

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 664**

BY SENATOR NELSON

[Introduced February 17, 2022; referred  
to the Committee on Pensions]

1 A BILL to amend and reenact §51-9-4 of the Code of West Virginia, 1931, as amended, relating  
 2 to the retirement system for judges of courts of record; and changing the contribution levels  
 3 of every person who is serving, and who elects to participate in this retirement system, on  
 4 or after July 1, 2014, to no less than three percent and no more than 10 percent of the  
 5 participant's annual compensation.

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

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

**§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.**

1 (a) Every person who is now serving or shall hereafter serve as a judge of any court of  
 2 record of this state shall pay into the Judges' Retirement Fund six percent of the salary received  
 3 by such person out of the State Treasury: *Provided*, That when a judge becomes eligible to  
 4 receive benefits from such trust fund by actual retirement, no further payment by him or her shall  
 5 be required, since ~~such~~ the employee contribution, in an equal treatment sense, ceases to be  
 6 required in the other retirement systems of the state, also, only after actual retirement: *Provided*,  
 7 *however*, That on and after January 1, 1995, every person who is then serving or shall thereafter  
 8 serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund  
 9 nine percent of the salary received by that person: *Provided further*, That consistent with the  
 10 salary increase granted to judges of courts of record during the 2005 regular legislative session  
 11 and to changes effectuated in judicial retirement by provisions enacted during the third  
 12 extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then  
 13 serving or shall thereafter serve as a judge of any court of record in this state shall pay into the  
 14 Judges' Retirement Fund 10 and one-half percent of the salary received by that person: *And*  
 15 *provided further*, That on and after July 1, 2013, except as provided in subsection (b) of this

16 section, every person who is then serving or shall thereafter serve as a judge of any court of  
17 record in this state and who elects to participate in this retirement system shall pay into the  
18 Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice  
19 to the contrary, in any way allowing discontinuance of required employee contributions prior to  
20 actual retirement under this retirement system, is rejected as erroneous and contrary to legislative  
21 intent and as violative of required equal treatment and is hereby nullified and discontinued fully,  
22 with the State Auditor to require such contribution in every instance hereafter, except where no  
23 contributions are required to be made under any of the provisions of this article.

24 (b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a  
25 judge of any court of record of this state and who elects to participate in this retirement system  
26 shall contribute to the fund an amount determined by the board. This amount will be based on the  
27 annual actuarial valuation prepared by the State Actuary: *Provided*, That the contribution will be  
28 no less than ~~seven percent~~ three percent or no more than 10 percent of the participant's annual  
29 compensation.

30 (c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation  
31 prepared by the State Actuary for determination of all participants' contributions and the annual  
32 actuarially required contribution prepared by the State Actuary for use by the courts of this state  
33 for legislative appropriation shall be provided to the Legislature's Joint Committee on Government  
34 and Finance and the Joint Committee on Pensions and Retirement.

35 (d) An individual who is a leased employee ~~shall~~ may not be eligible to participate in the  
36 system. For purposes of this system, a "leased employee" means any individual who performs  
37 services as an independent contractor or pursuant to an agreement with an employee leasing  
38 organization or other similar organization. If a question arises regarding the status of an individual  
39 as a leased employee, the board has the final power to decide the question.

40 (e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from  
41 the amount of each such salary check six percent thereof, which amount so deducted shall be

42 credited by the Consolidated Public Retirement Board to the trust fund: *Provided*, That on or after  
43 January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary  
44 check: *Provided, however*, That consistent with the salary increase granted to judges of courts of  
45 record during the 2005 regular legislative session and to changes effectuated in judicial retirement  
46 by provisions enacted during the third extraordinary legislative session of 2005, on or after July  
47 1, 2005, the amount so deducted and credited shall be 10 and one-half percent of each such  
48 salary check: *Provided further*, That on and after July 1, 2013, except as provided in subsection  
49 (b) of this section, the amount so deducted and credited shall be seven percent of each salary  
50 check: *And provided further*, That on and after July 1, 2014, the amount so deducted and credited  
51 will be determined by the board.

52 (f) Any judge seeking to qualify military service to be claimed as credited service, in  
53 allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same  
54 without any required payment in respect thereof to the Judges' Retirement Fund.

55 (g) Notwithstanding the preceding provisions of this section, contributions, benefits, and  
56 service credit with respect to qualified military service shall be provided in accordance with  
57 Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military  
58 service" has the same meaning as in section 414(u) of the Internal Revenue Code. The  
59 Retirement Board ~~is authorized to~~ may determine all questions and make all decisions relating to  
60 this section and may promulgate rules relating to contributions, benefits, and service credit  
61 pursuant to the authority granted to the retirement board in §5-10D-1 of this code to comply with  
62 section 414(u) of the Internal Revenue Code.

63 (h) Any judge holding office as such on the effective date of the amendments to this article  
64 adopted by the Legislature at its 1987 regular session who seeks to qualify service as a  
65 prosecuting attorney as credited service, which service credit must have been earned prior to the  
66 year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual  
67 salary which was actually received by such person as prosecuting attorney during the time ~~such~~

68 the prosecutorial service was rendered prior to the year 1987 and for which credited service is  
69 being sought, together with applicable interest. No judge whose term of office shall commence  
70 after the effective date of ~~such~~ amendments to this article ~~shall~~ may be eligible to claim any credit  
71 for service rendered as a prosecuting attorney as eligible service for retirement benefits under  
72 this article, nor ~~shall~~ may any time served as a prosecutor after the year 1988 be considered as  
73 eligible service for any purposes of this article.

NOTE: The purpose of this bill is to change the contribution level in the retirement system for judges of courts of record, on or after July 1, 2014, to no less than three percent and no more than 10 percent of the participant's annual compensation.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.