

SB 505

FILED

2007 APR -4 PM 3: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 505

(BY SENATORS FOSTER AND UNGER)

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §15-2-25a, §15-2-25b, §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-31a, §15-2-31b, §15-2-32, §15-2-33, §15-2-34, §15-2-35, §15-2-37, §15-2-38, §15-2-39 and §15-2-44 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia State Police Death, Disability and Retirement Fund; meaning of terms; definitions; continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund; retirement; awards and benefits; leased employees; retirement annual annuity adjustments; credit toward retirement for member's prior military service; credit toward retirement when employee has joined

armed forces in time of armed conflict; qualified military service; awards and benefits for disability incurred in performance of duty; awards and benefits for disability due to other causes; disability physical examinations; termination; application for disability benefit; determinations; annual report on disability retirement experience; retirant not to exercise police authority; retention of group insurance; awards and benefits to dependents of member when the member dies in performance of duty; dependents of a duty disability retirant; dependent child scholarship and amount; awards and benefits to dependents of employee when the employee dies from nonservice-connected causes; awards and benefits to dependents of retirant or after employee serves twenty years; refunds to certain employees upon discharge or resignation; deferred retirement; refunds to dependents upon death of member not eligible for benefits; dependent child or children; and federal law maximum benefit limitations.

Be it enacted by the Legislature of West Virginia:

That §15-2-25a, §15-2-25b, §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-31a, §15-2-31b, §15-2-32, §15-2-33, §15-2-34, §15-2-35, §15-2-37, §15-2-38, §15-2-39 and §15-2-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25a. Meaning of terms.

- 1 Any term used in this article relating to the Death,
- 2 Disability and Retirement Fund has the same meaning
- 3 as when used in a comparable context of the laws of the
- 4 United States, unless a different meaning is clearly

5 required. Any reference in this article to the Internal
6 Revenue Code means the Internal Revenue Code, as it
7 has been amended.

§15-2-25b. Definitions.

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

3 (a) "Agency" means the West Virginia State Police.

4 (b) "Beneficiary" means a surviving spouse or other
5 surviving beneficiary who is entitled to, or will be
6 entitled to, an annuity or other benefit payable by the
7 fund.

8 (c) "Board" means the West Virginia Consolidated
9 Public Retirement Board created pursuant to article
10 ten-d, chapter five of this code.

11 (d) "Dependent child" means any unmarried child or
12 children born to or adopted by a member of the fund
13 who is:

14 (1) Under the age of eighteen;

15 (2) After reaching eighteen years of age, continues as
16 a full-time student in an accredited high school, college,
17 university, business or trade school, until the child or
18 children reaches the age of twenty-three years; or

19 (3) Is financially dependent on the member by virtue
20 of a permanent mental or physical disability upon
21 evidence satisfactory to the board.

22 (e) "Dependent parent" means the member's parent or
23 step-parent claimed as a dependent by the member for
24 federal income tax purposes at the time of the member's
25 death.

26 (f) "Employee" means any person regularly employed
27 in the service of the agency as a law-enforcement officer
28 before the twelfth day of March, one thousand nine
29 hundred nine-four, and who is eligible to participate in
30 the fund.

31 (g) "Fund", "plan" or "system" means the West
32 Virginia State Police Death, Disability and Retirement
33 Fund.

34 (h) "Law-enforcement officer" means an individual
35 employed or otherwise engaged in either a public or
36 private position which involves the rendition of services
37 relating to enforcement of federal, state or local laws for
38 the protection of public or private safety, including, but
39 not limited to, positions as deputy sheriffs, police
40 officers, marshals, bailiffs, court security officers or any
41 other law-enforcement position which requires
42 certification, but excluding positions held by elected
43 sheriffs or appointed chiefs of police whose duties are
44 determined by the board to be purely administrative in
45 nature.

46 (i) "Member" means any person who has contributions
47 standing to his or her credit in the fund and who has not
48 yet entered into retirement status.

49 (j) "Partially disabled" means an employee's inability,
50 on a probable permanent basis, to perform the essential
51 duties of a law-enforcement officer by reason of any

52 medically determinable physical or mental impairment
53 which has lasted or can be expected to last for a
54 continuous period of not less than twelve months, but
55 which impairment does not preclude the employee from
56 engaging in other types of nonlaw-enforcement
57 employment.

58 (k) "Physical or mental impairment" means an
59 impairment that results from an anatomical,
60 physiological or psychological abnormality that is
61 demonstrated by medically accepted clinical and
62 laboratory diagnostic techniques.

63 (l) "Retirant" or "retiree" means any former member
64 who is receiving an annuity payable by the fund;

65 (m) "Surviving spouse" means the person to whom the
66 member was legally married at the time of the member's
67 death and who survived the member.

68 (n) "Totally disabled" means an employee's probable
69 permanent inability to engage in substantial gainful
70 activity by reason of any medically determined physical
71 or mental impairment that can be expected to result in
72 death or that has lasted or can be expected to last for a
73 continuous period of not less than twelve months. For
74 purposes of this subsection, an employee is totally
75 disabled only if his or her physical or mental
76 impairments are so severe that he or she is not only
77 unable to perform his or her previous work as an
78 employee of the agency but also cannot, considering his
79 or her age, education and work experience, engage in
80 any other kind of substantial gainful employment which
81 exists in the state regardless of whether: (1) The work
82 exists in the immediate area in which the employee

83 lives; (2) a specific job vacancy exists; or (3) the
84 employee would be hired if he or she applied for work.

**§15-2-26. Continuation of Death, Disability and Retirement
Fund; designating the Consolidated Public
Retirement Board as administrator of fund.**

1 (a) There is continued the Death, Disability and
2 Retirement Fund created for the benefit of members,
3 retirants and any dependents of retirants or deceased
4 members of the fund.

5 (b) There shall be deducted from the monthly payroll
6 of each employee and paid into the fund six percent of
7 the amount of his or her salary: *Provided*, That
8 beginning on the first day of July, one thousand nine
9 hundred ninety-four, there shall be deducted from the
10 monthly payroll of each employee and paid into the
11 fund seven and one-half percent of the amount of his or
12 her salary: *Provided, however*, That on and after the
13 first day of July, one thousand nine hundred ninety-
14 five, there shall be deducted from the monthly payroll
15 of each employee and paid into the fund nine percent of
16 the amount of his or her salary. An additional twelve
17 percent of the monthly salary of each employee shall be
18 paid by the State of West Virginia monthly into the
19 fund out of the annual appropriation for the agency:
20 *Provided further*, That beginning on the first day of
21 July, one thousand nine hundred ninety-five, the agency
22 shall pay thirteen percent of the monthly salary of each
23 employee into the fund: *And provided further*, That
24 beginning on the first day of July, one thousand nine
25 hundred ninety-six, the agency shall pay fourteen
26 percent of the monthly salary of each employee into the
27 fund: *And provided further*, That on and after the first

28 day of July, one thousand nine hundred ninety-seven,
29 the agency shall pay fifteen percent of the monthly
30 salary of each employee into the fund. There shall also
31 be paid into the fund amounts that have previously been
32 collected by the superintendent of the agency on
33 account of payments to employees for court attendance
34 and mileage, rewards for apprehending wanted persons,
35 fees for traffic accident reports and photographs, fees
36 for criminal investigation reports and photographs, fees
37 for criminal history record checks, fees for criminal
38 history record reviews and challenges or from any other
39 sources designated by the superintendent. All moneys
40 payable into the fund shall be deposited in the State
41 Treasury and the board shall keep a separate account
42 thereof.

43 (c) Notwithstanding any other provisions of this
44 article, forfeitures under the fund shall not be applied
45 to increase the benefits any member would otherwise
46 receive under the fund.

47 (d) The moneys in this fund, and the right of a member
48 to a retirement allowance, to the return of
49 contributions, or to any benefit under the provisions of
50 this article, are exempt from any state or municipal tax;
51 are not subject to execution, garnishment, attachment
52 or any other process whatsoever, with the exception
53 that the benefits or contributions under the fund are
54 subject to "qualified domestic relations orders" as that
55 term is defined in Section 414(p) of the Internal
56 Revenue Code with respect to governmental plans; and
57 are unassignable except as is provided in this article.
58 The fund shall be administered by the board created
59 pursuant to article ten-d, chapter five of this code.

60 (e) All moneys paid into and accumulated in the fund,
61 except amounts designated or set aside by the awards,
62 shall be invested by the West Virginia Investment
63 Management Board as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The board shall retire any member of the fund who
2 has filed with the board his or her voluntary petition in
3 writing for retirement and:

4 (1) Has or shall have completed twenty-five years of
5 service as a member of the fund (including military
6 service credit granted under the provisions of section
7 twenty-eight of this article);

8 (2) Has or shall have attained the age of fifty years
9 and has or shall have completed twenty years of service
10 as a member of the fund (excluding military service
11 credit granted under section twenty-eight of this
12 article); or

13 (3) Being under the age of fifty years has or shall have
14 completed twenty years of service as a member of the
15 fund (excluding military service credit granted under
16 section twenty-eight of this article).

17 (b) When the board retires any member under any of
18 the provisions of this section, the member is entitled to
19 receive annually and shall be paid from the fund in
20 equal monthly installments during his or her lifetime
21 while in status of retirement, one or the other of two
22 amounts, whichever is the greater:

23 (1) An amount equal to five and one-half percent of

24 the aggregate of salary paid to the employee during the
25 whole period of service as an employee of the agency; or

26 (2) The sum of six thousand dollars.

27 When a member has or shall have served twenty years
28 or longer but less than twenty-five years as a member of
29 the fund and is retired under any of the provisions of
30 this section before he or she has attained the age of fifty
31 years, payment of monthly installments of the amount
32 of retirement award to the member shall commence on
33 the day following the date he or she attains the age of
34 fifty years. Beginning on the fifteenth day of July, one
35 thousand nine hundred ninety-four, in no event may the
36 provisions of section thirteen, article sixteen, chapter
37 five of this code be applied in determining eligibility to
38 retire with either immediate or deferred commencement
39 of benefit.

40 (c) A member meeting the age and service
41 requirements of this section who terminates
42 employment at two thousand four hundred hours may
43 begin to receive retirement annuity payments
44 immediately upon termination of employment. Any
45 member meeting the age and service requirements of
46 this section who terminates employment at a time of day
47 other than two thousand four hundred hours shall
48 receive a pro rata share of a full day's amount for that
49 day. Upon receipt of properly executed forms from the
50 agency and the member, the board shall process the
51 member's retirement petition and commence annuity
52 payments as soon as administratively feasible.

53 (d) Any individual who is a leased employee is not
54 eligible to participate in the fund. For purposes of this

55 fund, a "leased employee" means any individual who
56 performs services as an independent contractor or
57 pursuant to an agreement with an employee-leasing
58 organization or other similar organization. If a question
59 arises regarding the status of an individual as a leased
60 employee, the board has final power to decide the
61 question.

§15-2-27a. Retirement annual annuity adjustments.

1 (a) Every retirant of the fund who is fifty-five years of
2 age or older and who is retired by the board under the
3 provisions of section twenty-seven of this article; every
4 retirant of the fund who is retired by the board under
5 the provisions of section twenty-nine or thirty of this
6 article; and every beneficiary receiving a benefit
7 pursuant to section thirty-three or thirty-four of this
8 article is eligible to receive an annual retirement
9 annuity adjustment equal to three and seventy-five
10 hundredths percent of his or her retirement award or
11 beneficiary award. The adjustments may not be
12 retroactive. Yearly adjustments shall begin upon the
13 first day of July of each year. The annuity adjustments
14 shall be paid to the retirants or beneficiaries from the
15 fund in equal monthly installments while in status of
16 retirement or payment of beneficiary award. The
17 annuity adjustments shall supplement the retirement
18 awards and benefits as provided in this article.

19 (b) Any retirant or beneficiary who receives a benefit
20 pursuant to the provisions of section twenty-nine,
21 thirty, thirty-three or thirty-four of this article shall
22 begin to receive the annual annuity adjustment one year
23 after the commencement of the benefit on the next July
24 first: *Provided*, That if the retirant has been retired for

25 less than one year or if the beneficiary has been in
26 receipt of beneficiary payments for less than one year
27 when the first annuity adjustment is given on that July
28 first, that first annuity adjustment shall be a pro rata
29 share of the full year's annuity adjustment.

**§15-2-28. Credit toward retirement for member's prior
military service; credit toward retirement when
employee has joined armed forces in time of
armed conflict; qualified military service.**

1 (a) For purposes of this section, the term "active
2 military duty" means full-time active duty with the
3 armed forces of the United States, namely the United
4 States Air Force, Army, Coast Guard, Marines or Navy;
5 and service with the National Guard or reserve military
6 forces of any of the armed forces when the employee has
7 been called to active full-time duty and has received no
8 compensation during the period of the duty from any
9 person other than the armed forces.

10 (b) Any member of the fund who has previously served
11 on active military duty is entitled to and shall receive
12 credit on the minimum period of service required by law
13 for retirement pay from the service of the West Virginia
14 State Police under the provisions of this article for a
15 period equal to the active military duty not to exceed
16 five years, subject to the following:

17 (1) That he or she has been honorably discharged from
18 the armed forces;

19 (2) That he or she substantiates by appropriate
20 documentation or evidence his or her period of active
21 military duty;

22 (3) That he or she is not receiving credit from any
23 other retirement system administered by the board for
24 his or her active military duty; and

25 (4) That, except with respect to disability retirement
26 pay awarded under section thirty of this article, he or
27 she has actually served with the fund for twenty years
28 exclusive of his or her active military duty.

29 (c) The amount of retirement pay to which any
30 member is entitled shall be calculated and determined
31 as if he or she had been receiving for the period of his or
32 her active military duty a monthly salary from the
33 agency equal to the average monthly salary which he or
34 she actually received from the agency for his or her total
35 service with the agency exclusive of the active military
36 duty. The superintendent shall transfer and pay into the
37 fund from moneys appropriated for the agency, a sum
38 equal to eighteen percent of the aggregate of the salaries
39 on which the retirement pay of all members has been
40 calculated and determined for their periods of active
41 military duty. In addition, any person who, while an
42 employee of the agency was commissioned, enlisted or
43 inducted into the armed forces of the United States or,
44 being a member of the reserve officers' corps, was called
45 to active duty in the armed forces between the first day
46 of September, one thousand nine hundred forty, and the
47 close of hostilities in World War II, or between the
48 twenty-seventh day of June, one thousand nine hundred
49 fifty, and the close of the armed conflict in Korea on the
50 twenty-seventh day of July, one thousand nine hundred
51 fifty-three, between the first day of August, one
52 thousand nine hundred sixty-four, and the close of the
53 armed conflict in Vietnam, or during any other period
54 of armed conflict by the United States whether

55 sanctioned by a declaration of war by the Congress or
56 by executive or other order of the President, is entitled
57 to and shall receive credit on the minimum period of
58 service required by law for retirement pay from the
59 service of the West Virginia State Police for a period
60 equal to the full time he or she has or shall, pursuant to
61 the commission, enlistment, induction or call, have
62 served with the Armed Forces subject to the following:

63 (1) That he or she has been honorably discharged from
64 the armed forces;

65 (2) That within ninety days after honorable discharge
66 from the armed forces he or she has presented himself
67 or herself to the superintendent and offered to resume
68 service as an active employee of the agency; and

69 (3) That he or she has made no voluntary act, whether
70 by reenlistment, waiver of discharge, acceptance of
71 commission or otherwise, to extend or participate in
72 extension of the period of service with the armed forces
73 beyond the period of service for which he or she was
74 originally commissioned, enlisted, inducted or called.

75 (d) That amount of retirement pay to which any
76 employee is entitled shall be calculated and determined
77 as if the employee has continued in the active service of
78 the agency at the rank or grade to him or her
79 appertaining at the time of the commission, induction,
80 enlistment or call, during a period coextensive with the
81 time the employee served with the armed forces
82 pursuant to the commission, induction, enlistment or
83 call. The superintendent of the agency shall transfer and
84 pay each month into the fund from moneys
85 appropriated for the agency a sum equal to eighteen

86 percent of the aggregate of salary which all employees
87 would have been entitled to receive had they continued
88 in the active service of the agency during a period
89 coextensive with the time the employee served with the
90 armed forces pursuant to the commission, induction,
91 enlistment or call: *Provided*, That the total amount of
92 military service credit allowable under this section shall
93 not exceed five years.

94 (e) Notwithstanding any of the preceding provisions of
95 this section, contributions, benefits and service credit
96 with respect to qualified military service shall be
97 provided in accordance with Section 414(u) of the
98 Internal Revenue Code. For purposes of this section,
99 "qualified military service" has the same meaning as in
100 Section 414(u) of the Internal Revenue Code. The board
101 may determine all questions and make all decisions
102 relating to this section and, pursuant to the authority
103 granted to the board in section one, article ten-d,
104 chapter five of this code, may promulgate rules relating
105 to contributions, benefits and service credit to comply
106 with Section 414(u) of the Internal Revenue Code.

**§15-2-29. Awards and benefits for disability incurred in
performance of duty.**

1 (a) Any member of the fund who has not yet entered
2 retirement status on the basis of age and service and
3 who becomes partially disabled by injury, illness or
4 disease resulting from any occupational risk or hazard
5 inherent in or peculiar to the services required of
6 employees of the agency or incurred pursuant to or
7 while the employee was engaged in the performance of
8 his or her duties as an employee of the agency shall, if,
9 in the opinion of the board, he or she is by reason of

10 that cause probably permanently unable to perform
11 adequately the duties required of him or her as an
12 employee of the agency, but is able to engage in any
13 other gainful employment in a field other than law
14 enforcement, be retired from active service by the
15 board. The member thereafter is entitled to receive
16 annually from the fund in equal monthly installments
17 during his or her lifetime; or until the disability
18 eligibility sooner terminates, one or the other of two
19 amounts, whichever is greater:

20 (1) An amount equal to five and one-half percent of
21 the total salary which would have been earned during
22 twenty-five years, or during actual service if more than
23 twenty-five years in the fund, based on the average
24 earnings of the retirant while employed as an employee
25 of the agency; or

26 (2) The sum of six thousand dollars.

27 (b) A retirant who is partially disabled under this
28 article may not, while in receipt of benefits for partial
29 disability, be employed as a law-enforcement officer:
30 *Provided*, That a retirant retired on partial disability
31 under this article may serve as an elected sheriff or
32 appointed chief of police in the state without a loss of
33 disability retirement benefits so long as the elected or
34 appointed position is shown, to the satisfaction of the
35 board, to require the performance of administrative
36 duties and functions only, as opposed to the full range
37 of duties of a law-enforcement officer.

38 (c) If any member not yet in retirement status on the
39 basis of age and service is found by the board to be
40 permanently and totally disabled as the result of a

41 physical or mental impairment resulting from any
42 occupational risk or hazard inherent in or peculiar to
43 the services required of employees of the agency or
44 incurred pursuant to or while the member was engaged
45 in the performance of his or her duties as an employee
46 of the agency, the member is entitled to receive annually
47 and there shall be paid from the fund in equal monthly
48 installments during his or her lifetime or until the
49 disability eligibility sooner terminates, an amount equal
50 to eight and one-half percent of the total salary which
51 would have been earned by the employee during
52 twenty-five years, or during actual service if more than
53 twenty-five years of service in the fund, based on the
54 average earnings of the retirant while employed as an
55 employee of the agency: *Provided*, That in no event may
56 the amount be less than fifteen thousand dollars per
57 annum, unless otherwise required by this article.

58 (d) The superintendent may expend moneys from
59 funds appropriated for the agency in payment of
60 medical, surgical, laboratory, X ray, hospital,
61 ambulance and dental expenses and fees and reasonable
62 costs and expenses incurred in the purchase of artificial
63 limbs and other approved appliances which may be
64 reasonably necessary for any member or disability
65 retirant who has or becomes temporarily, permanently
66 or totally disabled by injury, illness or disease resulting
67 from any occupational risk or hazard inherent in or
68 peculiar to the service required of employees of the
69 agency or incurred pursuant to or while the member
70 was or shall be engaged in the performance of duties as
71 an employee of the agency. Whenever the
72 superintendent determines that any disabled member or
73 retirant is ineligible to receive any of the aforesaid
74 benefits at public expense, the superintendent shall, at

75 the request of the disabled member or retirant, refer the
76 matter to the board for hearing and final decision. In no
77 case will the compensation rendered to health care
78 providers for medical and hospital services exceed the
79 then current rate schedule approved by the West
80 Virginia Insurance Commission.

81 (e) Any member awarded a disability benefit under
82 the provisions of this section may receive retirement
83 disability annuity payments on the day following the
84 board's approval of his or her disability application.
85 Upon termination of employment and receipt of
86 properly executed forms from the agency and the
87 member, the board shall process the member's disability
88 retirement benefit and commence annuity payments as
89 soon as administratively feasible.

90 (f) For the purposes of this section, the term "salary"
91 does not include any compensation paid for overtime
92 service.

**§15-2-30. Awards and benefits for disability due to other
causes.**

1 (a) If any employee who has served less than twenty
2 years and who remains in the active service of the
3 agency has, in the opinion of the board, become
4 permanently partially or totally disabled to the extent
5 that the employee cannot adequately perform the duties
6 required of an employee of the agency from any cause
7 other than those set forth in the preceding section and
8 not due to vicious habits, intemperance or willful
9 misconduct on his or her part, the employee shall be
10 retired by the board. The employee is entitled to receive
11 annually and shall be paid from the fund in equal

12 monthly installments during a period equal to one-half
13 the time he or she served as an employee of the agency
14 or until the disability eligibility sooner terminates, a
15 sum equal to five and one-half percent of the total
16 salary which would have been earned during twenty-
17 five years of service. At the end of the one-half time
18 period of service, the benefit payable for the remainder
19 of the retirant's life is an annual sum paid in monthly
20 installments equal to one-half the base salary received
21 by the retirant from the agency in the preceding twelve-
22 month period immediately prior to the disability award:
23 *Provided*, That if the retirant was not employed with
24 the agency for twelve months immediately prior to the
25 disability award, the amount of monthly salary shall be
26 annualized for the purpose of determining the benefit.

27 (b) If the employee, at the time of retirement under the
28 terms of this section, has served twenty years or longer
29 as an employee of the agency, the employee is entitled
30 to receive annually and shall be paid from the fund in
31 equal monthly installments, commencing on the date
32 the employee is retired and continuing during his or her
33 lifetime while in status of retirement or until the
34 disability eligibility sooner terminates, a sum equal to
35 five and one-half percent of the aggregate of salary paid
36 to the retirant through the day immediately preceding
37 his or her disability award, to be determined in the
38 manner provided by subsection (c), section twenty-
39 seven of this article.

40 (c) An employee awarded a disability benefit under
41 the provisions of this section may receive retirement
42 disability annuity payments on the day following the
43 board's approval of his or her disability application.
44 Upon termination of employment and receipt of

45 properly executed forms from the agency and the
46 employee, the board shall process the disability
47 retirement benefit and commence annuity payments as
48 soon as administratively feasible.

49 (d) For the purposes of this section, the term "salary"
50 does not include any compensation paid for overtime
51 service.

§15-2-31. Disability physical examinations; termination.

1 The board may require any retirant who has been
2 retired with compensation on account of disability to
3 submit to a physical and/or mental examination by a
4 physician or physicians selected or approved by the
5 board and cause all costs incident to the examination
6 including hospital, laboratory, X ray, medical and
7 physicians' fees to be paid out of funds appropriated to
8 defray the current expense of the agency and a report of
9 the findings of the physician or physicians shall be
10 submitted in writing to the board for its consideration.
11 If, from the report or from the report and hearing on the
12 report, the board is of the opinion and finds that the
13 disabled retirant has recovered from the disability to
14 the extent that he or she is able to perform adequately
15 the duties of a law-enforcement officer, the board shall
16 order that all payments from the fund to that disabled
17 retirant be terminated. If, from the report or the report
18 and hearing on the report, the board is of the opinion
19 and finds that the disabled retirant has recovered from
20 his or her previously determined probable permanent
21 disability to the extent that he or she is able to engage
22 in gainful employment but remains unable to
23 adequately perform the duties of a law-enforcement
24 officer, the board shall order the payment, in monthly

25 installments of an amount equal to two thirds of the
26 salary, in the case of a retirant retired under the
27 provisions of section twenty-nine of this article or equal
28 to one half of the salary, in the case of a retirant retired
29 under the provisions of section thirty of this article,
30 excluding any compensation paid for overtime service,
31 for the twelve-month employment period immediately
32 preceding the disability award: *Provided*, That if the
33 retirant had not been employed with the fund for twelve
34 months immediately prior to the disability award, the
35 amount of monthly salary shall be annualized for the
36 purpose of determining the benefit.

§15-2-31a. Application for disability benefit; determinations.

1 (a) Application for a disability benefit may be made
2 by a member under the provisions of section twenty-
3 nine of this article, by an employee under the provisions
4 of section thirty of this article or, if the member or
5 employee is under an incapacity, by a person acting
6 with legal authority on the member's or the employee's
7 behalf. After receiving an application for a disability
8 benefit, the board shall notify the superintendent of the
9 agency that an application has been filed: *Provided*,
10 That when, in the judgment of the superintendent, an
11 employee is no longer physically or mentally fit for
12 continued duty as an employee of the West Virginia
13 State Police and the employee has failed or refused to
14 make application for disability benefits under this
15 article, the superintendent may petition the board to
16 retire the employee on the basis of disability pursuant
17 to rules which may be established by the board. Within
18 thirty days of the superintendent's receipt of the notice
19 from the board or the filing of the superintendent's
20 petition with the board, the superintendent shall

21 forward to the board a statement certifying the duties
22 of the employee's employment, information relating to
23 the superintendent's position on the work relatedness of
24 the employee's alleged disability, complete copies of the
25 employee's medical file and any other information
26 requested by the board in its processing of the
27 application, if this information is requested timely.

28 (b) The board shall propose legislative rules in
29 accordance with the provisions of article three, chapter
30 twenty-nine-a of this code relating to the processing of
31 applications and petitions for disability retirement
32 under this article.

33 (c) The board shall notify the member and the
34 superintendent of its final action on the disability
35 application or petition within ten days of the board's
36 final action. The notice shall be sent by certified mail,
37 return receipt requested. If either the member or the
38 superintendent is aggrieved by the decision of the board
39 and intends to pursue judicial review of the board's
40 decision as provided in section four, article five, chapter
41 twenty-nine-a of this code, the party so aggrieved shall
42 notify the board within twenty days of the member's or
43 superintendent's receipt of the board's notice that they
44 intend to pursue judicial review of the board's decision.

45 (d) (1) The board shall require each disability benefit
46 recipient to file an annual certified statement of
47 earnings, to include the amount and source of earnings
48 and any other information required in legislative rules
49 which may be proposed by the board. The board may
50 waive or modify the requirement that a recipient of
51 total disability benefits file the annual statement of
52 earnings if the board's physician certifies that the

53 recipient's disability is ongoing. The board shall
54 annually examine the information submitted by each
55 recipient. If a disability retirant refuses to file a
56 statement and other information required by the board,
57 the disability benefit shall be suspended, after notice
58 and opportunity to be heard, until the statement and
59 information are filed.

60 (2) The board shall annually examine any information
61 available from the State Tax Commissioner on all
62 recipients of disability benefits pursuant to article ten,
63 chapter eleven of this code.

64 (e) (1) A nonblind recipient earning annual income
65 exceeding the equivalent of eight hundred sixty dollars
66 per month in the year two thousand six, after
67 impairment-related work expenses are subtracted from
68 earnings, has engaged in substantial gainful activity. A
69 statutorily blind recipient has engaged in substantial
70 gainful activity in the year two thousand six if the
71 recipient has earned annual income exceeding the
72 equivalent of one thousand four hundred fifty dollars
73 per month after impairment-related work expenses are
74 subtracted from earnings.

75 (2) The substantial gainful activity dollar limit shall
76 be automatically adjusted annually to correspond to the
77 dollar limit as established and published by the United
78 States Social Security Administration for each year in
79 accordance with methods published in the Federal
80 Register (FR6582905 December 29, 2000) and similar
81 methods used by the Social Security Administration
82 applying the average annual wage index.

83 (3) If after review of a disability retirant's annual

84 statement of earnings, tax records or other financial
85 information, as required or otherwise obtained by the
86 board, the board determines that earnings of the
87 recipient of total disability benefits in the preceding
88 year are sufficient to show that the recipient engaged in
89 substantial gainful activity, the disability retiree's
90 disability annuity shall be terminated by the board,
91 upon recommendation of the board's disability review
92 committee and after notice and opportunity to be heard,
93 on the first day of the month following the board's
94 action.

95 (4) If the board obtains information that a recipient of
96 partial disability benefits is employed as a law-
97 enforcement officer, upon recommendation of the
98 board's disability review committee and after notice
99 and an opportunity to be heard, the board shall
100 terminate the recipient's disability benefits on the first
101 day of the month following the board's action.

102 (f) Any person who wishes to reapply for disability
103 retirement and whose disability retirement has been
104 terminated by the board pursuant to this section may do
105 so within ninety days of the effective date of
106 termination: *Provided*, That any person reapplying for
107 disability benefits shall undergo an examination at the
108 applicant's expense by an appropriate medical
109 professional selected by the board as part of the
110 reapplication process.

(g) Notwithstanding other provisions in this section, any person whose disability retirement has been terminated by the board pursuant to this section may apply for regular retirement benefits upon meeting the eligibility requirements of age and years of service.

§15-2-31b. Annual report on disability retirement experience.

1 Not later than the first day of January, two thousand
2 six, and each first day of January thereafter, the board
3 shall prepare a report for the preceding fiscal year of
4 the disability retirement experience of the West Virginia
5 State Police Death, Disability and Retirement Fund.
6 The report shall specify the total number of disability
7 applications submitted, the status of each application as
8 of the last day of the fiscal year, total applications
9 granted or denied, and the percentage of disability
10 benefit recipients to the total number of West Virginia
11 State Police employees who are members of the fund.
12 The report shall be submitted to the Governor and the
13 chairpersons of the standing committees of the Senate
14 and House of Delegates with primary responsibility for
15 retirement legislation.

§15-2-32. Retirant not to exercise police authority; retention of group insurance.

1 A retirant may not exercise any of the powers
2 conferred upon active employees by section twelve of
3 this article; but is entitled to receive free of cost to the
4 retirant and retain as his or her separate property one
5 complete standard uniform prescribed by section ten of
6 this article: *Provided*, That the uniform may be worn by
7 a retirant on occasions prescribed by the
8 superintendent. The superintendent shall maintain at
9 public expense for the benefit of all retirants that group
10 life insurance mentioned in section ten of this article.
11 The superintendent, when he or she is of opinion that
12 the public safety shall require, may recall to active duty
13 during any period determined by the superintendent,
14 any retiree who is retired under the provisions of

15 section twenty-seven of this article, provided the
16 consent of the retiree to reassume duties of active
17 membership shall first be obtained. Any retirant who
18 resumes status of active membership is not entitled to
19 receive retirement pay or benefits, but in lieu thereof, is
20 entitled to receive that rate of salary and allowance
21 pertinent to the rank or grade previously held by the
22 retirant. When the former retirant is released from
23 active duty, he or she shall reassume the status of
24 retirement and shall be entitled to receive appropriate
25 benefits as provided by this article: *Provided*, That the
26 amount of the benefits shall in no event be less than the
27 amount determined by the order of the board previously
28 made in his or her behalf.

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

1 (a) The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member
3 who has lost or loses his or her life by reason of injury,
4 illness or disease resulting from an occupational risk or
5 hazard inherent in or peculiar to the service required of
6 employees while the member was or is engaged in the
7 performance of his or her duties as an employee of the
8 agency, or if a retirant dies from any cause after having
9 been retired pursuant to the provisions of section
10 twenty-nine of this article, the surviving spouse or other
11 dependent is entitled to receive and shall be paid from
12 the fund benefits as follows: To the surviving spouse
13 annually, in equal monthly installments during his or
14 her lifetime the greater of one or the other of two
15 amounts:

16 (1) An amount equal to five and one-half percent of
17 the total salary which was or would have been earned
18 by the deceased member or duty disability retirant
19 during twenty-five years of service based on the average
20 earnings of the member or duty disability retirant while
21 employed by the agency; or

22 (2) The sum of six thousand dollars.

23 (b) In addition, the surviving spouse is entitled to
24 receive and shall be paid one hundred dollars monthly
25 for each dependent child or children. If the surviving
26 spouse dies or if there is no surviving spouse, there shall
27 be paid monthly to each dependent child or children
28 from the fund a sum equal to twenty-five percent of the
29 surviving spouse's entitlement. If there is no surviving
30 spouse and no dependent child or children, there shall
31 be paid annually in equal monthly installments from the
32 fund to the dependent parents of the deceased member
33 or retirant during their joint lifetimes a sum equal to the
34 amount which a surviving spouse, without children,
35 would have received: *Provided*, That when there is one
36 dependent parent surviving, that parent is entitled to
37 receive during his or her lifetime one-half the amount
38 which both parents, if living, would have been entitled
39 to receive.

40 (c) Any person qualified as a surviving dependent
41 child under this section, in addition to any other
42 benefits due under this or other sections of this article,
43 is entitled to receive a scholarship to be applied to the
44 career development education of that person. This sum
45 up to but not exceeding seven thousand five hundred
46 dollars shall be paid from the fund to any university or
47 college in this state or to any trade or vocational school

48 or other entity in this state approved by the board, to
49 offset the expenses of tuition, room and board, books,
50 fees or other costs incurred in a course of study at any
51 of those institutions so long as the recipient makes
52 application to the board on an approved form and under
53 rules as provided by the board and maintains scholastic
54 eligibility as defined by the institution or the board. The
55 board may by appropriate rules define age
56 requirements, physical and mental requirements,
57 scholastic eligibility, disbursement methods,
58 institutional qualifications and other requirements as
59 necessary and not inconsistent with this section.

60 (d) A surviving spouse or dependent of an employee
61 meeting the requirements of this section is entitled to
62 receive beneficiary payments on the first day following
63 the date the deceased employee is removed from payroll
64 by the agency. A surviving spouse or dependent of a
65 member who is not currently an employee meeting the
66 requirements of this section is entitled to receive
67 beneficiary payments on the first day following the date
68 of the deceased member's death. A surviving spouse or
69 dependent of a retirant meeting the requirements of this
70 section is entitled to receive beneficiary payments on
71 the first day of the month following the date of the
72 deceased retirant's death. Upon receipt of properly
73 executed forms from the agency and the surviving
74 spouse or dependent, the board shall process the
75 surviving spouse or dependent benefit as soon as
76 administratively feasible.

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

§15-2-34. Awards and benefits to dependents of employee when the employee dies from nonservice-connected causes.

1 (a) If an employee of the agency, before having
2 completed twenty years of service as an employee of the
3 agency, dies from any cause other than those specified
4 in this article and not due to vicious habits,
5 intemperance or willful misconduct on his or her part,
6 there shall be paid annually in equal monthly
7 installments from the fund to the surviving spouse of
8 the employee during his or her lifetime, or until such
9 time as the surviving spouse remarries, a sum equal to
10 two and three-quarters percent of the total salary which
11 would have been earned by the employee during
12 twenty-five years of service with the agency based on
13 his or her average earnings while employed with the
14 agency. If there is no surviving spouse, or the surviving
15 spouse dies or remarries, there shall be paid monthly to
16 each dependent child or children from the fund, a sum
17 equal to twenty-five percent of the surviving spouse's
18 entitlement. If there is no surviving spouse and no
19 dependent child or children, there shall be paid
20 annually in equal monthly installments from the fund to
21 the dependent parents of the deceased employee during
22 their joint lifetimes, a sum equal to the amount which a
23 surviving spouse would have been entitled to receive:
24 *Provided*, That when there is only one dependent parent
25 surviving, that parent is entitled to receive during his or
26 her lifetime one-half the amount which both parents, if
27 living, would have been entitled to receive.

28 (b) A surviving spouse or dependent meeting the
29 requirements of this section is entitled to receive
30 beneficiary payments on the first day following the date

31 the deceased employee is removed from payroll by the
32 agency. Upon receipt of properly executed forms from
33 the agency and the surviving spouse or dependent, the
34 board shall process the surviving spouse or dependent
35 benefit as soon as administratively feasible.

36 (c) For the purposes of this section, the term "salary"
37 does not include compensation paid for overtime
38 service.

**§15-2-35. Awards and benefits to dependents of retirant or
after an employee serves twenty years.**

1 (a) When any employee of the agency has completed
2 twenty years of service or longer as an employee of the
3 agency and has died or dies from any cause or causes
4 other than those specified in this article before having
5 been retired by the board, and when a retirant has died
6 or dies after having been retired by the board under the
7 provisions of this article, there shall be paid annually in
8 equal monthly installments from the fund to the
9 surviving spouse of the employee or retirant during the
10 lifetime or until remarriage of the surviving spouse, an
11 amount equal to three-fourths the retirement benefits
12 the deceased retirant was receiving or would have been
13 entitled to receive while in status of retirement, or
14 would have been entitled to receive to the same effect as
15 if the employee had been retired under the provisions of
16 this article immediately prior to the time of his or her
17 death and in no event to be less than five thousand
18 dollars, unless otherwise required under this article,
19 and in addition the surviving spouse shall be entitled to
20 receive and shall be paid from the fund the sum of one
21 hundred dollars monthly for each dependent child or
22 children. If the surviving spouse dies or remarries or if

23 there is no surviving spouse, there shall be paid monthly
24 from the fund to each dependent child or children of the
25 deceased employee or retirant a sum equal to twenty-
26 five percent of the surviving spouse's entitlement. If
27 there is no surviving spouse or no surviving spouse
28 eligible to receive benefits and no dependent child or
29 children, there shall be paid annually in equal monthly
30 installments from the fund to the dependent parents of
31 the deceased employee or retirant during their joint
32 lifetimes a sum equal to the amount which a surviving
33 spouse without children would have been entitled to
34 receive: *Provided*, That when there is only one
35 dependent parent surviving, the parent shall be entitled
36 to receive during his or her lifetime one-half the amount
37 which both parents, if living, would have been entitled
38 to receive.

39 (b) A surviving spouse or dependent of an employee
40 meeting the requirements of this section is entitled to
41 receive beneficiary payments on the first day following
42 the date the deceased employee is removed from payroll
43 by the agency. A surviving spouse or dependent of a
44 retirant meeting the requirements of this section is
45 entitled to receive beneficiary payments on the first day
46 of the month following the date of the deceased
47 retirant's death. Upon receipt of properly executed
48 forms from the agency and the surviving spouse or
49 dependent, the board shall process the surviving spouse
50 or dependent benefit as soon as administratively
51 feasible.

**§15-2-37. Refunds to certain employees upon discharge or
resignation; deferred retirement.**

1 (a) Any employee who is discharged by order of the
2 superintendent or otherwise terminates employment

3 with the agency, at the written request of the member to
4 the board, is entitled to receive from the fund a sum
5 equal to the aggregate of the principal amount of
6 moneys deducted from his or her salary and paid into
7 the fund plus four percent interest compounded thereon
8 calculated annually as provided and required by this
9 article.

10 (b) Any member withdrawing contributions who may
11 thereafter be reemployed by the agency shall not receive
12 any prior service credit in the fund on account of former
13 service. The employee may redeposit in the fund
14 established in article two-a of this chapter the amount
15 of the refund, together with interest thereon at the rate
16 of seven and one-half percent per annum from the date
17 of withdrawal to the date of redeposit, in which case he
18 or she shall receive the same credit on account of his or
19 her former service as if no refund had been made. He or
20 she shall become a member of the retirement system
21 established in article two-a of this chapter.

22 (c) Every employee who completes ten years of service
23 with the agency is eligible, upon separation of
24 employment, either to withdraw his or her contributions
25 in accordance with subsection (a) of this section or to
26 choose not to withdraw his or her accumulated
27 contributions with interest. Upon attainment of age
28 sixty-two, a member who chooses not to withdraw his
29 or her contributions is eligible to receive a retirement
30 annuity. Any member choosing to receive the deferred
31 annuity under this subsection is not eligible to receive
32 the annual annuity adjustment provided in section
33 twenty-seven-a of this article. When the board retires
34 any member under any of the provisions of this section,
35 the member is entitled to receive annually and shall be
36 paid from the fund in equal monthly installments

37 during the lifetime of the member while in status of
38 retirement one or the other of two amounts, whichever
39 is greater:

40 (1) An amount equal to five and one-half percent of
41 the aggregate of salary paid to the employee during the
42 whole period of service as an employee of the agency; or

43 (2) The sum of six thousand dollars.

44 (d) A member may choose, in lieu of a life annuity
45 available under the provisions of subsection (c) of this
46 section, an annuity in a reduced amount payable during
47 the member's lifetime, with one half of the reduced
48 monthly amount paid to his or her surviving spouse, for
49 the spouse's remaining lifetime after the death of the
50 retirant. Reduction of this monthly benefit amount shall
51 be calculated to be of equal actuarial value to the life
52 annuity the member could otherwise have chosen.

53 (e) A member retiring under the provisions of this
54 section may receive retirement annuity payments on the
55 day following his or her attaining age sixty-two. Upon
56 receipt of properly executed forms from the agency and
57 the member, the board shall process the member's
58 retirement benefit and commence annuity payments as
59 soon as administratively feasible.

**§15-2-38. Refund to dependents upon death of member not
eligible for benefits.**

1 If any member dies and the board is of the opinion
2 after hearing that the dependent or dependents of the
3 member are ineligible under the provisions of this
4 article to receive any of the benefits provided herein,
5 the board shall refund to the spouse, if surviving, but if

6 not surviving, to the children of the member, and if
7 there is no surviving spouse or children, to the
8 dependent parents, a sum equal to the aggregate of the
9 principal amount of all moneys deducted from the
10 salary of the member and paid into the fund. If there is
11 no surviving spouse or children or dependent parent or
12 parents, then a sum equal to the aggregate of the
13 principal amount of all moneys deducted from the
14 salary of the member and paid into the fund will be
15 paid to the member's estate. Whenever a refund is made
16 to the surviving spouse or other dependents of the
17 deceased member, the surviving spouse or other
18 dependents shall not be entitled to any other rights or
19 benefits from the fund.

§15-2-39. Dependent child or children.

1 In any case where under the terms of this article
2 benefits are provided for dependent child or children,
3 the benefits shall be paid for so long as they continue to
4 meet the qualifications provided under the provisions of
5 this article.

§15-2-44. Federal law maximum benefit limitations.

1 Notwithstanding any other provision of this article or
2 state law, the board shall administer the fund in
3 compliance with the limitations of Section 415 of the
4 Internal Revenue Code and regulations under that
5 section to the extent applicable to governmental plans
6 so that no annuity or other benefit provided under this
7 fund shall exceed those limitations. The extent to which
8 any annuity or other benefit payable under this fund
9 shall be reduced as compared with the extent to which
10 an annuity, contributions or other benefits under any
11 other defined benefit plans or defined contribution

12 plans required to be taken into consideration under
13 Section 415 of the Internal Revenue Code shall be
14 determined by the board in a manner that shall
15 maximize the aggregate benefits payable to the member.
16 If the reduction is under this fund, the board shall
17 advise affected members or retirants of any additional
18 limitation on the annuities required by this section.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April* 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:30 pm