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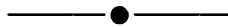
SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4453

(By Delegates Campbell, Craig, Frederick and Hall)



Passed March 13, 2004

In Effect July 1, 2004

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H. B. 4453

(BY DELEGATES CAMPBELL, CRAIG, FREDERICK AND HALL)

[Passed March 13, 2004; in effect July 1, 2004.]

AN ACT to amend and reenact §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §7-14D-24a, all relating to benefits and responsibilities in the deputy sheriffs' retirement system generally; providing for membership of certain persons not employed as a deputy when system initiated; changing method for determining contributions to the system's fund; providing for calculation of contributions required upon reemployment as deputy sheriff; removing language providing for benefits upon reaching early retirement age; changing method for calculating retirement benefits; providing right of members to name a beneficiary in certain circumstances; providing for distribution of accumulated contributions to member's estate in certain circumstances; limiting system loans to members; and providing for determining payment of benefits prior to, during and after deputy retiree returns to work as a deputy.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-5, §7-14D-7, §7-14D-12, §7-14D-13, §7-14D-14, §7-14D-15, §7-14D-20, §7-14D-21 and §7-14D-23 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §7-14D-24a, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-2. Definitions.

1 As used in this article, unless a federal law or regulation or
2 the context clearly requires a different meaning:

3 (a) “Accrued benefit” means on behalf of any member two
4 and one-quarter percent of the member’s final average salary
5 multiplied by the member’s years of credited service. A
6 member’s accrued benefit may not exceed the limits of Section
7 415 of the Internal Revenue Code and is subject to the provi-
8 sions of section nine-a of this article.

9 (b) “Accumulated contributions” means the sum of all
10 amounts deducted from the compensation of a member, or paid
11 on his or her behalf pursuant to article ten-c, chapter five of this
12 code, either pursuant to section seven of this article or section
13 twenty-nine, article ten, chapter five of this code as a result of
14 covered employment together with regular interest on the
15 deducted amounts.

16 (c) “Active military duty” means full-time active duty with
17 any branch of the armed forces of the United States, including
18 service with the national guard or reserve military forces when
19 the member has been called to active full-time duty and has
20 received no compensation during the period of that duty from
21 any board or employer other than the armed forces.

22 (d) “Actuarial equivalent” means a benefit of equal value
23 computed upon the basis of the mortality table and interest rates

24 as set and adopted by the retirement board in accordance with
25 the provisions of this article.

26 (e) “Annual compensation” means the wages paid to the
27 member during covered employment within the meaning of
28 Section 3401(a) of the Internal Revenue Code, but determined
29 without regard to any rules that limit the remuneration included
30 in wages based upon the nature or location of employment or
31 services performed during the plan year plus amounts excluded
32 under Section 414(h)(2) of the Internal Revenue Code and less
33 reimbursements or other expense allowances, cash or noncash
34 fringe benefits or both, deferred compensation and welfare
35 benefits. Annual compensation for determining benefits during
36 any determination period may not exceed one hundred fifty
37 thousand dollars as adjusted for cost of living in accordance
38 with Section 401(a)(17)(B) of the Internal Revenue Code.

39 (f) “Annual leave service” means accrued annual leave.

40 (g) “Annuity starting date” means the first day of the first
41 period for which an amount is received as an annuity by reason
42 of retirement. For purposes of this subsection, if retirement
43 income payments commence after the normal retirement age,
44 “retirement” means the later of the last day the member worked
45 in covered employment and the normal retirement age.

46 (h) “Base salary” means a member’s cash compensation
47 exclusive of overtime from covered employment during the last
48 twelve months of employment. Until a member has worked
49 twelve months, annualized base salary is used as base salary.

50 (i) “Board” means the consolidated public retirement board
51 created pursuant to article ten-d, chapter five of this code.

52 (j) “County commission” has the meaning ascribed to it in
53 section one, article one, chapter seven of this code.

54 (k) "Covered employment" means either: (1) Employment
55 as a deputy sheriff and the active performance of the duties
56 required of a deputy sheriff; or (2) the period of time which
57 active duties are not performed but disability benefits are
58 received under section fourteen or fifteen of this article; or (3)
59 concurrent employment by a deputy sheriff in a job or jobs in
60 addition to his or her employment as a deputy sheriff where the
61 secondary employment requires the deputy sheriff to be a
62 member of another retirement system which is administered by
63 the consolidated public retirement board pursuant to article ten-
64 d of chapter five of this code: *Provided*, That the deputy sheriff
65 contribute to the fund created in section six of this article the
66 amount specified as the deputy sheriff's contribution in section
67 seven of this article.

68 (l) "Credited service" means the sum of a member's years
69 of service, active military duty, disability service and annual
70 leave service.

71 (m) "Deputy sheriff" means an individual employed as a
72 county law-enforcement deputy sheriff in this state and as
73 defined by section two, article fourteen, chapter seven of this
74 code.

75 (n) "Dependent child" means either:

76 (1) An unmarried person under age eighteen who is:

77 (A) A natural child of the member;

78 (B) A legally adopted child of the member;

79 (C) A child who at the time of the member's death was
80 living with the member while the member was an adopting
81 parent during any period of probation; or

82 (D) A stepchild of the member residing in the member's
83 household at the time of the member's death; or

84 (2) Any unmarried child under age twenty-three:

85 (A) Who is enrolled as a full-time student in an accredited
86 college or university;

87 (B) Who was claimed as a dependent by the member for
88 federal income tax purposes at the time of the member's death;
89 and

90 (C) Whose relationship with the member is described in
91 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

92 (o) "Dependent parent" means the father or mother of the
93 member who was claimed as a dependent by the member for
94 federal income tax purposes at the time of the member's death.

95 (p) "Disability service" means service received by a
96 member, expressed in whole years, fractions thereof or both,
97 equal to one half of the whole years, fractions thereof, or both,
98 during which time a member receives disability benefits under
99 section fourteen or fifteen of this article.

100 (q) "Early retirement age" means age forty or over and
101 completion of twenty years of service.

102 (r) "Effective date" means the first day of July, one
103 thousand nine hundred ninety-eight.

104 (s) "Final average salary" means the average of the highest
105 annual compensation received for covered employment by the
106 member during any five consecutive plan years within the
107 member's last ten years of service. If the member did not have
108 annual compensation for the five full plan years preceding the
109 member's attainment of normal retirement age and during that

110 period the member received disability benefits under section
111 fourteen or fifteen of this article then “final average salary”
112 means the average of the monthly salary determined paid to the
113 member during that period as determined under section
114 seventeen of this article multiplied by twelve.

115 (t) “Fund” means the West Virginia deputy sheriff retire-
116 ment fund created pursuant to section six of this article.

117 (u) “Hour of service” means:

118 (1) Each hour for which a member is paid or entitled to
119 payment for covered employment during which time active
120 duties are performed. These hours shall be credited to the
121 member for the plan year in which the duties are performed;
122 and

123 (2) Each hour for which a member is paid or entitled to
124 payment for covered employment during a plan year but where
125 no duties are performed due to vacation, holiday, illness,
126 incapacity including disability, layoff, jury duty, military duty,
127 leave of absence, or any combination thereof, and without
128 regard to whether the employment relationship has terminated.
129 Hours under this paragraph shall be calculated and credited
130 pursuant to West Virginia division of labor rules. A member
131 will not be credited with any hours of service for any period of
132 time he or she is receiving benefits under section fourteen or
133 fifteen of this article; and

134 (3) Each hour for which back pay is either awarded or
135 agreed to be paid by the employing county commission,
136 irrespective of mitigation of damages. The same hours of
137 service shall not be credited both under paragraph (1) or (2) of
138 this subdivision and under this paragraph. Hours under this
139 paragraph shall be credited to the member for the plan year or
140 years to which the award or agreement pertains, rather than the
141 plan year in which the award, agreement or payment is made.

142 (v) “Member” means a person first hired as a deputy sheriff
143 after the effective date of this article, as defined in subsection
144 (r) of this section, or a deputy sheriff first hired prior to the
145 effective date and who elects to become a member pursuant to
146 section five or section seventeen of this article. A member shall
147 remain a member until the benefits to which he or she is
148 entitled under this article are paid or forfeited.

149 (w) “Monthly salary” means the portion of a member’s
150 annual compensation which is paid to him or her per month.

151 (x) “Normal form” means a monthly annuity which is one
152 twelfth of the amount of the member’s accrued benefit which
153 is payable for the member’s life. If the member dies before the
154 sum of the payments he or she receives equals his or her
155 accumulated contributions on the annuity starting date, the
156 named beneficiary shall receive in one lump sum the difference
157 between the accumulated contributions at the annuity starting
158 date and the total of the retirement income payments made to
159 the member.

160 (y) “Normal retirement age” means the first to occur of the
161 following:

162 (1) Attainment of age fifty years and the completion of
163 twenty or more years of service;

164 (2) While still in covered employment, attainment of at
165 least age fifty years and when the sum of current age plus years
166 of service equals or exceeds seventy years;

167 (3) While still in covered employment, attainment of at
168 least age sixty years and completion of five years of service; or

169 (4) Attainment of age sixty-two years and completion of
170 five or more years of service.

171 (z) “Partially disabled” means a member’s inability to
172 engage in the duties of deputy sheriff by reason of any medi-
173 cally determinable physical or mental impairment that can be
174 expected to result in death or that has lasted or can be expected
175 to last for a continuous period of not less than twelve months.
176 A member may be determined partially disabled for the
177 purposes of this article and maintain the ability to engage in
178 other gainful employment which exists within the state but
179 which ability would not enable him or her to earn an amount at
180 least equal to two thirds of the average annual compensation
181 earned by all active members of this plan during the plan year
182 ending as of the most recent thirtieth day of June, as of which
183 plan data has been assembled and used for the actuarial
184 valuation of the plan.

185 (aa) “Public employees retirement system” means the West
186 Virginia public employee’s retirement system created by article
187 ten, chapter five of this code.

188 (bb) “Plan” means the West Virginia deputy sheriff death,
189 disability and retirement plan established by this article.

190 (cc) “Plan year” means the twelve-month period commenc-
191 ing on the first day of July of any designated year and ending
192 the following thirtieth day of June.

193 (dd) “Regular interest” means the rate or rates of interest
194 per annum, compounded annually, as the board adopts in
195 accordance with the provisions of this article.

196 (ee) “Retirement income payments” means the annual
197 retirement income payments payable under the plan.

198 (ff) “Spouse” means the person to whom the member is
199 legally married on the annuity starting date.

200 (gg) “Surviving spouse” means the person to whom the
201 member was legally married at the time of the member’s death
202 and who survived the member.

203 (hh) “Totally disabled” means a member’s inability to
204 engage in substantial gainful activity by reason of any medi-
205 cally determined physical or mental impairment that can be
206 expected to result in death or that has lasted or can be expected
207 to last for a continuous period of not less than twelve months.

208 For purposes of this subdivision:

209 (1) A member is totally disabled only if his or her physical
210 or mental impairment or impairments are so severe that he or
211 she is not only unable to perform his or her previous work as a
212 deputy sheriff but also cannot, considering his or her age,
213 education and work experience, engage in any other kind of
214 substantial gainful employment which exists in the state
215 regardless of whether: (A) The work exists in the immediate
216 area in which the member lives; (B) a specific job vacancy
217 exists; or (C) the member would be hired if he or she applied
218 for work.

219 (2) “Physical or mental impairment” is an impairment that
220 results from an anatomical, physiological or psychological
221 abnormality that is demonstrated by medically accepted clinical
222 and laboratory diagnostic techniques.

223 A member’s receipt of social security disability benefits
224 creates a rebuttable presumption that the member is totally
225 disabled for purposes of this plan. Substantial gainful employ-
226 ment rebuts the presumption of total disability.

227 (ii) “Year of service.” A member shall, except in his or her
228 first and last years of covered employment, be credited with
229 year of service credit based upon the hours of service performed

230 as covered employment and credited to the member during the
231 plan year based upon the following schedule:

232	Hours of Service	Year of Service Credited
233	Less than 500	0
234	500 to 999	1/3
235	1,000 to 1,499	2/3
236	1,500 or more	1

237 During a member’s first and last years of covered employ-
238 ment, the member shall be credited with one twelfth of a year
239 of service for each month during the plan year in which the
240 member is credited with an hour of service. A member is not
241 entitled to credit for years of service for any time period during
242 which he or she received disability payments under section
243 fourteen or fifteen of this article. Except as specifically ex-
244 cluded, years of service include covered employment prior to
245 the effective date.

246 Years of service which are credited to a member prior to his
247 or her receipt of accumulated contributions upon termination of
248 employment pursuant to section thirteen of this article or
249 section thirty, article ten, chapter five of this code, shall be
250 disregarded for all purposes under this plan unless the member
251 repays the accumulated contributions with interest pursuant to
252 section twelve of this article or had prior to the effective date
253 made the repayment pursuant to section eighteen, article ten,
254 chapter five of this code.

255 (jj) “Required beginning date” means the first day of April
256 of the calendar year following the later of: (i) The calendar year
257 in which the member attains age seventy and one-half; or (ii)

258 the calendar year in which he or she retires or otherwise
259 separates from covered employment.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article shall
3 be a member of this retirement system and plan and does not
4 qualify for membership in any other retirement system adminis-
5 tered by the board, so long as he or she remains employed in
6 covered employment.

7 (b) Any deputy sheriff employed in covered employment on
8 the effective date of this article shall within six months of that
9 effective date notify in writing both the county commission in
10 the county in which he or she is employed and the board of his
11 or her desire to become a member of the plan: *Provided*, That
12 this time period is extended to the thirtieth day of January, one
13 thousand nine hundred ninety-nine, in accordance with the
14 decision of the supreme court of appeals in *West Virginia*
15 *Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No.
16 25212: *Provided, however*, That any deputy sheriff employed
17 in covered employment on the effective date of this article has
18 an additional time period consisting of the ten-day period
19 following the day after which the amended provisions of this
20 section become law to notify in writing both the county
21 commission in the county in which he or she is employed and
22 the board of his or her desire to become a member of the plan.
23 Any deputy sheriff who elects to become a member of the plan
24 ceases to be a member or have any credit for covered employ-
25 ment in any other retirement system administered by the board
26 and shall continue to be ineligible for membership in any other
27 retirement system administered by the board so long as the
28 deputy sheriff remains employed in covered employment in this
29 plan: *Provided further*, That any deputy sheriff who elects
30 during the time period from the first day of July, one thousand

31 nine hundred ninety-eight, to the thirtieth day of January, one
32 thousand nine hundred ninety-nine, or who so elects during the
33 ten-day time period occurring immediately following the day
34 after the day the amendments made during the one thousand
35 nine hundred ninety-nine legislative session become law, to
36 transfer from the public employees retirement system to the
37 plan created in this article shall contribute to the plan created in
38 this article at the rate set forth in section seven of this article
39 retroactive to the first day of July, one thousand nine hundred
40 ninety-eight. Any deputy sheriff who does not affirmatively
41 elect to become a member of the plan continues to be eligible
42 for any other retirement system as is from time to time offered
43 to other county employees but is ineligible for this plan
44 regardless of any subsequent termination of employment and
45 rehire.

46 (c) Any deputy sheriff who was employed as a deputy
47 sheriff prior to the effective date, but was not employed as a
48 deputy sheriff on the effective date of this article, shall become
49 a member upon rehire as a deputy sheriff. For purposes of this
50 section, the member's years of service and credited service
51 prior to the effective date shall not be counted for any purposes
52 under this plan unless: (1) The deputy sheriff has not received
53 the return of his or her accumulated contributions in the public
54 employees retirement fund system pursuant to section thirty,
55 article ten, chapter five of this code; or (2) the accumulated
56 contributions returned to the member from the public employ-
57 ees retirement system have been repaid pursuant to section
58 thirteen of this article. If the conditions of subdivision (1) or (2)
59 of this subsection are met, all years of the deputy sheriff's
60 covered employment shall be counted as years of service for the
61 purposes of this article. Each transferring deputy sheriff shall be
62 given credited service for the purposes of this article for all
63 covered employment transferred from the public employees
64 retirement system regardless of whether the credited service (as
65 that term is defined in section two, article ten, chapter five of

66 this code) was earned as a deputy sheriff. All service in the
67 public employees retirement system accrued by a transferring
68 deputy sheriff shall be transferred into the plan created by this
69 article and the transferring deputy sheriff shall be given the
70 same credit for the purposes of this article for all covered
71 service which is transferred from the public employees retire-
72 ment system as that transferring deputy sheriff would have
73 received from the public employees retirement system if the
74 transfer had not occurred. In connection with each deputy
75 sheriff receiving credit for prior employment provided in this
76 subsection, a transfer from public employees retirement system
77 to this plan shall be made pursuant to the procedures described
78 in section eight of this article.

79 (d) Once made, the election made under this section is
80 irrevocable. All deputy sheriffs first employed after the
81 effective date and deputy sheriffs electing to become members
82 as described in this section shall be members as a condition of
83 employment and shall make the contributions required by
84 section seven of this article.

85 (e) Notwithstanding any other provisions of this article, any
86 individual who is a leased employee shall not be eligible to
87 participate in the plan. For purposes of this plan, a "leased
88 employee" means any individual who performs services as an
89 independent contractor or pursuant to an agreement with an
90 employee leasing organization or similar organization. If a
91 question arises regarding the status of an individual as a leased
92 employee, the board has final power to decide the question.

§7-14D-7. Members' contributions; employer contributions.

1 There shall be deducted from the monthly salary of each
2 member and paid into the fund an amount equal to eight and
3 one-half percent of his or her monthly salary. Any active
4 member who has concurrent employment in an additional job

5 or jobs and the additional employment requires the deputy
6 sheriff to be a member of another retirement system which is
7 administered by the consolidated public retirement board
8 pursuant to article ten-d, chapter five of this code shall contrib-
9 ute to the fund the sum of eight and one-half percent of his or
10 her monthly salary earned as a deputy sheriff as well as the sum
11 of eight and one-half percent of his or her monthly salary
12 earned from any additional employment which additional
13 employment requires the deputy sheriff to be a member of
14 another retirement which is administered by the consolidated
15 public retirement board pursuant to article ten-d, chapter five of
16 this code. An additional amount shall be paid to the fund by the
17 county commission of the county in which the member is
18 employed in covered employment in an amount determined by
19 the board: Provided, That in no year may the total of the
20 contributions provided for in this section, to be paid by the
21 county commission, exceed ten and one-half percent of the total
22 payroll for the members in the employ of the county commis-
23 sion for the preceding fiscal year. If the board finds that the
24 benefits provided by this article can be actually funded with a
25 lesser contribution, then the board shall reduce the required
26 member or employer contributions or both. The sums withheld
27 each calendar month shall be paid to the fund no later than ten
28 days following the end of the calendar month.

§7-14D-12. Annuity options.

1 Prior to the effective date of retirement, but not thereafter,
2 a member may elect to receive retirement income payments in
3 the normal form, or the actuarial equivalent of the normal form
4 from the following options:

5 (a) *Option A — Joint and Survivor Annuity.* — A life
6 annuity payable during the joint lifetime of the member and his
7 or her beneficiary who is a natural person with an insurable
8 interest in the member's life. Upon the death of either the

9 member or his or her beneficiary, the benefit shall continue as
10 a life annuity to the survivor in an amount equal to fifty percent,
11 sixty-six and two-thirds percent, seventy-five percent or one
12 hundred percent of the amount paid while both were living as
13 selected by the member. If the retiring member is married, the
14 spouse shall sign a waiver of benefit rights if the beneficiary is
15 to be other than the spouse.

16 (b) *Option B — Contingent Joint and Survivor Annuity.* —
17 A life annuity payable during the joint lifetime of the member
18 and his or her beneficiary who must be a natural person with an
19 insurable interest in the member's life. Upon the death of the
20 member, the benefit shall continue as a life annuity to the
21 beneficiary in an amount equal to fifty percent, sixty-six and
22 two-thirds percent, seventy-five percent or one hundred percent
23 of the amount paid while both were living as selected by the
24 member. If the beneficiary dies first, the monthly amount of
25 benefits may not be reduced, but shall be paid at the amount
26 that was in effect before the death of the beneficiary. If the
27 retiring member is married, the spouse shall sign a waiver of
28 benefit rights if the beneficiary is to be other than the spouse.

29 (c) *Option C — Ten Years Certain and Life Annuity.* — A
30 life annuity payable during the member's lifetime but in any
31 event for a minimum of ten years. If the member dies before the
32 expiration of ten years, the remaining payments shall be made
33 to a designated beneficiary, if any, or otherwise to the mem-
34 ber's estate.

35 (d) *Option D — Level Income Annuity.* — A life annuity
36 payable monthly in an increased amount "A" from the time of
37 retirement until the member is social security retirement age,
38 and then a lesser amount "B" payable for the member's lifetime
39 thereafter, with these amounts computed actuarially to satisfy
40 the following two conditions:

41 (1) *Actuarial equivalence.* — The actuarial present value at
42 the date of retirement of the member’s annuity if taken in the
43 normal form must equal the actuarial present value of the term
44 life annuity in amount “A” plus the actual present value of the
45 deferred life annuity in amount “B”; and

46 (2) *Level income.* — The amount “A” equals the amount
47 “B” plus the amount of the member’s estimated monthly social
48 security primary insurance amount that would commence at the
49 date amount “B” becomes payable. For this calculation, the
50 primary insurance amount is estimated when the member
51 applies for retirement, using social security law then in effect,
52 using assumptions established by the board.

53 In the case of a member who has elected the options set
54 forth in subdivisions (a) and (b) of this section, respectively,
55 and whose beneficiary dies prior to the member’s death, the
56 member may name an alternative beneficiary. If an alternative
57 beneficiary is named within eighteen months following the
58 death of the prior beneficiary, the benefit shall be adjusted to be
59 the actuarial equivalent of the benefit the member is receiving
60 just after the death of the member’s named beneficiary. If the
61 election is not made until eighteen months after the death of the
62 prior beneficiary, the amount shall be reduced so that it is only
63 ninety percent of the actuarial equivalent of the benefit the
64 member is receiving just after the death of the member’s named
65 beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and
2 is not eligible to receive disability benefits under this article is,
3 by written request filed with the board, entitled to receive from
4 the fund the member’s accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the

6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

8 (b) Any member who withdraws accumulated contributions
9 from either this plan or the public employees retirement system
10 and thereafter becomes reemployed in covered employment
11 shall not receive any credited service for the prior employment
12 unless following his or her return to covered employment, the
13 member redeposits in the fund the amount of the accumulated
14 contributions submitted on salary earned while a deputy sheriff,
15 together with interest on the accumulated contributions at the
16 rate determined by the board from the date of withdrawal to the
17 date of redeposit. Upon repayment he or she shall receive the
18 same credit on account of his or her former service as if no
19 refund had been made. The repayment shall be made in a lump
20 sum within sixty months of the deputy sheriff's reemployment
21 or if later, within sixty months of the effective date of this
22 article.

23 (c) Every member who completes sixty months of covered
24 employment is eligible, upon cessation of covered employment,
25 to either withdraw his or her accumulated contributions in
26 accordance with subsection (a) of this section, or to choose not
27 to withdraw his or her accumulated contribution and to receive
28 retirement income payments upon attaining normal retirement
29 age.

30 (d) Notwithstanding any other provision of this article,
31 forfeitures under the plan shall not be applied to increase the
32 benefits any member would otherwise receive under the plan.

§7-14D-14. Awards and benefits for disability — Duty related.

1 Any member who after the effective date of this article and
2 during covered employment: (A) Has been or becomes either
3 totally or partially disabled by injury, illness or disease; and (B)

4 the disability is a result of an occupational risk or hazard
5 inherent in or peculiar to the services required of members; or
6 (C) the disability was incurred while performing law-enforce-
7 ment functions during either scheduled work hours or at any
8 other time; and (D) in the opinion of the board, the member is
9 by reason of the disability unable to perform adequately the
10 duties required of a deputy sheriff, is entitled to receive and
11 shall be paid from the fund in monthly installments during the
12 lifetime of the member, or if sooner until the member attains
13 normal retirement age or until the disability sooner terminates,
14 the compensation under either subdivision (a) or (b) of this
15 section.

16 (a) If the member is totally disabled, the member shall
17 receive ninety percent of his or her average full monthly
18 compensation for the twelve-month contributory period
19 preceding the member's disability award, or the shorter period
20 if the member has not worked twelve months.

21 (b) If the member is partially disabled, the member shall
22 receive forty-five percent of his or her average full monthly
23 compensation for the twelve-month contributory period
24 preceding the member's disability award, or the shorter period
25 if the member has not worked twelve months.

26 If the member remains totally disabled until attaining sixty-
27 five years of age, the member shall then receive the retirement
28 benefit provided for in sections eleven and twelve of this
29 article.

30 If the member remains partially disabled until attaining
31 sixty years of age the member shall then receive the retirement
32 benefit provided for in sections eleven and twelve of this
33 article.

§7-14D-15. Same — Due to other causes.

1 (a) Any member who after the effective date of this article
2 and during covered employment: (1) Has been or becomes
3 totally or partially disabled from any cause other than those set
4 forth in section fourteen of this article and not due to vicious
5 habits, intemperance or willful misconduct on his or her part;
6 and (2) in the opinion of the board, he or she is by reason of the
7 disability unable to perform adequately the duties required of a
8 deputy sheriff, is entitled to receive and shall be paid from the
9 fund in monthly installments during the lifetime of the member,
10 or if sooner until the member attains normal retirement age or
11 until the disability sooner terminates the compensation set forth
12 in, either subsection (b) or (c) of this section.

13 (b) If the member is totally disabled, he or she shall receive
14 sixty-six and two-thirds percent of his or her average full
15 monthly compensation for the twelve-month contributory
16 period preceding the disability award, or the shorter period, if
17 the member has not worked twelve months.

18 (c) If the member is partially disabled, he or she shall
19 receive thirty-three and one-third percent of his or her average
20 full monthly compensation for the twelve-month contributory
21 period preceding the disability award, or the shorter period, if
22 the member has not worked twelve months.

23 (d) If the member remains disabled until attaining sixty
24 years of age, then the member shall receive the retirement
25 benefit provided for in sections eleven and twelve of this
26 article.

27 (e) The board shall propose legislative rules for promulga-
28 tion in accordance with the provisions of article three, chapter
29 twenty-nine-a of this code concerning member disability
30 payments so as to ensure that the payments do not exceed one
31 hundred percent of the average current salary in any given
32 county for the position last held by the member.

41 (1) *Actuarial equivalence.* — The actuarial present value at
42 the date of retirement of the member's annuity if taken in the
43 normal form must equal the actuarial present value of the term
44 life annuity in amount "A" plus the actual present value of the
45 deferred life annuity in amount "B"; and

46 (2) *Level income.* — The amount "A" equals the amount
47 "B" plus the amount of the member's estimated monthly social
48 security primary insurance amount that would commence at the
49 date amount "B" becomes payable. For this calculation, the
50 primary insurance amount is estimated when the member
51 applies for retirement, using social security law then in effect,
52 using assumptions established by the board.

53 In the case of a member who has elected the options set
54 forth in subdivisions (a) and (b) of this section, respectively,
55 and whose beneficiary dies prior to the member's death, the
56 member may name an alternative beneficiary. If an alternative
57 beneficiary is named within eighteen months following the
58 death of the prior beneficiary, the benefit shall be adjusted to be
59 the actuarial equivalent of the benefit the member is receiving
60 just after the death of the member's named beneficiary. If the
61 election is not made until eighteen months after the death of the
62 prior beneficiary, the amount shall be reduced so that it is only
63 ninety percent of the actuarial equivalent of the benefit the
64 member is receiving just after the death of the member's named
65 beneficiary.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and
2 is not eligible to receive disability benefits under this article is,
3 by written request filed with the board, entitled to receive from
4 the fund the member's accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the

6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

8 (b) Any member who withdraws accumulated contributions
9 from either this plan or the public employees retirement system
10 and thereafter becomes reemployed in covered employment
11 shall not receive any credited service for the prior employment
12 unless following his or her return to covered employment, the
13 member redeposits in the fund the amount of the accumulated
14 contributions submitted on salary earned while a deputy sheriff,
15 together with interest on the accumulated contributions at the
16 rate determined by the board from the date of withdrawal to the
17 date of redeposit. Upon repayment he or she shall receive the
18 same credit on account of his or her former service as if no
19 refund had been made. The repayment shall be made in a lump
20 sum within sixty months of the deputy sheriff's reemployment
21 or if later, within sixty months of the effective date of this
22 article.

23 (c) Every member who completes sixty months of covered
24 employment is eligible, upon cessation of covered employment,
25 to either withdraw his or her accumulated contributions in
26 accordance with subsection (a) of this section, or to choose not
27 to withdraw his or her accumulated contribution and to receive
28 retirement income payments upon attaining normal retirement
29 age.

30 (d) Notwithstanding any other provision of this article,
31 forfeitures under the plan shall not be applied to increase the
32 benefits any member would otherwise receive under the plan.

§7-14D-14. Awards and benefits for disability — Duty related.

1 Any member who after the effective date of this article and
2 during covered employment: (A) Has been or becomes either
3 totally or partially disabled by injury, illness or disease; and (B)

4 the disability is a result of an occupational risk or hazard
5 inherent in or peculiar to the services required of members; or
6 (C) the disability was incurred while performing law-enforce-
7 ment functions during either scheduled work hours or at any
8 other time; and (D) in the opinion of the board, the member is
9 by reason of the disability unable to perform adequately the
10 duties required of a deputy sheriff, is entitled to receive and
11 shall be paid from the fund in monthly installments during the
12 lifetime of the member, or if sooner until the member attains
13 normal retirement age or until the disability sooner terminates,
14 the compensation under either subdivision (a) or (b) of this
15 section.

16 (a) If the member is totally disabled, the member shall
17 receive ninety percent of his or her average full monthly
18 compensation for the twelve-month contributory period
19 preceding the member's disability award, or the shorter period
20 if the member has not worked twelve months.

21 (b) If the member is partially disabled, the member shall
22 receive forty-five percent of his or her average full monthly
23 compensation for the twelve-month contributory period
24 preceding the member's disability award, or the shorter period
25 if the member has not worked twelve months.

26 If the member remains totally disabled until attaining sixty-
27 five years of age, the member shall then receive the retirement
28 benefit provided for in sections eleven and twelve of this
29 article.

30 If the member remains partially disabled until attaining
31 sixty years of age the member shall then receive the retirement
32 benefit provided for in sections eleven and twelve of this
33 article.

§7-14D-15. Same — Due to other causes.

1 (a) Any member who after the effective date of this article
2 and during covered employment: (1) Has been or becomes
3 totally or partially disabled from any cause other than those set
4 forth in section fourteen of this article and not due to vicious
5 habits, intemperance or willful misconduct on his or her part;
6 and (2) in the opinion of the board, he or she is by reason of the
7 disability unable to perform adequately the duties required of a
8 deputy sheriff, is entitled to receive and shall be paid from the
9 fund in monthly installments during the lifetime of the member,
10 or if sooner until the member attains normal retirement age or
11 until the disability sooner terminates the compensation set forth
12 in, either subsection (b) or (c) of this section.

13 (b) If the member is totally disabled, he or she shall receive
14 sixty-six and two-thirds percent of his or her average full
15 monthly compensation for the twelve-month contributory
16 period preceding the disability award, or the shorter period, if
17 the member has not worked twelve months.

18 (c) If the member is partially disabled, he or she shall
19 receive thirty-three and one-third percent of his or her average
20 full monthly compensation for the twelve-month contributory
21 period preceding the disability award, or the shorter period, if
22 the member has not worked twelve months.

23 (d) If the member remains disabled until attaining sixty
24 years of age, then the member shall receive the retirement
25 benefit provided for in sections eleven and twelve of this
26 article.

27 (e) The board shall propose legislative rules for promulga-
28 tion in accordance with the provisions of article three, chapter
29 twenty-nine-a of this code concerning member disability
30 payments so as to ensure that the payments do not exceed one
31 hundred percent of the average current salary in any given
32 county for the position last held by the member.

§7-14D-20. Additional death benefits and scholarships — Dependent children.

1 (a) In addition to the spouse death benefits in sections
2 eighteen and nineteen of this article, the surviving spouse is
3 entitled to receive and there shall be paid to the spouse one
4 hundred dollars monthly for each dependent child.

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

25 (c) Any person qualifying as a dependent child under this,
26 in addition to any other benefits due under this or other sections
27 of this article, is entitled to receive a scholarship to be applied
28 to the career development education of that person. This sum,
29 up to but not exceeding six thousand dollars per year, shall be
30 paid from the fund to any university or college in this state or
31 to any trade or vocational school or other entity in this state

32 approved by the board, to offset the expenses of tuition, room
33 and board, books, fees or other costs incurred in a course of
34 study at any of these institutions so long as the recipient makes
35 application to the board on an approved form and under such
36 rules as the board may provide, and maintains scholastic
37 eligibility as defined by the institution or the board. The board
38 may propose legislative rules for promulgation in accordance
39 with article three, chapter twenty-nine-a of this code which
40 define age requirements, physical and mental requirements,
41 scholastic eligibility, disbursement methods, institutional
42 qualifications and other requirements as necessary and not
43 inconsistent with this section.

§7-14D-21. Burial benefit.

1 Any member who dies as a result of any service related
2 illness or injury after the effective date is entitled to a lump sum
3 burial benefit of five thousand dollars. If the member is
4 married, the burial benefit shall be paid to the member's
5 spouse. If the member is not married, the burial benefit shall be
6 paid to the member's estate for the purposes of paying burial
7 expenses, settling the member's final affairs, or both. Any
8 unspent balance shall be distributed as a part of the member's
9 estate.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from the
3 plan no more than one time in any year an amount up to one
4 half of his or her accumulated contributions, but not less than
5 five hundred dollars nor more than eight thousand dollars:
6 *Provided*, That the maximum amount of any loan shall not
7 exceed the lesser of the following: (1) Eight thousand dollars;
8 or (2) fifty percent of his or her accumulated contributions. No
9 member is eligible for more than one outstanding loan at any

10 time. No loan may be made from the plan if the board deter-
11 mines that the loans constitute more than fifteen percent of the
12 amortized cost value of the assets of the plan as of the last day
13 of the preceding plan year. The board may discontinue the loans
14 any time it determines that cash flow problems might develop
15 as a result of the loans. Each loan shall be repaid through
16 monthly installments over periods of six through sixty months
17 and carry interest on the unpaid balance and an annual effective
18 interest rate that is two hundred basis points higher than the
19 most recent rate of interest used by the board for determining
20 actuarial contributions levels: *Provided, however*, That interest
21 charged shall be commercially reasonable in accordance with
22 the provisions of section 72(p)(2) of the Internal Revenue Code
23 and federal regulations issued thereunder. Monthly loan
24 payments shall be calculated to be as nearly equal as possible
25 with all but the final payment being an equal amount. An
26 eligible member may make additional loan payments or pay off
27 the entire loan balance at any time without incurring any
28 interest penalty. At the member's option, the monthly loan
29 payment may include a level premium sufficient to provide
30 declining term insurance with the plan as beneficiary to repay
31 the loan in full upon the member's death. If a member declines
32 the insurance and dies before the loan is repaid, the unpaid
33 balance of the loan shall be deducted from the lump sum
34 insurance benefits payable under section twenty-one of this
35 article.

36 (b) A member with an unpaid loan balance who wishes to
37 retire may have the loan repaid in full by accepting retirement
38 income payments reduced by deducting from the actuarial
39 reserve for the accrued benefit the amount of the unpaid balance
40 and then converting the remaining of the reserve to a monthly
41 pension payable in the form of the annuity desired by the
42 member.

43 (c) The entire unpaid balance of any loan, and interest due
44 thereon, shall at the option of the retirement board become due
45 and payable without further notice or demand upon the occur-
46 rence with respect to the borrowing member of any of the
47 following events of default: (1) Any payment of principal and
48 accrued interest on a loan remains unpaid after the same
49 become due and payable under the terms of the loan or after
50 such grace period as may be established in the discretion of the
51 retirement board; (2) the borrowing member attempts to make
52 an assignment for the benefit of creditors of his or her benefit
53 under the retirement system; or (3) any other event of default
54 set forth in rules promulgated by the board pursuant to the
55 authority granted in section one, article ten-d, chapter five of
56 this code: *Provided*, That any offset of an unpaid loan balance
57 shall be made only at such time as the member is entitled to
58 receive a distribution under the plan.

59 (d) Loans shall be evidenced by such form of obligations
60 and shall be made upon such additional terms as to default,
61 prepayment, security, and otherwise as the retirement board
62 may determine.

63 (e) Notwithstanding anything herein to the contrary, the
64 loan program authorized by this section shall comply with the
65 provisions of section 72(p)(2) and section 401 of the Internal
66 Revenue Code and the federal regulations issued thereunder.
67 The retirement board is authorized to: (a) Apply and construe
68 the provisions of this section and administer the plan loan
69 program in such a manner as to comply with the provisions of
70 sections 72(p)(2) and section 401 of the Internal Revenue Code;
71 (b) adopt plan loan policies or procedures consistent with these
72 federal law provisions; and (c) take such actions as it deems
73 necessary or appropriate to administer the plan loan program
74 created hereunder in accordance with these federal law provi-
75 sions. The retirement board is further authorized in connection
76 with the plan loan program to take any actions that may at any

77 time be required by the Internal Revenue Service regarding
78 compliance with the requirements of section 72(p)(2) or section
79 401 of the Internal Revenue Code, notwithstanding any
80 provision in this article to the contrary.

§7-14D-24a. Return to covered employment by retired member.

1 The annuity of any member who retires under the provi-
2 sions of this article and who resumes service in covered
3 employment shall be suspended while the member continues in
4 covered employment. The monthly annuity payment for the
5 month in which the service resumes shall be pro-rated to the
6 date of commencement of service, and the member shall again
7 become a contributing member during resumption of service.
8 At the conclusion of resumed service in covered employment
9 the member shall have his or her annuity recalculated to take
10 into account the entirety of service in covered employment.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect July 1, 2004.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th day of April, 2004.

Governor

PRESENTED TO THE
GOVERNOR

Date 4/2/04

Time 2:15 pm