanent
18 mental or physical disability upon evidence satisfactory to the
19 board; and has named the disabled child as sole beneficiary, the
20 disabled child shall immediately receive an annuity computed in the
21 same manner in all respects as if the member had: (A) Retired the
22 day preceding the date of his or her death, notwithstanding that he
23 or she might not have attained age sixty or sixty-two years, as the
24 case may be; (B) elected option A provided in section twenty-four
25 of this article; and (C) nominated his or her disabled child as
26 beneficiary. A member or former member with ten or more years of

1 credited service, who does not leave surviving him or her a spouse
2 or a disabled child, may elect to have the preretirement death
3 benefit paid as a return of accumulated contributions in a lump sum
4 amount to any beneficiary or beneficiaries he or she chooses.

5 (b) (1) In the event any member who has ten or more years of
6 credited service, or any former member with ten or more years of
7 credited service and who is entitled to a deferred annuity,
8 pursuant to section twenty-one of this article: Dies; and leaves a
9 surviving spouse, the surviving spouse shall immediately receive an
10 annuity computed in the same manner in all respects as if the
11 member had: (A) Retired the day preceding the date of his or her
12 death, notwithstanding that he or she might not have attained age
13 sixty or sixty-two years, as the case may be; (B) elected option A
14 provided in section twenty-four of this article; and (C) nominated
15 his or her surviving spouse as beneficiary. However, the surviving
16 spouse shall have the right to waive the annuity provided in this
17 section: *Provided*, That he or she executes a valid and notarized
18 waiver on a form provided by the board and that the member or
19 former member attests to the waiver. If the waiver is presented to
20 and accepted by the board, the member or former member, may
21 nominate a beneficiary who has an insurable interest in the
22 member's or former member's life. As an alternative to annuity
23 option A, the member or former member may elect to have the
24 preretirement death benefit paid as a return of accumulated
25 contributions in a lump sum amount to any beneficiary or
26 beneficiaries he or she chooses in the event a waiver, as provided

1 in this section, has been presented to and accepted by the board.

2 (2) Whenever any member or former member who first became a
3 member of the retirement system after the effective date of the
4 amendments to this section made during the 2006 regular legislative
5 session and who has ten or more years of credited service and who
6 is entitled to a deferred annuity, pursuant to section twenty-one
7 of this article, dies and leaves a surviving spouse, the surviving
8 spouse shall immediately receive an annuity computed in the same
9 manner in all respects as if the member had: (A) Retired the day
10 preceding the date of his or her death, notwithstanding that he or
11 she might not have attained age sixty or sixty-two years, as the
12 case may be; (B) elected option A provided in section twenty-four
13 of this article; and (C) nominated his or her surviving spouse as
14 beneficiary. However, the surviving spouse shall have the right to
15 waive the annuity provided in this section: *Provided*, That he or
16 she executes a valid and notarized waiver on a form provided by the
17 board and that the member or former member attests to the waiver.
18 If the waiver is presented to and accepted by the board, the member
19 or former member may: (1) Elect to have the preretirement death
20 benefit paid in a lump sum amount, rather than annuity option A
21 provided in section twenty-four of this article, as a return of
22 accumulated contributions to any beneficiary or beneficiaries he or
23 she chooses; or (2) may name his or her surviving child, who is
24 financially dependent on the member by virtue of a permanent mental
25 or physical disability, as his or her sole beneficiary to receive
26 an annuity computed in the same manner in all respects as if the

1 member had: (A) Retired the day preceding the date of his or her
2 death, notwithstanding that he or she might not have attained the
3 age of sixty or sixty-two as the case may be; (B) elected option A
4 provided in section twenty-four of this article; and (C) nominated
5 his or her disabled child as beneficiary.

6 (c) In the event any member who has ten or more years of
7 credited service or any former member with ten or more years of
8 credited service and who is entitled to a deferred annuity,
9 pursuant to section twenty-one of this article: (1) Dies without
10 leaving surviving him or her a spouse; but (2) leaves surviving him
11 or her an infant child or children; and (3) does not have a
12 beneficiary nominated as provided in subsection (a) of this
13 section, the infant child or children are entitled to an annuity to
14 be calculated as follows: The annuity reserve shall be calculated
15 as though the member had retired as of the date of his or her
16 decease and elected a straight life annuity and the amount of the
17 annuity reserve shall be paid in equal monthly installments to the
18 member's infant child or children until the child or children
19 attain age twenty-one or sooner marry or become emancipated;
20 however, in no event shall any child or children receive more than
21 \$250 per month each. The annuity payments shall be computed as of
22 the date of the death of the member and the amount of the annuity
23 shall remain constant during the period of payment. The annual
24 amount of the annuities payable by this section shall not exceed
25 sixty percent of the deceased member's final average salary.

26 (d) In the event any member or former member does not have ten

1 or more years of credited service, no preretirement death annuity
2 may be authorized, owed or awarded under this section, except as
3 provided in subdivision (4), subsection (a), section fifteen of
4 this article as amended during the 2005 regular session of the
5 Legislature.

6 (e) Any person qualified as a surviving dependent child under
7 this section, who is the surviving dependent child of a law-
8 enforcement officer who loses his or her life in the performance of
9 duty, in addition to any other benefits due under this or other
10 sections of this article is entitled to receive a scholarship to be
11 applied to the career development education of that person. This
12 sum, up to but not exceeding \$7,500 per year, shall be paid from
13 the fund to any higher education institution in this state, career-
14 technical education provider in this state or other entity in this
15 state approved by the board, to offset the expenses of tuition,
16 room and board, books, fees or other costs incurred in a course of
17 study at any of those institutions so long as the recipient makes
18 application to the board on an approved form and under rules as
19 provided by the board and maintains scholastic eligibility as
20 defined by the institution or the board. The board may by
21 appropriate rules define age requirements, physical and mental
22 requirements, scholastic eligibility, disbursement methods,
23 institutional qualifications and other requirements as necessary
24 and not inconsistent with this section.

25 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

26 **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

1 **§7-14D-20. Additional death benefits and scholarships - Dependent**
2 **children.**

3 (a) In addition to the spouse death benefits in sections
4 eighteen and nineteen of this article, the surviving spouse is
5 entitled to receive and there shall be paid to the spouse \$100
6 monthly for each dependent child.

7 (b) If the surviving spouse dies or if there is no surviving
8 spouse, the fund shall pay monthly to each dependent child a sum
9 equal to one fourth of the surviving spouse's entitlement under
10 either section nineteen or twenty of this article. If there is
11 neither a surviving spouse nor a dependent child, the fund shall
12 pay in equal monthly installments to the dependent parents of the
13 deceased member during their joint lifetimes a sum equal to the
14 amount which a surviving spouse, without children, would have
15 received: *Provided*, That when there is only one dependent parent
16 surviving, that parent is entitled to receive during his or her
17 lifetime one-half the amount which both parents, if living, would
18 have been entitled to receive: *Provided, however*, That if there is
19 no surviving spouse, dependent child nor dependent parent of the
20 deceased member the accumulated contributions shall be paid to a
21 named beneficiary or beneficiaries: *Provided further*, That if there
22 is no surviving spouse, dependent child, nor dependent parent of
23 the deceased member, nor any named beneficiary or beneficiaries
24 then the accumulated contributions shall be paid to the estate of
25 the deceased member.

1 (c) Any person qualifying as a dependent child under this
2 section, in addition to any other benefits due under this or other
3 sections of this article, is entitled to receive a scholarship to
4 be applied to the career development education of that person.
5 This sum, up to but not exceeding \$7,500 per year, shall be paid
6 from the fund to any higher education institution in this state,
7 career-technical education provider in this state or other entity
8 in this state approved by the board, to offset the expenses of
9 tuition, room and board, books, fees or other costs incurred in a
10 course of study at any of these institutions so long as the
11 recipient makes application to the board on an approved form and
12 under such rules as the board may provide, and maintains scholastic
13 eligibility as defined by the institution or the board. The board
14 may propose legislative rules for promulgation in accordance with
15 article three, chapter twenty-nine-a of this code which define age
16 requirements, physical and mental requirements, scholastic
17 eligibility, disbursement methods, institutional qualifications and
18 other requirements as necessary and not inconsistent with this
19 section.

20 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

21 **§8-22A-22. Additional death benefits and scholarships - Dependent**
22 **children.**

23 (a) Except as provided in subsection (a), section nine of this
24 article, in addition to the spouse death benefits in this article,
25 the surviving spouse is entitled to receive and there shall be paid

1 to the spouse \$100 monthly for each dependent child.

2 (b) If the surviving spouse dies or if there is no surviving
3 spouse, the fund shall pay monthly to each dependent child a sum
4 equal to one hundred percent of the spouse's entitlement under this
5 article divided by the number of dependent children. If there is
6 neither a surviving spouse nor a dependent child, the fund shall
7 pay in equal monthly installments to the dependent parents of the
8 deceased member during their joint lifetimes a sum equal to the
9 amount which a surviving spouse, without children, would have
10 received: *Provided*, That when there is only one dependent parent
11 surviving, that parent is entitled to receive during his or her
12 lifetime one-half the amount which both parents, if living, would
13 have been entitled to receive: *Provided, however*, That if there is
14 no surviving spouse, dependent child or dependent parent of the
15 deceased member, the accumulated contributions shall be paid to a
16 named beneficiary or beneficiaries: *Provided further*, That if there
17 is no surviving spouse, dependent child or dependent parent of the
18 deceased member, or any named beneficiary or beneficiaries, then
19 the accumulated contributions shall be paid to the estate of the
20 deceased member.

21 (c) Any person qualifying as a dependent child under this
22 section, in addition to any other benefits due under this or other
23 sections of this article, is entitled to receive a scholarship to
24 be applied to the career development education of that person.
25 This sum, up to but not exceeding \$7,500 per year, shall be paid
26 from the fund to any higher education institution in this state,

1 career-technical education provider in this state or other entity
2 in this state approved by the board, to offset the expenses of
3 tuition, room and board, books, fees or other costs incurred in a
4 course of study at any of these institutions so long as the
5 recipient makes application to the board on an approved form and
6 under rules provided by the board and maintains scholastic
7 eligibility as defined by the institution or the board. The board
8 may propose legislative rules for promulgation in accordance with
9 article three, chapter twenty-nine-a of this code which define age
10 requirements, physical and mental requirements, scholastic
11 eligibility, disbursement methods, institutional qualifications and
12 other requirements as necessary and not inconsistent with this
13 section.

14 **CHAPTER 15. PUBLIC SAFETY.**

15 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

16 **§15-2-33. Awards and benefits to dependents of member when the**
17 **member dies in performance of duty; to dependents of a duty**
18 **disability retirant; dependent child scholarship and amount.**

19 (a) The surviving spouse or the dependent child or children or
20 dependent parent or parents of any member who has lost or loses his
21 or her life by reason of injury, illness or disease resulting from
22 an occupational risk or hazard inherent in or peculiar to the
23 service required of employees while the member was or is engaged in
24 the performance of his or her duties as an employee of the agency,
25 or if a retirant dies from any cause after having been retired

1 pursuant to the provisions of section twenty-nine of this article,
2 the surviving spouse or other dependent is entitled to receive and
3 shall be paid from the fund benefits as follows: To the surviving
4 spouse annually, in equal monthly installments during his or her
5 lifetime the greater of one or the other of two amounts:

6 (1) An amount equal to five and one-half percent of the total
7 salary which was or would have been earned by the deceased member
8 or duty disability retirant during twenty-five years of service
9 based on the average earnings of the member or duty disability
10 retirant while employed by the agency; or

11 (2) The sum of \$6,000.

12 (b) In addition, the surviving spouse is entitled to receive
13 and shall be paid \$100 monthly for each dependent child or
14 children. If the surviving spouse dies or if there is no surviving
15 spouse, there shall be paid monthly to each dependent child or
16 children from the fund a sum equal to twenty-five percent of the
17 surviving spouse's entitlement. If there is no surviving spouse
18 and no dependent child or children, there shall be paid annually in
19 equal monthly installments from the fund to the dependent parents
20 of the deceased member or retirant during their joint lifetimes a
21 sum equal to the amount which a surviving spouse, without children,
22 would have received: *Provided*, That when there is one dependent
23 parent surviving, that parent is entitled to receive during his or
24 her lifetime one half the amount which both parents, if living,
25 would have been entitled to receive.

26 (c) Any person qualified as a surviving dependent child under

1 this section, in addition to any other benefits due under this or
2 other sections of this article, is entitled to receive a
3 scholarship to be applied to the career development education of
4 that person. This sum, up to but not exceeding \$7,500 per year,
5 shall be paid from the fund to any higher education institution in
6 this state, career-technical education provider in this state or
7 other entity in this state approved by the board, to offset the
8 expenses of tuition, room and board, books, fees or other costs
9 incurred in a course of study at any of those institutions so long
10 as the recipient makes application to the board on an approved form
11 and under rules as provided by the board and maintains scholastic
12 eligibility as defined by the institution or the board. The board
13 may by appropriate rules define age requirements, physical and
14 mental requirements, scholastic eligibility, disbursement methods,
15 institutional qualifications and other requirements as necessary
16 and not inconsistent with this section.

17 (d) A surviving spouse or dependent of an employee meeting the
18 requirements of this section is entitled to receive beneficiary
19 payments on the first day following the date the deceased employee
20 is removed from payroll by the agency. A surviving spouse or
21 dependent of a member who is not currently an employee meeting the
22 requirements of this section is entitled to receive beneficiary
23 payments on the first day following the date of the deceased
24 member's death. A surviving spouse or dependent of a retirant
25 meeting the requirements of this section is entitled to receive
26 beneficiary payments on the first day of the month following the

1 date of the deceased retirant's death. Upon receipt of properly
2 executed forms from the agency and the surviving spouse or
3 dependent, the board shall process the surviving spouse or
4 dependent benefit as soon as administratively feasible.

5 (e) For the purposes of this section, the term "salary" does
6 not include any compensation paid for overtime service.

7 **ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.**

8 **§15-2A-12. Awards and benefits to dependents of employees or**
9 **retirants - When employee dies in performance of**
10 **duty, etc.; dependent child scholarship and amount.**

11 The surviving spouse, the dependent child or children or
12 dependent parent or parents of any employee who has lost or shall
13 lose his or her life by reason of injury, illness or disease
14 resulting from an occupational risk or hazard inherent in or
15 peculiar to the service required of employees while the employee
16 was engaged in the performance of his or her duties as an employee
17 of the agency, or the survivor of a retirant who dies from any
18 cause after having been retired pursuant to the provisions of
19 section nine of this article, is entitled to receive and shall be
20 paid from the fund benefits as follows: To the surviving spouse
21 annually, in equal monthly installments during his or her lifetime,
22 one or the other of two amounts, which shall become payable the
23 first day of the month following the employee's or retirant's death
24 and which shall be the greater of:

25 (1) An amount equal to nine-tenths of the base salary received

1 in the preceding full twelve-month employment period by the
2 deceased employee: *Provided*, That if the employee had not been
3 employed with the agency for twelve full months prior to his or her
4 death, the amount of monthly salary shall be annualized for the
5 purpose of determining the benefit; or

6 (2) The sum of \$10,000.

7 In addition, the surviving spouse is entitled to receive and
8 shall be paid \$150 monthly for each dependent child. If the
9 surviving spouse dies or if there is no surviving spouse, there
10 shall be paid monthly to each dependent child or children from the
11 fund a sum equal to one third of the surviving spouse's
12 entitlement. If there is no surviving spouse and no dependent
13 child or children, there shall be paid annually in equal monthly
14 installments from the fund to the dependent parents of the deceased
15 member during their joint lifetimes a sum equal to the amount which
16 a surviving spouse, without children, would have received:
17 *Provided*, That when there is one dependent parent surviving, that
18 parent is entitled to receive during his or her lifetime one half
19 the amount which both parents, if living, would have been entitled
20 to receive: *Provided, however*, That if there is no surviving
21 spouse, dependent child or dependent parent of the deceased member,
22 the accumulated contributions shall be paid to a named beneficiary
23 or beneficiaries: *Provided further*, That if there is no surviving
24 spouse, dependent child, dependent parent of the deceased member or
25 any named beneficiary or beneficiaries, then the accumulated
26 contributions shall be paid to the estate of the deceased member.

1 Any person qualifying as a surviving dependent child under
2 this section, in addition to any other benefits due under this or
3 other sections of this article, is entitled to receive a
4 scholarship to be applied to the career development education of
5 that person. This sum, up to but not exceeding \$7,500 per year,
6 shall be paid from the fund to any higher education institution in
7 this state, career-technical education provider in this state or
8 other entity in this state approved by the board to offset the
9 expenses of tuition, room and board, books, fees or other costs
10 incurred in a course of study at any of these institutions as long
11 as the recipient makes application to the board on an approved form
12 and under rules provided by the board and maintains scholastic
13 eligibility as defined by the institution or the board. The board
14 may by appropriate rules define age requirements, physical and
15 mental requirements, scholastic eligibility, disbursement methods,
16 institutional qualifications and other requirements as necessary
17 and not inconsistent with this section.

18 A surviving spouse or dependent of an employee meeting the
19 requirements of this section is entitled to receive beneficiary
20 payments on the first day of the month following the date the
21 deceased member is removed from payroll by the agency. A surviving
22 spouse or dependent of a member who is not currently an employee
23 meeting the requirements of this section is entitled to receive
24 beneficiary payments on the first day of the month following the
25 date of the deceased member's death. A surviving spouse or
26 dependent of a retirant meeting the requirements of this section is

1 entitled to receive beneficiary payments on the first day of the
2 month following the date of the deceased retirant's death. Upon
3 receipt of properly executed forms from the agency and surviving
4 spouse or dependent, the board shall process the surviving spouse
5 or dependent benefit as soon as administratively feasible.

6 It is the intent of the Legislature that the levels of
7 benefits provided by operation of this section from the effective
8 date of the enactment of this section during the regular session of
9 the Legislature, 2005, be the same levels of benefits as provided
10 by this section as amended and reenacted during the fourth
11 extraordinary session of the Legislature, 2005. Accordingly, the
12 effective date of the operation of this section as amended and
13 reenacted during the fourth extraordinary session of the
14 Legislature, 2005, is expressly made retrospective to April 9,
15 2005.