

# **WEST VIRGINIA LEGISLATURE**

**2026 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 1035**

BY SENATORS OLIVERIO, WOELFEL, GARCIA, AND TAKUBO

[Reported February 23, 2026, from the Committee on  
Pensions]



1 A BILL to amend and reenact §51-9-6, §51-9-6a, and §51-9-6b of the Code of West Virginia,  
2 1931, as amended; and to repeal §51-9-6c and §51-9-6d, relating to the Judges'  
3 Retirement System; providing for retirees under post-2005 retirement system to be treated  
4 as pre-2005 retirement system retirees; providing for actuarially reduced pension benefit  
5 for judges in certain circumstances; increasing surviving spouse plan benefit for certain  
6 judges; eliminating limitation on retirement benefit increases; and eliminating distinction  
7 between certain judges for purposes of calculating surviving spouse plan benefits,  
8 surviving dependent children plan benefits, and adjusted annual retirement benefit.

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

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

**§51-9-6. Eligibility for and payment of benefits.**

1 (a) Except as otherwise provided in §51-9-5, §51-9-6d, §51-9-12, and §51-9-13 of this  
2 code, and subject to the provisions of subsection (e) of this section, any person who is now  
3 serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have  
4 served as such judge for a period of not less than ~~sixteen~~ 16 full years and shall have reached  
5 the age of ~~sixty-five~~ 65 years, or who has served as judge of such court or of that court and other  
6 courts of record of the state for a period of ~~sixteen~~ 16 full years or more (whether continuously or  
7 not and whether said service be entirely before or after this article became effective, or partly  
8 before and partly after said date, and whether or not said judge shall be in office on the date he  
9 or she shall become eligible to benefits hereunder) and shall have reached the age of ~~sixty-five~~  
10 65 years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of  
11 this state and shall have served as such judge for a period of not less than ~~twenty-four~~ 24 full  
12 years, regardless of age, shall, upon a determination and certification of his or her eligibility as  
13 provided in §51-9-9 of this code, be paid from the fund annual retirement benefits, so long as he  
14 or she shall live, in an amount equal to ~~seventy-five~~ 75 percent of the annual salary of the office  
15 from which he or she has retired based upon such salary of such office and as such salary may

16 be changed from time to time during the period of his or her retirement and the amount of his or  
17 her retirement benefits shall be based upon and be equal to ~~seventy-five~~ 75 percent of the highest  
18 annual salary of such office for any one calendar year during the period of his or her retirement  
19 and shall be payable in monthly installments: *Provided*, That such retirement benefits shall be  
20 paid only after such judge has resigned as such or, for any reason other than his or her  
21 impeachment, his or her service as such has ended: *Provided, however*, That every such person  
22 seeking to retire and to receive the annual retirement benefits provided by this subsection must  
23 have served a minimum of ~~twelve~~ 12 years as a sitting judge of any such court of record: *Provided*  
24 *further*, That every individual who is appointed or elected for the first time as judge of a court of  
25 record of this state after July 1, 2005, who subsequently seeks to retire and to receive the annual  
26 retirement benefits provided by this subsection must have served a minimum of ~~fourteen~~ 14 years  
27 as a sitting judge of any court of record: *And provided further*, That any justice of the West Virginia  
28 Supreme Court of Appeals, Intermediate Court of Appeals judge, circuit court judge, or family  
29 court judge appointed or elected for the first time after July 1, 2005, shall be eligible for payment  
30 of benefits under this subsection.

31 (b) Notwithstanding any other provisions of this article with the exception of ~~sections~~  
32 ~~twelve a and twelve b~~ §51-9-12a and §51-9-12b of this code, any person who is now serving or  
33 who shall hereafter serve as a judge of any court of record of this state and who shall have  
34 accumulated ~~sixteen~~ 16 years or more of credited service, at least ~~twelve~~ 12 years of which is as  
35 a sitting judge of a court of record, and who has attained the age of ~~sixty-two~~ 62 years or more  
36 but less than the age of ~~sixty-five~~ 65 years, may elect to retire from his or her office and to receive  
37 the pension to which he or she would otherwise be entitled to receive at age ~~sixty-five~~ 65, but with  
38 an actuarial reduction of pension benefit to be established as a reduced annuity receivable  
39 throughout retirement: *Provided*, That every individual who is appointed or elected for the first  
40 time as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire  
41 and to receive the annual retirement benefits provided by this subsection must have served a

42 minimum of ~~fourteen~~ 14 years as a sitting judge of any court of record. The reduced percentage  
43 (less than ~~seventy-five~~ 75 percent) actuarially computed, determined and established at time of  
44 retirement in respect of this reduced pension benefit shall also continue and be applicable to any  
45 subsequent new annual salary set for the office from which such judge has retired and as such  
46 salary may be changed from time to time during the period of his or her retirement.

47 (c) In determining eligibility for the benefits provided by this section, active full-time duty  
48 (including leaves and furloughs) in the armed forces of the United States shall be eligible for  
49 qualification as credited military service for the purposes of this article by any judge with ~~twelve~~  
50 12 or more years actual service as a sitting judge of a court of record, such awardable military  
51 service to not exceed five years: *Provided*, That in determining eligibility for the benefits provided  
52 by this section for every individual who is appointed or elected for the first time as judge of a court  
53 of record of this state after July 1, 2005, active full-time duty (including leaves and furloughs) in  
54 the armed forces of the United States qualifies as credited service for the purposes of this article  
55 for any judge with ~~fourteen~~ 14 or more years actual service as a sitting judge of a court of record  
56 of this state, the awardable military service not to exceed five years.

57 (d) If a judge of a court of record who is presently sitting as such on the effective date of  
58 the amendments to this section enacted by the Legislature at its regular session held in the year  
59 1987 and who has served for a period of not less than ~~twelve~~ 12 full years and has made payments  
60 into the Judges' Retirement Fund as provided in this article for each month during which he or  
61 she served as judge, following the effective date of this section, any portion of time which he or  
62 she had served as prosecuting attorney in any county in this state shall qualify as years of service,  
63 if such judge shall pay those sums required to be paid pursuant to the provisions of §51-9-4 of  
64 this code: *Provided*, That any term of office as prosecuting attorney, or part thereof, commencing  
65 after December 31, 1988, shall not hereafter in any way qualify as eligible years of service under  
66 this retirement system. For purposes of this article, eligible service as a "prosecuting attorney" or  
67 as a "prosecutor" does not include any service as an assistant prosecuting attorney. The

68 amendment to this subsection during the third extraordinary session in the year 2005 is not for  
69 the purpose of changing existing law but is intended to clarify the intent of the Legislature as to  
70 existing law regarding eligibility for benefits for service as a prosecuting attorney since its initial  
71 enactment and this clarification shall be applied retrospectively to the effective date of this section  
72 and any predecessor acts in which service as a prosecuting attorney was initially determined by  
73 statute to qualify as eligible years of service under the retirement system provided by this article.

74 (e) Any retirement benefit accruing under the provisions of this section shall not be paid if  
75 otherwise barred under the provisions of ~~article ten-a, chapter five~~ §5-10A-1 et seq. of this code.

76 (f) Notwithstanding any other provisions of this article, forfeitures under the system shall  
77 not be applied to increase the benefits any member would otherwise receive under the system.

**§51-9-6a. Eligibility benefits; service and retirement of judges over 65 years of age.**

1 (a) Any judge of a court of record of this state who shall have served for a period of not  
2 less than eight full years after attaining the age of ~~sixty-five~~ 65 years and who shall have made  
3 payments into the Judges' Retirement Fund as provided in this article for each month during which  
4 he or she served as such judge following the effective date of this section, shall be subject to all  
5 the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and  
6 shall receive retirement benefits in an amount equal to ~~seventy-five~~ 75 percent of the annual  
7 salary of the office from which he or she has retired based upon such salary of such office as  
8 such salary may be changed from time to time during the period of his or her retirement and the  
9 amount of his or her retirement benefits shall be based upon and be equal to ~~seventy-five~~ 75  
10 percent of the highest annual salary of such office for any one calendar year during the period of  
11 his or her retirement and shall be payable in monthly installments. If such judge shall become  
12 incapacitated to perform his or her said duties before the expiration of his or her said term and  
13 after serving for six years thereof, and upon the acceptance of his or her resignation as in this  
14 article provided, he or she shall be paid the annual retirement benefits as herein provided so long  
15 as he or she shall live. The provisions of this section shall prevail over any language to the

16 contrary in this article contained, except those provisions of §51-9-12a and §51-9-12b of this code:  
17 *Provided*, That no individual who is appointed or elected for the first time as judge of a court of  
18 record of this state after July 1, 2005, is eligible for retirement under this subsection.

19 (b) Any individual who is appointed or elected for the first time as a family court judge, a  
20 judge of a court of record, judge of the Intermediate Court of Appeals, or as a justice of the  
21 Supreme Court of Appeals after July 1, 2005, who having attained the age of 65 years, and who  
22 shall have served as a sitting judge of said court or courts for a period of not less than 12 full  
23 years, and who shall have made payments into the Judges' Retirement Fund as provided in this  
24 article for each month during which he or she served as a judge or justice, shall be eligible to  
25 receive the pension to which he or she would otherwise have been entitled to receive as if at 16  
26 years of credited service, but with an actuarial reduction of pension benefit to be established as  
27 a reduced annuity receivable throughout retirement, and shall be paid as an annual retirement  
28 benefit as herein provided so long as he or she shall live.

**§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges;  
automatic escalation and increase of annuity benefit; proration designation by  
judge permitted.**

1 (a) There shall be paid, from the fund created or continued by §51-9-2 of this code, or from  
2 such funds as may be appropriated by the Legislature for such purpose, an annuity to the  
3 surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement  
4 benefits provided by any of the provisions of this article, or who has, at death, actually served five  
5 years or more as a sitting judge of any court of record of this state, exclusive of any other service  
6 credit to which such judge may otherwise be entitled, and who dies either while in office or after  
7 resignation or retirement from office pursuant to the provisions of this article. Said annuity shall  
8 amount to ~~forty~~ 50 percent of the annual salary of the office which said judge held at his or her  
9 death or from which he or she resigned or retired. In the event said salary is increased or  
10 decreased while an annuitant is receiving the benefits hereunder, his or her annuity shall amount

11 to ~~forty~~ 50 percent of the new salary. ~~Provided, That with respect to any individual who is~~  
12 ~~appointed or elected for the first time as judge of a court of record of this state after July 1, 2005,~~  
13 ~~any annuity to the surviving spouse of the judge shall be an amount equal to forty percent of the~~  
14 ~~judge's final average salary: Provided, however, That the annuitant is not entitled to an increase~~  
15 ~~in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice~~  
16 ~~of the Supreme Court of Appeals~~ The annuity granted hereunder shall accrue monthly and shall  
17 be due and payable in monthly installments on the first business day of the month following the  
18 month for which the annuity shall have accrued. Such annuity shall commence on the first day of  
19 the month in which said judge dies and shall, subject to the provisions of subsection (b) of this  
20 section, terminate upon the death of the annuitant or shall terminate upon the remarriage of the  
21 annuitant.

22 (b) If there be no surviving spouse at the time of death of a judge who dies after serving  
23 five years or more as a sitting judge of any court of record and such judge leaves surviving him  
24 or her any dependent child or children, such dependent child or children shall receive an amount  
25 equal to 20 percent of the annual salary of the office which said judge held at the time of his or  
26 her death: *Provided*, That the total of all such annuities payable to each such child shall not  
27 exceed in the aggregate an amount equal to ~~forty~~ 40 percent of such salary. Such annuity shall  
28 continue as to each such child until: (i) He or she attains the age of ~~eighteen~~ 18 years; or (ii)  
29 attains the age of ~~twenty-three~~ 23 years so long as such child remains a full-time student. The  
30 Auditor shall by legislative rule establish the criteria for determining a person's status as a full-  
31 time student within the meaning and intent of this subsection. In the event there are surviving any  
32 such judge three or more dependent children, then each such child's annuity shall be proratably  
33 reduced in order that the aggregate annuity received by all such dependent children does not  
34 exceed ~~forty~~ 40 percent of such salary and the amount to be so received by any such child shall  
35 continue throughout the entire period during which each such child is eligible to receive such  
36 annuity. The provisions of this subsection shall also apply to those circumstances and situations

37 wherein a surviving spouse of a deceased judge shall die while receiving benefits pursuant to  
38 subsection (a) of this section and who shall leave surviving dependent children of such deceased  
39 judge who would be entitled to benefits under this subsection as if they had succeeded to such  
40 annuity benefits upon the death of such judge in the first instance. In the event the salary of judges  
41 is increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the  
42 annuities payable shall be likewise increased or decreased proportionately to reflect such change  
43 in salary. ~~Provided, however, That with respect to any individual who is appointed or elected for~~  
44 ~~the first time as judge of a court of record of this state after July 1, 2005, any annuity to any~~  
45 ~~children of the judge shall be calculated with respect to the judge's final average salary: Provided~~  
46 ~~further, That the child is not entitled to an increase in benefits by virtue of any increase in the~~  
47 ~~salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals~~ The  
48 annuities granted hereunder shall accrue monthly and shall be due and payable in monthly  
49 installments on the same day as surviving spouses' benefits are required to be paid. Such  
50 annuities shall commence on the first day of the month in which any such dependent child  
51 becomes eligible for benefits hereunder and shall terminate on the last day of the month during  
52 which such eligibility ceases.

**§51-9-6c. Limitations on benefit increases.**

1 [Repealed.]

**§51-9-6d. Adjusted annual retirement benefit calculations.**

1 [Repealed.]