WEST VIRGINIA CODE CHAPTER 15 ARTICLE 2

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§15-2-1. Short title.

This article shall be known and may be cited as the "West Virginia Department of Public Safety Reorganization Act."

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§15-2-1a.

Repealed.

Acts, 1990 Reg. Sess., Ch. 157.

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§15-2-2. Superintendent; departmental headquarters; continuation of the State Police.

The Department of Public Safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia State Police. Wherever the words "Department of Public Safety" or "Division of Public Safety" appear in this code, they shall mean the West Virginia State Police. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. The superintendent shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of $10,000, payable to the State of West Virginia and conditioned upon the faithful performance of his or her duties. Such bond both as to form and security shall be approved as to form by the Attorney General and to sufficiency by the Governor.

Before entering upon the duties of his or her office, the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department shall be located in Kanawha County.

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§15-2-3. State Police structure; how established; training; special revenue account.

(a) The superintendent shall create, appoint and equip the State Police which shall consist of the number of troops, districts and detachments required for the proper administration of the State Police. Each troop, district or detachment shall be composed of the number of officers and members the superintendent determines are necessary to meet operational needs and are required for the efficient operation of the State Police. The superintendent shall establish the general organizational structure of the State Police by interpretive rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. The superintendent shall provide adequate facilities for the training of all members of the State Police and shall prescribe basic training requirements for newly enlisted members. He or she shall also provide advanced or in-service training, from time to time, for all members of the State Police. The superintendent shall hold entry-level training classes for other law-enforcement officers in the state without cost to those officers, except actual expenses for food, lodging and school supplies. The superintendent may hold advanced levels of training classes for other law-enforcement officers and those individuals in law enforcement-related professions for a reasonable daily fee per student not to exceed $100. The superintendent may also allow the use of classrooms, firearms training facilities and other training venues by other agencies or entities for a daily fee not to exceed $100 per day, per venue.

(b) There is hereby created in the State Treasury a special revenue account, which shall be an interest bearing account, to be known as the Academy Training and Professional Development Fund. The special revenue account shall consist of training fees, any appropriations that may be made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures, for purposes of this section, are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. The superintendent is authorized to expend funds from the account to offset operational and training costs; for building maintenance and repair; for purchases and for equipment repair or replacement for the West Virginia State Police Academy; and to defray necessary expenses incidental to those and other activities associated with law-enforcement training.

(c) There is hereby created in the State Treasury a special revenue account, which is an interest bearing account, to be known as the State Police 100th Anniversary Fund. The special revenue account shall consist of merchandise sales, any appropriations that may be made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal

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year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. The superintendent is authorized to expend funds from the account to offset costs for the 100th anniversary celebration; for purchasing 100th anniversary commemorative merchandise, equipment and vehicles; and to defray necessary expenses incidental to those and other activities associated with the 100th anniversary of the West Virginia State Police. This fund expires on December 31, 2019, and remaining funds shall be transferred to the Academy Training and Professional Development Fund.

(d) The superintendent may hold training classes for certification to access and use the West Virginia Automated Police Network for a reasonable daily fee per student not to exceed $100.

(e) There is hereby created in the State Treasury a special revenue account, which is an interest bearing account, to be known as the West Virginia State Police Criminal Justice Information Services Fund. The special revenue account shall consist of: Fees collected for training and certification for access to the West Virginia Automated Police Network system; any appropriations that may be made by the Legislature; income from the investment of moneys held in the special revenue account; and all other sums available for deposit to the special revenue account from any source, public or private. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and may be used solely in a manner consistent with this article. The superintendent is authorized to expend funds from the account for the following purposes: To offset operational and training costs; for building maintenance and repair; for purchases and for equipment repair; personal services; software; other associated maintenance costs; and to defray necessary expenses incidental to those and other activities associated with the communications section of the West Virginia State Police.

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§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the State Police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the State Police, the number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the State Police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal, trooper first class, senior trooper, trooper or cadet trooper. Each member while in uniform shall wear the insignia of rank as provided by law and written State Police policies. Members assigned to the forensic laboratory shall hold the title of trooper, be classified as criminalists and wear the insignia of classification as provided by written State Police policies.

The superintendent may appoint from the membership of the State Police 20 principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. The superintendent may also appoint from the membership of the executive protection section of the State Police two additional supervisors who shall receive the compensation and hold the temporary rank of first lieutenant and serve at the will and pleasure of the superintendent. Appointments are exempt from any eligibility requirements established by the career progression system: *Provided*, That any member appointed from within the executive protection section of the State Police to the temporary rank of first lieutenant must have completed a minimum of two years service within the executive protection section prior to becoming eligible for such appointment. Any person appointed to a temporary rank under the provisions of this article remains eligible for promotion or reclassification under the provisions of the career progression system if his or her permanent rank is below that of first lieutenant. Upon the termination of a temporary appointment by the superintendent, the member may not be reduced to a rank or classification below his or her permanent rank or classification, unless the reduction results from disciplinary action, and remains eligible for subsequent appointment to a temporary rank.

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§15-2-5. Career progression system state; salaries; exclusion from wage and hour laws, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: (1) The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; (2) the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class, or corporal; and (3) the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII. The promotion of individuals in the forensic laboratory shall include the classifications of Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV, based on the Forensic Lab Career Progression System.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list. A written manual shall also be provided to individuals within the forensic laboratory governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation of promotion or reclassification of those individuals.

(d) Effective July 1, 2026, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)
SUPERVISORY AND NONSUPERVISORY RANKS

Cadet During Training	$55,518
Cadet Trooper After Training	$62,778
Trooper Second Year	$63,790
Trooper Third Year	$64,173
Senior Trooper	$64,572
Trooper First Class	$65,178
Corporal	$65,784
Sergeant	$70,085
First Sergeant	$72,236
Second Lieutenant	$74,386
First Lieutenant	$76,537
Captain	$78,688
Major	$80,838
Lieutenant Colonel	$82,989

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ANNUAL SALARY SCHEDULE (BASE PAY)
ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION

I	$63,790
II	$64,572
III	$65,178
IV	$65,784
V	$70,085
VI	$72,236
VII	$74,386
VIII	$76,537

Effective July 1, 2026, designated individuals within the forensic laboratory shall receive annual base salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

EVIDENCE CUSTODIAN	
I	$52,644
II	$54,972
III	$58,633
IV	$61,660
FORENSIC TECHNICIAN	
I	$54,844
II	$56,538
III	$60,420
FORENSIC SCIENTIST	
I	$62,044
II	$64,228
III	$66,332
IV	$68,731
V	$72,257
VI	$76,057
FORENSIC SCIENTIST SUPERVISOR	
I	$78,756
II	$82,320
III	$86,098
IV	$90,102

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia

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State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative. The forensic laboratory employees whose salaries are fixed and specified pursuant to this section, shall receive, and are entitled to, an increase in salary over that set forth in subsection (d) of this section, in accordance with §15-2-7(h) of this code.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour laws. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour laws prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour laws, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq*. of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members

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during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

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§15-2-6. Authority to make rules for grievance procedure.

The superintendent shall have continuing authority to propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, relating to a grievance procedure for sworn members of the State Police. At a minimum, the rule shall provide a process for filing and resolving grievances at the lowest possible level in a timely manner, providing for representation, taking evidence at each level, establishing a hearing procedure, providing for appellate review, allocating costs and authorizing attorney fees to a grievant who prevails on appeal.

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§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees; forensic laboratory employees; salaries.

(a) The superintendent shall establish within the West Virginia State Police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the State Police.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than 18 years of age nor more than 39 years of age, of sound constitution and good moral character, and is required to pass any mental and physical examination and meet other requirements as provided in rules promulgated by the cadet selection board: *Provided*, That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the State Police because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in §5-11-1 *et seq*. of this code and shall take positive steps to encourage applications for State Police membership from females and minority groups within the state. An annual report shall be filed with the Legislature on or before January 1 of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans, and other minorities into the ranks of the State Police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the State Police at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint civilian employees as are necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of §29-6-1 *et seq*. of this code.

(h) Effective June 30, 2014, West Virginia State Police civilian employees with a minimum of one year service shall receive an annual longevity salary increase equal to $500. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.

(i) Effective July 1, 2014, all current West Virginia State Police Forensic Laboratory analysts, directors, and evidence technicians shall receive a one-time, across-the-board salary increase equal to 20 percent of their current salary.

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(j) On or before January 1, 2018, the Director of the West Virginia State Police Forensic Laboratory shall submit a report to the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory's ability to retain employees.

(k) Effective July 1, 2021, the salaries of West Virginia State Police Forensic Laboratory evidence custodians, forensic technicians, forensic scientists, and forensic scientist supervisors shall be as set forth in the provisions of §15-2-5(d) of this code.

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§15-2-8. Chaplains.

The superintendent may also appoint for each company not more than two chaplains, residing within the State of West Virginia, who shall serve without pay, and who may not be required to perform any duties of members of the department, nor shall any bond be required. The superintendent is authorized to furnish each such chaplain one official uniform, with proper chaplain insignia, to be worn at any ceremonial occasion conducted officially by the department where the presence of a member of the clergy is customary. Such chaplains may be reimbursed by the superintendent for all reasonable and necessary expenses actually incurred in attending such ceremonies.

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§15-2-9. State Police Voluntary Contribution Fund.

(a) The Legislature finds that from the year 1951 to 2003, employees of the West Virginia State Police or its predecessor agencies have operated a voluntary contribution fund. Upon the death of a member or employee of the West Virginia State Police who, upon his or her death, was a member of the contribution fund, active members and employees of the West Virginia State Police who have voluntarily chosen to be members of the fund have been permitted, as an expression of respect and gratitude for the contributions and service of the deceased member in protecting the public, to donate small financial contributions to a designated beneficiary of the deceased member. The contributions were deposited into the contribution fund and the disbursements were made from the fund.

The Legislature further finds, upon the reports of the Legislative Auditor, that over the years, without statutory authority to do so, administrators of the West Virginia State Police and its predecessor agencies assumed control of the administration of the contribution fund, performing or directing the administrative functions necessary to receive contributions to and disbursements from the contribution fund.

The Legislature further finds that the State of West Virginia had not established the contribution fund or any similar benefit plan for the members and employees of the West Virginia State Police or its predecessor agencies, nor approved the same as an official state benefit program or plan in any manner whatsoever. In the absence of the establishment or approval of such a program or plan by the Legislature, the exercise of administrative powers for these purposes is inappropriate.

The Legislature further finds that the contribution fund is not a state program, but a private activity to which individual employees of the West Virginia State Police have committed state time and resources.

The Legislature further finds that the contributions and service of deceased members and employees of the West Virginia State Police merit sincere, dignified and personal voluntary expressions of respect and gratitude from fellow members and employees of the deceased. The Legislature further finds that the continuance of the contribution fund or similar benefit plan for the purposes of facilitating those personal voluntary expressions of respect and gratitude may be appropriate under certain circumstances.

It is therefore the intent of the Legislature to authorize the limited use of staff and other resources incidental to the continued administration of the private contribution fund in accordance with the provisions of this section.

(b) The limited use of State Police staff time, postage, duplicating and incidental resources is authorized in the continued administration of the contribution fund for the purpose of facilitating contributions and disbursements from the fund if the following conditions have been met:

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(1) The superintendent has provided each member and employee of the West Virginia State Police a copy of this section and a statement in writing that clearly advises the member or employee that the contribution fund is a private activity established and maintained by members and employees of the West Virginia State Police in their private capacity with limited administration by the West Virginia State Police and is not in any manner a benefit or other plan provided by or on behalf of the State of West Virginia and that participation in the fund or plan is not required, but is only permitted if the member or employee elects to participate on a voluntary basis with no obligation to give nor opportunity for coerced participation and that the purpose of the fund is to facilitate participating members' expressions of admiration, appreciation and bereavement to the survivors of deceased members;

(2) All rosters, records and accounts of the contribution fund are available for public inspection and audit; and

(3) State Police administration is consistent with all applicable federal and state tax requirements.

(c) Membership in the State Police Contribution Fund is voluntary. On or before July 31, 2006, members or employees hired between January 1, 2003, and the effective date of this section may elect to participate in the fund, and within five days of employment or reemployment with the West Virginia State Police, a member or employee may elect to participate in the fund: Provided, That any member of the original contribution fund in good standing upon the effective date of this section shall be presumed to be a member of the contribution fund. A retired member may maintain membership in the fund. A member may terminate membership in the fund at any time, by written notice to the superintendent, or by ceasing to make contributions to the fund. Upon the death of a member of the fund, the superintendent is authorized to collect a contribution not to exceed the sum of $5 from all personnel participating in the fund, payable to a designated beneficiary of the deceased member. To aid administrative efficiency and ease the burden of participation, the superintendent may collect funds prospectively to cover an estimated number of deaths in a given period: Provided, That any such remaining funds credited to a deceased member shall be returned to the member's designated beneficiary.

(d) Use of coercion in an attempt to influence a West Virginia State Police officer's or employee's election to participate in the contribution fund is prohibited and grounds for dismissal from employment.

(e) The superintendent is authorized to establish and maintain a nongovernmental bank account established by agreement with a bank within the state to receive contributions to and make disbursements from the fund. These receipts are not to be deposited or held in the state Treasury.

(f) The superintendent shall verify any death of a member of the fund and authorize the dissemination of a notice of the death to members of the fund. The superintendent shall use

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the most cost efficient means of communication available in making these notifications.

(g) The superintendent is authorized to develop a written internal department policy for the operation of the contribution fund, which may include terms and conditions of membership and the development of any necessary forms or agreements for enrollment in the fund and the designation of a beneficiary.

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§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

(a) The standard uniform to be used by the West Virginia State Police after the effective date of this article shall be as follows: Forestry green blouse with West Virginia State Police emblem on sleeve; black shoulder strap one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the State Police; forestry green shirts with West Virginia State Police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia State Police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer's uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which are authorized for use by members of the State Police and shall provide for periodic inspection of the weapons and equipment. He or she shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the State Police with suitable arms and weapons and, when he or she considers it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance to be used by the West Virginia State Police, the Governor and other officers and executives in the discretion of the Governor, in times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work and in other matters of official business. He or she shall also provide the standard uniforms for all members of the State Police, for officers, noncommissioned officers and troopers provided for in this section. All uniforms and all arms, weapons and other property furnished the members of the State Police by the State of West Virginia are and remain the property of the state.

(d) The superintendent may purchase and maintain on behalf of members group life insurance not to exceed the amount of $5,000 on behalf of each member.

(e) The superintendent may contract and furnish at State Police expense medical and hospital services for treatment of illness or injury of a member which shall be determined by the superintendent to have been incurred by the member while engaged in the performance of duty and from causes beyond control of the members. Notwithstanding any other provision of this code, the superintendent has the right of subrogation in any civil action or settlement brought by or on behalf of a member in relation to any act by another which

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results in the illness, injury or death of a member. To this end, the superintendent may initiate an action on behalf of the State Police in order to recover the costs incurred in providing medical and hospital services for the treatment of a member resulting from injury or illness originating in the performance of official duties. This subsection shall not affect the power of a court to apply ordinary equitable defenses to the right of subrogation.

The superintendent may also consult with the West Virginia Insurance Commissioner in an effort to defray the cost of medical and hospital services. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule in use by the West Virginia Insurance Commissioner.

Third-party reimbursements received by the superintendent after the expiration of the fiscal year in which the injury, illness or death occurred will be deposited to a nonexpiring special revenue account. Funds deposited to this account may be used solely for defraying the costs of medical or hospital services rendered to any sworn members as a direct result of an illness, injury or death resulting from the performance of official duties.

(f) The superintendent shall establish and maintain local headquarters at those places in West Virginia that are in his or her judgment suitable and proper to render the West Virginia State Police most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by acquisition, lease or otherwise, for local headquarters, for housing and quarters for the accommodation of the members of the West Virginia State Police, and for any other facilities necessary or useful for the effective operation of the West Virginia State Police and shall provide all equipment and supplies necessary for the members of the West Virginia State Police to perform their duties.

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§15-2-10a. Duty to return assigned items; superintendent's right of setoff.

(a) Whenever any member of the department of public safety retires, resigns or is terminated from employment, he or she shall surrender, in good condition, considering reasonable wear and tear from proper use, all items of equipment and clothing assigned to such member as set forth in section ten of this article: Provided, That this section shall not apply to any member awarded his or her service revolver pursuant to the provisions of section forty-three of this article.

(b) Notwithstanding any provision of this code to the contrary, the superintendent of the department of public safety shall have a setoff against any West Virginia state police retirement benefits, salary owed, sick leave benefits or vacation day benefits owed such retired, resigning or terminated member in an amount equal to the value of any equipment and clothing not returned. Notwithstanding the fact that a retired, resigning or terminated member is no longer employed by the department of public safety, the member may file a grievance for the sole purpose of protesting the application of the setoff. Such a grievance shall be processed, considered and decided pursuant to the provisions of section six of this article and rules promulgated thereunder. Prior to applying any setoff under this subsection, the superintendent will notify the retired, resigning or terminated member of his or her opportunity to file a grievance.

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§15-2-11. Territorial jurisdiction.

The jurisdiction of the department shall extend anywhere in the State of West Virginia.

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§15-2-12. Mission of the State Police; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia State Police shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.

(b) The superintendent and each of the officers and members of the division are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, to make arrests without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever a complaint is made and a warrant is issued thereon for the arrest, and the person arrested shall be immediately brought before the proper tribunal for examination and trial in the county where the offense for which the arrest has been made was committed;

(2) To serve criminal process issued by any court or magistrate anywhere within this state: Provided, That they may not serve civil process; and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the Division of Highways, Division of Motor Vehicles and of West Virginia State Police for any license, permit or certificate that may be lawfully issued by these divisions of state government.

(c) Members of the West Virginia State Police are hereby designated as forest patrolmen and natural resources police officers throughout the state to do and perform any duties and exercise any powers of forest patrolmen and natural resources police officers, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code. The West Virginia State Police is at any time subject to the call of the West Virginia Alcohol Beverage Control Commissioner to aid in apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of an officer in civil matters.

(d) Any member of the West Virginia State Police knowing or having reason to believe that any person has violated the law may make complaint in writing before any court or officer

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having jurisdiction and procure a warrant for the offender, execute the warrant and bring the person before the proper tribunal having jurisdiction. The member shall make return on all warrants to the tribunals and his or her official title shall be "Member of the West Virginia State Police". Members of the West Virginia State Police may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before the tribunal and make return thereon as provided by law. Any return by a member of the West Virginia State Police showing the manner of executing the warrant or process has the same force and effect as if made by a sheriff.

(e) Each member of the West Virginia State Police, when called by the sheriff of any county, or when directed by the Governor by proclamation, has full power and authority within the county, or within the territory defined by the Governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, natural resources police officer and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When called, any officer or person is, during the time his or her assistance is required, for all purposes a member of the West Virginia State Police and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section of any turnpike or toll road, operated by the West Virginia Parkways, Economic Development and Tourism Authority: Provided, That the authority shall reimburse the West Virginia State Police for salaries paid to the members and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual or estimated costs determined by the superintendent.

(g) The West Virginia State Police may develop proposals for a comprehensive county or multicounty plan on the implementation of an enhanced emergency service telephone system and may cause a public meeting on the proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) By July 1, 1993, the superintendent shall establish a network to implement reports of the disappearance of children by local law-enforcement agencies to local school division superintendents and the State Registrar of Vital Statistics. The network shall be designed to establish cooperative arrangements between local law-enforcement agencies and local school divisions concerning reports of missing children and notices to law-enforcement agencies of requests for copies of the cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the State Registrar of Vital Statistics.

(i) The superintendent may at his or her discretion and upon the written request of the West Virginia Alcohol Beverage Control Commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

(j) Notwithstanding the provisions of article one-a, chapter twenty of this code, the

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Superintendent of the West Virginia State Police may sell any surplus real property to which the West Virginia State Police or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the West Virginia State Police. There is hereby created a special revolving fund in the State Treasury which shall be designated as the "Surplus Real Property Proceeds Fund". The fund shall consist of all money received from the sale of surplus real property owned by the West Virginia State Police. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(k) Notwithstanding any other provision of this code, the agency for surplus property is hereby empowered to transfer funds generated from the sale of vehicles, other equipment and commodities belonging to the West Virginia State Police to a special revenue account within the West Virginia State Police entitled the West Virginia State Police surplus transfer account. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this subsection may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. Any funds transferred to this account may be utilized by the superintendent to defray the cost of normal operating needs of the division.

(l) If the State Police or any other law-enforcement agency in this state receives a report that a person who has Alzheimer's disease and related dementia is missing, the State Police or any other law-enforcement agency shall immediately open an investigation for the purpose of determining the whereabouts of that missing person. Any policy of the State Police or any other law-enforcement agency relating to a waiting period prior to initiation of an investigation of a missing person does not apply in the case of a person who has Alzheimer's disease or other related dementia of the type referred to in this subsection.

(m) Notwithstanding any provision of this code to the contrary, effective on and after July 1, 2007, the expenses and salaries paid to the members of the West Virginia State Police for the monitoring and enforcement duties defined in chapter seventeen-c of this code may not be paid from the State Road Fund or subject to reimbursement from the Division of Motor Vehicles but is subject to appropriation by the Legislature.

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§15-2-13. Limitations upon members; exceptions.

(a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

(b) No member of the State Police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, assembly or convention or in any primary, general, or special election while in uniform, except to cast his or her ballot.

(c) No member of the State Police may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of an election or convention; nor may any member thereof remain in, about or near the voting precinct or place of convention, except to cast his or her vote. After voting he or she shall forthwith retire from the voting precinct. No member may act as an election official. If any member of the State Police is found guilty of violating any of the provisions of this section, he or she shall be dismissed by the superintendent as hereinafter provided.

(d) While out of uniform and off duty, no member of the State Police may participate in any political activity except to:

(1) Campaign for and hold office in political clubs and organizations;

(2) Actively campaign for candidates for public office in partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend political fund-raising functions.

(e) No member of the State Police may at any time:

(1) Be a candidate for public office in a nonpartisan or partisan election;

(2) Use official authority or influence to interfere with or affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(f) No officer or member of the State Police may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in these cases see that the statutes and laws of this state are enforced in a legal way and manner.

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§15-2-14. Oath of superintendent and members.

The superintendent and each of the other members of the department of public safety, before entering upon the discharge of his duties, shall take and subscribe to an oath which shall be in form and effect as follows, to wit: State of West Virginia,

County of ....., to wit:

I, ..., do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the Department of Public Safety to the best of my skill and judgment.

.....

Taken, subscribed and sworn to before me, this the ..... day of .....

.....

All such oaths, except that of the superintendent, shall be filed and preserved in the office of the department of public safety.

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§15-2-15. State Police Child Abuse and Neglect Investigations Unit.

(a) The superintendent shall maintain a special unit of the State Police called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating, and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to §49-2-802 of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise, and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys, and multidisciplinary teams established pursuant to the provisions of §49-4-402 of this code, to identify, investigate, report, and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.

(b) The unit shall consist, at a minimum, six members of the State Police. The superintendent shall assign a unit director and five regional members, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to §49-2-803 of this code, and any other credible child abuse or neglect allegations.

(c) The unit director’s duties include:

(1) Overseeing State Police members assigned to the unit;

(2) Coordinating activities of the unit with Child Protection Services;

(3) Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and

(4) Assuring that all other directives and responsibilities of the unit are fulfilled.

(d) The unit shall maintain a statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4 and §61-8D-4a of this code, to monitor the timely and proper investigation and disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall not contain information of a specific nature that would identify individual cases or persons.

(e) On or before December 31, of each year, the unit director shall submit an annual report to the Joint Committee on Government and Finance. The annual report is to include the statistical index required under the provisions of subsection (d) of this section, and may include recommendations for statutory or program reforms that will assist the unit and further promote the goals of the unit. The report may not contain information of a specific

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nature that would identify individual cases or persons.

(f) Every state law-enforcement agency of this state shall periodically provide statistical information regarding child abuse and neglect cases investigated and prosecuted by that law-enforcement agency to the unit.

(g) The superintendent may propose rules for legislative approval or procedural rules as necessary to effectuate the provisions of this section in accordance with the provisions of §29A-3-1 et seq. of this code. The superintendent shall provide forms to law-enforcement agencies, circuit clerks, and parole officers to facilitate submission of appropriate information necessary to prepare the statistical reports required by this section.

(h) There is continued a special account in the state Treasury, into which shall be deposited any gifts, grants or donations made to the unit, and any other funds directed to be deposited into the account by appropriation of the Legislature, and to be expended for the purposes of this section pursuant to appropriation of the Legislature.

WV Legislature

§15-2-16. Interference with officers or members; false information; penalty.

Any person who shall at any time intercept, molest or interfere with any officer or member of the department of public safety while on duty, or any state, county or municipal officer or person then under the charge and direction of some officer or member of the department of public safety while on duty, or who knowingly gives false or misleading information to a member of the department, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or imprisoned in the county jail for not more than sixty days, or both fined and imprisoned.

WV Legislature

§15-2-17. Unauthorized use of uniform, badge or other insignia; impersonation of member; penalty.

Every person who is not a member of the department is hereby forbidden to wear, use, order to be used or worn, copy or imitate in any respect or manner the uniform, badge, insignia and equipment prescribed for members of the West Virginia State Police, and any person who shall violate the provisions of this article, for which no other penalty is expressly provided, and any person who shall falsely represent himself or herself to be an officer or member of the West Virginia State Police, or to be under the order or direction of any officer or member of said department, or who shall, unless an officer or member thereof, wear the uniform prescribed for members of said department, or the badge or other insignia adopted or used by said department, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $200, or confined in the county jail for not more than six months, or both fined and confined: Provided, That items sold at the State Police post exchange as outlined in article two-e of this chapter do not qualify as agency issued uniforms, badge, insignia or equipment.

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§15-2-18. Officers or members failure to perform duties; general penalty; providing extraordinary police or security services by contract.

(a) Any officer or member of the State Police who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the rules of the superintendent and the provisions of this article, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than five years, and any such officer or member of the State Police who violates any other provisions of this article, for which no other penalty is expressly provided, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for not more than four months, or both fined and confined.

(b) Notwithstanding any other provision of this article to the contrary, the superintendent may contract with public, quasi-public, military, or private entities to provide extraordinary police or security services by the State Police when it is determined by the superintendent to be in the public interest. The superintendent shall assign the personnel, equipment, or facilities he or she considers necessary and the State Police shall be reimbursed for the wages, overtime wages, benefits, and costs of providing the contract services as negotiated between the parties. The compensation paid to State Police personnel by virtue of contracts provided for in this section shall be paid from a special account and shall be excluded from any formulation used to calculate an employee's benefits. All requests for obtaining extraordinary police or security services shall be made to the superintendent in writing and shall explain the funding source and the authority for making the request. An officer or member of the State Police may not be required to accept any assignment made pursuant to this subsection. Every officer or member assigned to duty under this section shall be paid according to the hours and overtime hours actually worked notwithstanding that officer's or member's status as exempt personnel under the Federal Labor Standards Act or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of all officers and members is required, neither the State Police nor any of its officers or members are liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the State Police, an officer, or member under this section shall also agree as part of that contract to hold harmless and indemnify the state, State Police and its personnel from any liability arising out of employment under the contract. The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code, relating to the implementation of any contracts made under this subsection: Provided, That the rules shall expressly prohibit private employment of officers or members in circumstances involving labor disputes. Notwithstanding any provision of this article to the contrary, an officer or member may contract to work for a private person or entity during his or her off duty hours: Provided, however, That the contract work may not be a type prohibited by this code or the rules of the State Police on the locations and the nature of services provided.

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§15-2-19. Bribing, etc., officers or members; penalty.

If any person, firm or corporation shall give or offer to give any money or other thing of value to any officer or member of the department of public safety as a consideration for the performance of, or the failure to perform, any duty of such officer or member of the department of public safety under the rules and regulations of the superintendent and the provisions of this article, he or it shall be guilty of a felony and, if a person, upon conviction thereof, shall be confined in the penitentiary for a term of not less than one year nor more than five years, and if a firm or corporation, shall be fined not less than $3,000 nor more than $10,000.

WV Legislature

§15-2-20. Transfer authorized; use for disciplinary purposes prohibited; notice required under certain circumstances; relocation expense; regulation of member's residence.

The superintendent may transfer members to meet the operational needs of the department. A transfer may not be made as a disciplinary measure.

Whenever any member of the department is to be transferred from one station to another station, for a period of time in excess of sixty days, the superintendent shall give written notice of such proposed transfer to such member at least fifteen days in advance of such transfer. The superintendent shall not, however, be required to give such notice in the event the transfer is at the request of the member who is to be transferred. In the event that a member appeals a transfer in accordance with section six of this article, the transfer shall not take effect pending the appeal before the board. If the board upholds the transfer, such transfer shall be effective upon the issuance of the board's decision and shall remain in effect pending any appeal of such decision by the member.

Whenever any member of the department is transferred from one station to another station, for a period of time in excess of sixty days, all reasonable and necessary transportation expenses actually incurred in moving the household furniture and effects of such member and of his immediate family from his former station to his new station shall be paid by the department: Provided, That if any such member owns and resides in a mobile home, the department shall pay all reasonable and necessary transportation expenses actually incurred in moving such mobile home from such member's former station to his new station, but the department may not pay transportation expenses for moving such mobile home in excess of the amount which would have been paid for moving an equivalent amount of household furniture and effects had such member not owned such mobile home.

A member transferred shall also be given a relocation expense of $300 if the transfer necessitated relocation of the member's family.

The superintendent shall not restrict a member from residing in a county other than that in which the member is stationed, except that the superintendent may promulgate by appropriate written regulation to be applied uniformly throughout the department a restriction as to either: (1) The number of miles distant from his station which a member may reside, or (2) the time necessary under ordinary traffic conditions for a member to travel between his residence and station.

The member may appeal the superintendent's order of transfer to the board of appeals created for such purpose or to the circuit court of Kanawha County in accordance with the provisions of section six of this article and all of the original papers in such cases shall be delivered to the appeals board or the circuit court, as the case may be. The right of a member to appeal a transfer shall not apply until the member has completed the eighteen-month probationary period with the department.

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§15-2-21. Suspension, demotion or discharge of members; right of appeal.

The superintendent may suspend, demote in rank or discharge from the service any member of the department of public safety for any of the following causes: Refusing to obey the lawful orders of his superior officer, neglect of duty, drunkenness, immorality, inefficiency, abuse of his authority, interference with the lawful right of any person, participation in political activities, primaries, conventions or elections, conviction for a crime or any action proscribed under this article. The superintendent shall cause an investigation to be made when notice of any one or more of such causes is brought to his attention and shall determine whether or not the member should be suspended, demoted in rank or discharged. If the superintendent orders the member suspended, demoted in rank or discharged, a written statement of the charges and a written order of suspension, demotion in rank or discharge shall be delivered personally to the member by his commanding officer, or next in command in the absence of his commanding officer. The superintendent shall explicitly set forth in any such written statement of charges the details giving rise to the cause or causes upon which he ordered such suspension, demotion in rank or discharge. The member may appeal the superintendent's order to the board of appeals created for such purpose or to the circuit court of Kanawha County in accordance with the provisions of section six of this article and all of the original papers in such cases shall be delivered to the appeals board or the circuit court, as the case may be.

The right to appeal a suspension or discharge shall not apply to members until they have completed their probationary period with the department, which shall be for a period of eighteen months.

WV Legislature

§15-2-22. Assignment of assistant Attorney General; employment of legal counsel.

(a) The Attorney General may, upon request of the superintendent, assign an assistant Attorney General to the department.

(b) Notwithstanding the provisions of section one, article three, chapter five of this code, the superintendent may authorize any member of the department to employ an attorney of such member's choice to act in proceedings wherein criminal charges are brought against such member because of action in line of duty. For such attorney's services an amount determined by the judge in whose court the action is pending, not to exceed $1,000, may be expended in any one case.

WV Legislature

§15-2-23. Duties of superintendent as to statistics, aliens and labor conditions.

The superintendent of the department of public safety is authorized from time to time to collect statistics and distribute information throughout the state, and in this to cooperate with the state superintendent of public schools and other educational agencies of the state, to secure the naturalization and Americanization of all foreign-born inhabitants; to employ all agencies in his power to secure a harmonious feeling and understanding between the employers of labor and their employees; and to secure this end he may call upon the educational and other state institutions for public speakers, and is authorized to hold public meetings at any point in the state where, in his judgment, such meetings will be of advantage to carry out the spirit of this law.

WV Legislature

§15-2-24. Criminal Identification Bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

(a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a Criminal Identification Bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a supervisor to be in charge of the Criminal Identification Bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the Criminal Identification Bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The Criminal Identification Bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The Criminal Identification Bureau may furnish fingerprints, photographs, records or other information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the fingerprints, photographs, records or other information requested are necessary in the interest of and will be used solely in the administration of official duties and the criminal laws.

(d) The Criminal Identification Bureau may furnish, with the approval of the superintendent, fingerprints, photographs, records or other information to any private or public agency, person, firm, association, corporation or other organization, other than a law-enforcement or governmental agency as to which the provisions of subsection (c) of this section shall govern and control, but all requests under the provisions of this subsection for such fingerprints, photographs, records or other information must be accompanied by a written authorization signed and acknowledged by the person whose fingerprints, photographs, records or other information is to be released.

(e) The Criminal Identification Bureau may furnish fingerprints, photographs, records and other information of persons arrested or sought to be arrested in this state to the identification bureau of the United States government and to other states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institution, including any city or county jail in this state, shall take, or cause to be taken, the fingerprints and description of all persons lawfully committed thereto or confined therein and furnish the same in duplicate to the Criminal Identification Bureau, Department of Public Safety. Such fingerprints shall be taken on forms approved by the superintendent of the Department of Public Safety. All such

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officials as herein named may, when possible to do so, furnish photographs to the Criminal Identification Bureau of such persons so fingerprinted.

(g) Members of the Department of Public Safety, and all other state law-enforcement officials, sheriffs, deputy sheriffs and each and every peace officer in this state, shall take or cause to be taken the fingerprints and description of all persons arrested or detained by them, charged with any crime or offense in this state, in which the penalty provided therefor is confinement in any penal or correctional institution, or of any person who they have reason to believe is a fugitive from justice or a habitual criminal, and furnish the same in duplicate to the Criminal Identification Bureau of the Department of Public Safety on forms approved by the superintendent of said department. All such officials as herein named may, when possible to do so, furnish to the Criminal Identification Bureau photographs of such persons so fingerprinted. For the purpose of obtaining data for the preparation and submission to the Governor and the Legislature by the Department of Public Safety of an annual statistical report on crime conditions in the state, the clerk of any court of record, the magistrate of any magistrate court and the mayor or clerk of any municipal court before which a person appears on any criminal charge shall report to the Criminal Identification Bureau the sentence of the court or other disposition of the charge and the prosecuting attorney of every county shall report to the Criminal Identification Bureau such additional information as the bureau may require for such purpose, and all such reports shall be on forms prepared and distributed by the Department of Public Safety, shall be submitted monthly and shall cover the period of the preceding month.

(h) All persons arrested or detained pursuant to the requirements of this article shall give fingerprints and information required by subsections (f) and (g) of this section. Any person who has been fingerprinted or photographed in accordance with the provisions of this section who is acquitted of the charges upon which he or she was arrested and who has no previous criminal record may, upon the presentation of satisfactory proof to the department, have such fingerprints or photographs, or both, returned to them.

(i) All state, county and municipal law-enforcement agencies shall submit to the bureau uniform crime reports setting forth their activities in connection with law enforcement. It shall be the duty of the bureau to adopt and promulgate rules and regulations prescribing the form, general content, time and manner of submission of such uniform crime reports. Willful or repeated failure by any state, county or municipal law-enforcement official to submit the uniform crime reports required by this article shall constitute neglect of duty in public office. The bureau shall correlate the reports submitted to it and shall compile and submit to the Governor and the Legislature semiannual reports based on such reports. A copy of such reports shall be furnished to all prosecuting attorneys and law-enforcement agencies.

(j) Neglect or refusal of any person mentioned in this section to make the report required herein, or to do or perform any act on his or her part to be done or performed in connection with the operation of this section, shall constitute a misdemeanor and such person shall, upon conviction thereof, be punished by a fine of not less than $25 nor more than $200, or

by imprisonment in the county jail for a period of not more than sixty days, or both. Such neglect shall constitute misfeasance in office and subject such persons to removal from office. Any person who willfully removes, destroys or mutilates any of the fingerprints, photographs, records or other information of the Department of Public Safety shall be guilty of a misdemeanor and such person shall, upon conviction thereof, be punished by a fine of not more than $100, or by imprisonment in the county jail for a period of not more than six months, or both.

(k) The Criminal Identification Bureau (CIB) and the Federal Bureau of Investigation (FBI) shall retain applicant fingerprints for the purpose of participating in the Rap Back Program to determine suitability or fitness for a permit, license or employment. Agencies participating in the program shall notify applicants and employees subject to a criminal history check that their fingerprint shall be retained by the CIB and the FBI. Notification shall also be given to the applicant and employee subject to the Rap Back Program.

(l) The State Police may assess a fee to applicants, covered providers or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized under article forty-nine, chapter sixteen of this code. The assessment shall be deposited into a nonappropriated special revenue account within the State Treasurer’s office to be known as the WVSP Criminal History Account. Expenditures from this account shall be made by the superintendent for purposes set forth in this article and are authorized from collections. The account shall be administered by the superintendent and may not be deemed a part of the general revenue of the state.

WV Legislature

§15-2-24a. National Crime Prevention and Privacy Compact.

The Legislature of West Virginia approves and ratifies the

National Crime Prevention and Privacy Compact, 42 U.S.C. §14616, as it existed on January 1, 2006, and the compact shall remain in effect in this state until the Legislature renounces the compact by statute. The Superintendent of the West Virginia State Police shall execute, administer, and implement the compact on behalf of the state, and may adopt necessary rules, regulations, and procedures for the national exchange of criminal history records for noncriminal records purposes. Ratification of the compact does not affect the obligations and responsibilities of the State Police criminal records section regarding the dissemination of criminal history records within West Virginia.

WV Legislature

§15-2-24b. Fees for certain fingerprinting services; dedication of fees.

In addition to any fees that may be established or collected by the State Police under any other provision of this article or rule promulgated pursuant thereto, the State Police shall collect a fee of $20 for performing adult private employment fingerprinting or fingerprinting for federal firearm permits: Provided, That all state entities are exempt from the fee. Fees collected pursuant to this section shall be deposited into the West Virginia State Police Retirement System and shall be in addition to employer percent-of-payroll contribution.

WV Legislature

§15-2-24c. Relationship with Marshall University Forensic Science Center.

(a) The Forensic Analysis Laboratory of the Marshall University Forensic Science Center is hereby declared to be engaged in the administration of criminal justice as that term is defined in 28 C. F. R. 20.3(b).

(b) The Marshall University Forensic Science Center and the West Virginia State Police shall confer with each other as to available grants or similar possible funding sources and applications therefor.

(c) To avoid duplicative and wasteful use of limited resources and to ensure maximum utilization of available funds, the West Virginia State Police shall have primacy of decisionmaking over the Marshall University Forensic Science Center with regard to applications for particular grants or funding in which both entities may have an interest to which the Marshall University Forensic Science Center shall accede.

(d) The West Virginia State Police and the Marshall University Forensic Science Center shall execute a written agreement to ensure compliance with the provisions of subsection (c) of this section.

WV Legislature

§15-2-24d. State Police Forensic Laboratory Fund.

The State Police Forensic Laboratory Fund is hereby created within the Treasury of the state. The fund shall be administered by the superintendent and shall consist of all moneys made available for the operations of the State Police Forensic Laboratory from any source, including, but not limited to, all fees, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the forensic laboratory by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the operations of the State Police Forensic Laboratory and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2018, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature.

WV Legislature

§15-2-25. Rules generally; carrying of weapons upon retirement or medical discharge.

Subject to the written approval of the Governor and the provisions of this article, the superintendent may make and promulgate proper rules for the government, discipline and control of the West Virginia state police and shall also cause to be established proper rules for the examinations of all applicants for appointment thereto. The members of the West Virginia state police shall be permitted to carry arms and weapons and no license may be required for the privilege.

Upon retirement or medical discharge from the West Virginia state police and with the written consent of the superintendent, any retired or medically discharged member may carry a handgun for the life of the member following retirement or medical discharge notwithstanding the provisions of article seven, chapter sixty-one of this code: Provided, That the superintendent's written letter of consent to carry a handgun may not last for more than five years at a time and a retired or medically discharged member who wishes to continue to carry a handgun beyond five years of the date of his or her initial retirement or medical discharge must request and obtain a renewal of the superintendent's written permission to carry a handgun at least once every five years. A retired or medically discharged member desiring to carry a handgun after retirement or medical discharge must provide his or her own handgun. Upon request, each member shall be presented with a letter of authorization signed by the superintendent authorizing the retired or medically discharged member to carry a handgun. The written authorization shall be carried by the retired or medically discharged member at all times that he or she has a handgun on his or her person. The superintendent may not issue a letter of authorization to any retired or medically discharged member who is no longer employed by the State Police due to a mental disability or who the superintendent has reason to believe is mentally incapacitated to the extent it would present a threat of physical harm to one or more persons for the member to carry a concealed weapon. The superintendent may revoke the authority at any time without cause and without recourse. Conviction of the retired or medically discharged member for the commission of any felony or for a misdemeanor involving the improper or illegal use of a firearm shall cause this authority to terminate immediately without a hearing or other recourse and without any action on the part of the superintendent. The superintendent shall promulgate a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, which rule shall prescribe requirements necessary for the issuance and continuance of the authority herein granted.

WV Legislature

§15-2-25a. Meaning of terms.

Any term used in this article relating to the Death, Disability and Retirement Fund has the same meaning as when used in a comparable context of the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code, as it has been amended.

WV Legislature

§15-2-25b. Definitions.

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

(a) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(b) "Agency" means the West Virginia State Police.

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

(d) "Board" means the West Virginia Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq*. of this code.

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

(1) Under the age of 18;

(2) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university, business or trade school, until the child or children reaches the age of 20 years; or

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

(f) "Dependent parent" means the member's parent or stepparent claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(g) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer before March 12, 1994, and who is eligible to participate in the fund.

(h) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(i) "Fund", "plan" or "system" means the West Virginia State Police Death, Disability and Retirement Fund.

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

(k) “Member” means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(l) “Partially disabled” means an employee’s inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

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

(n) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(o) “Qualified public safety employee” means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(p) “Retirant” or “retiree” means any former member who is receiving an annuity payable by the fund.

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

(r) “Totally disabled” means an employee’s probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (1) The work exists in the immediate area in which the employee lives; (2) a

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

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

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members, retirants and any dependents of retirants or deceased members of the fund. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section twenty-five-b of this article.

(b) There shall be deducted from the monthly payroll of each employee and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on July 1, 1994, there shall be deducted from the monthly payroll of each employee and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after July 1, 1995, there shall be deducted from the monthly payroll of each employee and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each employee shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the agency: Provided further, That beginning on July 1, 1995, the agency shall pay thirteen percent of the monthly salary of each employee into the fund: And provided further, That beginning on July 1, 1996, the agency shall pay fourteen percent of the monthly salary of each employee into the fund: And provided further, That on and after July 1, 1997, the agency shall pay fifteen percent of the monthly salary of each employee into the fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the agency on account of payments to employees for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the State Treasury and the board shall keep a separate account thereof.

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

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

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

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

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

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

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

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

(b) When the board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the fund in equal monthly installments during his or her lifetime while in status of retirement, one or the other of two amounts, whichever is the greater, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section forty-four of this article:

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

(2) The sum of $6,000.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the fund and is retired under any of the provisions of this section before he or she has attained the age of fifty years, payment of monthly installments of the amount of retirement award to the member shall commence on the day following the date he or she attains the age of fifty years. Beginning on July 15, 1994, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

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

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(d) Any individual who is a leased employee is not eligible to participate in the fund. For purposes of this fund, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

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

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

(b) Any retirant or beneficiary who receives a benefit pursuant to the provisions of section twenty-nine, thirty, thirty-three or thirty-four of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the retirant has been retired for less than one year or if the beneficiary has been in receipt of beneficiary payments for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment shall be a pro rata share of the full year's annuity adjustment.

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§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.

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

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

(1) That he or she has been honorably discharged from the Armed Forces;

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

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

(4) That, except with respect to disability retirement pay awarded under §15-2-30 of this code, he or she has actually served with the fund for 20 years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to 18 percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between September 1, 1940, and the close of hostilities in World War II, or between June 27, 1950, and the close of the armed conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the

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commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within 90 days after honorable discharge from the Armed Forces he or she has presented himself or herself to the superintendent and offered to resume service as an active employee of the agency; and

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

(d) That amount of retirement pay to which any employee is entitled shall be calculated and determined as if the employee has continued in the active service of the agency at the rank or grade to him or her appertaining at the time of the commission, induction, enlistment or call, during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call. The superintendent of the agency shall transfer and pay each month into the fund from moneys appropriated for the agency a sum equal to 18 percent of the aggregate of salary which all employees would have been entitled to receive had they continued in the active service of the agency during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call: *Provided*, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The board may determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in §5-10D-1 of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.

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

(a) Any member of the fund who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall, if, in the opinion of the board, he or she is by reason of that cause probably permanently unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in any other gainful employment in a field other than law enforcement, be retired from active service by the board. The member thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime; or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

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

(2) The sum of $6,000.

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

(c) If any member not yet in retirement status on the basis of age and service is found by the board to be permanently and totally disabled as the result of a physical or mental impairment resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the member was engaged in the performance of his or her duties as an employee of the agency, the member is entitled to receive annually and there shall be paid from the fund in equal monthly installments during his or her lifetime or until the disability eligibility sooner terminates, an amount equal to eight and one-half percent of the total salary which would have been earned by the employee during twenty-five years, or during actual service if more than twenty-five years of service in the fund, based on the average earnings of the retirant while employed as an employee of the agency: Provided, That in no event may the amount be less than $15,000 per annum, unless otherwise required by this article.

(d) The superintendent may expend moneys from funds appropriated for the agency in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees and reasonable costs and expenses incurred in the purchase of artificial limbs and

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other approved appliances which may be reasonably necessary for any member or disability retirant who has or becomes temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of employees of the agency or incurred pursuant to or while the member was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled member or retirant is ineligible to receive any of the aforesaid benefits at public expense, the superintendent shall, at the request of the disabled member or retirant, refer the matter to the board for hearing and final decision. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule approved by the West Virginia Insurance Commission.

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

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

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

(a) If any employee who has served less than twenty years and who remains in the active service of the agency has, in the opinion of the board, become permanently partially or totally disabled to the extent that the employee cannot adequately perform the duties required of an employee of the agency from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the employee shall be retired by the board. The employee is entitled to receive annually and shall be paid from the fund in equal monthly installments during a period equal to one-half the time he or she served as an employee of the agency or until the disability eligibility sooner terminates, a sum equal to five and one-half percent of the total salary which would have been earned during twenty-five years of service. At the end of the one-half time period of service, the benefit payable for the remainder of the retirant's life is an annual sum paid in monthly installments equal to one-half the base salary received by the retirant from the agency in the preceding twelve-month period immediately prior to the disability award: Provided, That if the retirant was not employed with the agency for twelve months immediately prior to the disability award, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

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

(c) An employee awarded a disability benefit under the provisions of this section may receive retirement disability annuity payments on the day following the board's approval of his or her disability application. Upon termination of employment and receipt of properly executed forms from the agency and the employee, the board shall process the disability retirement benefit and commence annuity payments as soon as administratively feasible.

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

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

(a) The board may require any retirant who has been retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the board and a report of the findings of the physician or physicians shall be submitted in writing to the board for its consideration. All medical costs associated with the examination shall be paid by the fund. If, from the report or from the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the board shall within five working days provide written notice of the finding to the Superintendent of State Police, who shall reinstate the retirant to active duty as a member of the department at his or her rank or classification prior to the disability retirement within forty-five days of the finding, unless the retirant declines to be reinstated, is found by a background check to be ineligible for reinstatement, or is found by the Superintendent to be unacceptable due to the retirant's performance history and evaluations during prior work with the department. The Superintendent shall promptly notify the Board when the retirant is reinstated, is found ineligible for reinstatement due to a background check or unacceptable prior performance history or evaluations, or refuses reinstatement. The board shall order disability payments from the fund to be terminated at the earlier of the date of the retirant's reinstatement, regular retirement, failure of a background check, finding of unacceptable prior performance history or evaluation with the department, failure to accept reinstatement or forty-five days from the board's finding. If, from the report or the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the board shall order the payment, in monthly installments of an amount equal to two thirds of the salary, in the case of a retirant retired under the provisions of section twenty-nine of this article or equal to one half of the salary, in the case of a retirant retired under the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period immediately preceding the disability award: Provided, That if the retirant had not been employed with the fund for twelve months immediately prior to the disability award, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

(b) A disability retirant who is returned to active duty as a member of the West Virginia State Police shall again become a member of the retirement system in which he or she was originally enrolled and the retirant's credited service in force at the time of retirement shall be restored.

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

(a) Application for a disability benefit may be made by a member under the provisions of section twenty-nine of this article, by an employee under the provisions of section thirty of this article or, if the member or employee is under an incapacity, by a person acting with legal authority on the member's or the employee's behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the West Virginia State Police and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the employee on the basis of disability pursuant to rules which may be established by the board. Within thirty days of the superintendent's receipt of the notice from the board or the filing of the superintendent's petition with the board, the superintendent shall forward to the board a statement certifying the duties of the employee's employment, information relating to the superintendent's position on the work relatedness of the employee's alleged disability, complete copies of the employee's medical file and any other information requested by the board in its processing of the application, if this information is requested timely.

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

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

(d)(1) The board shall require each disability benefit recipient to file an annual certified statement of earnings, to include the amount and source of earnings and any other information required in legislative rules which may be proposed by the board. The board may waive or modify the requirement that a recipient of total disability benefits file the annual statement of earnings if the board's physician certifies that the recipient's disability is ongoing. The board shall annually examine the information submitted by each recipient. If a disability retirant refuses to file a statement and other information required by the board, the disability benefit shall be suspended, after notice and opportunity to be heard, until the statement and information are filed.

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

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(e)(1) A nonblind recipient earning annual income exceeding the equivalent of $860 per month in the year two thousand six, after impairment-related work expenses are subtracted from earnings, has engaged in substantial gainful activity. A statutorily blind recipient has engaged in substantial gainful activity in the year two thousand six if the recipient has earned annual income exceeding the equivalent of $1,450 per month after impairment-related work expenses are subtracted from earnings.

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

(3) If after review of a disability retirant's annual statement of earnings, tax records or other financial information, as required or otherwise obtained by the board, the board determines that earnings of the recipient of total disability benefits in the preceding year are sufficient to show that the recipient engaged in substantial gainful activity, the disability retirant's disability annuity shall be terminated by the board, upon recommendation of the board's disability review committee and after notice and opportunity to be heard, on the first day of the month following the board's action.

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

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

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

Not later than January 1, 2006, and each January 1 thereafter, the board shall prepare a report for the preceding fiscal year of the disability retirement experience of the West Virginia State Police Death, Disability and Retirement Fund. The report shall specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit recipients to the total number of West Virginia State Police employees who are members of the fund. The report shall be submitted to the Governor and the chairpersons of the standing committees of the Senate and House of Delegates with primary responsibility for retirement legislation.

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

A retirant may not exercise any of the powers conferred upon active employees by section twelve of this article; but is entitled to receive free of cost to the retirant and retain as his or her separate property one complete standard uniform prescribed by section ten of this article: Provided, That the uniform may be worn by a retirant on occasions prescribed by the superintendent. The superintendent shall maintain at public expense for the benefit of all retirants that group life insurance mentioned in section ten of this article. The superintendent, when he or she is of opinion that the public safety shall require, may recall to active duty during any period determined by the superintendent, any retiree who is retired under the provisions of section twenty-seven of this article, provided the consent of the retiree to reassume duties of active membership shall first be obtained. Any retirant who resumes status of active membership is not entitled to receive retirement pay or benefits, but in lieu thereof, is entitled to receive that rate of salary and allowance pertinent to the rank or grade previously held by the retirant. When the former retirant is released from active duty, he or she shall reassume the status of retirement and shall be entitled to receive appropriate benefits as provided by this article: Provided, That the amount of the benefits shall in no event be less than the amount determined by the order of the board previously made in his or her behalf.

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§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.

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

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

(2) The sum of $6,000.

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

(c) Any person qualified as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may, by appropriate rules, define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate

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payee by any Qualified Domestic Relations Order.

(d) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date of the deceased member's death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant's death. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

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

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§15-2-33a. Awards and benefits to dependents of member -- Termination.

When any surviving spouse of a member shall die or remarry while receiving or being entitled to receive any benefits under any section except section thirty-three of this article, the surviving spouse may not from the date of his or her remarriage, nor may the deceased member's estate from the date of death of the surviving spouse, be entitled to receive any benefits hereunder whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

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

(a) If an employee of the agency, before having completed twenty years of service as an employee of the agency, dies from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his or her part, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the employee during his or her lifetime, or until such time as the surviving spouse remarries, a sum equal to two and three-quarters percent of the total salary which would have been earned by the employee during twenty-five years of service with the agency based on his or her average earnings while employed with the agency. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each dependent child or children from the fund, a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased employee during their joint lifetimes, a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(b) A surviving spouse or dependent meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

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

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

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and has died or dies from any cause or causes other than those specified in this article before having been retired by the board, and when a retirant has died or dies after having been retired by the board under the provisions of this article, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the employee or retirant during the lifetime or until remarriage of the surviving spouse, an amount equal to three-fourths the retirement benefits the deceased retirant was receiving or would have been entitled to receive while in status of retirement, or would have been entitled to receive to the same effect as if the employee had been retired under the provisions of this article immediately prior to the time of his or her death and in no event to be less than $5,000, unless otherwise required under this article, and in addition the surviving spouse shall be entitled to receive and shall be paid from the fund the sum of $100 monthly for each dependent child or children. If the surviving spouse dies or remarries or if there is no surviving spouse, there shall be paid monthly from the fund to each dependent child or children of the deceased employee or retirant a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased employee or retirant during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there is only one dependent parent surviving, the parent shall be entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

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

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§15-2-35a. Authority to continue payments to certain dependents.

The board may continue payments of a surviving spouse's entitlement in full to any dependent children who continue to be dependent by reason of mental or physical incapacity as determined by the board notwithstanding the age of the dependent child or other provisions of this article.

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§15-2-36. Awards and benefits to dependents of member -- Termination.

When any surviving spouse of a member shall die or remarry while receiving or being entitled to receive any benefits under any section except section thirty-three of this article, such surviving spouse shall not from the date of such remarriage, nor shall the estate from the date of death of such surviving spouse be entitled to receive any benefits hereunder whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of such surviving spouse, payment of such benefits to such child or children shall be calculated for payment from the date such surviving spouse shall die or remarry.

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

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency, at the written request of the member to the board, is entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

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

(c) Every employee who completes ten years of service with the agency is eligible, upon separation of employment, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section twenty-seven-a of this article. When the board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the fund in equal monthly installments during the lifetime of the member while in status of retirement one or the other of two amounts, whichever is greater, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section forty-four of this article:

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

(2) The sum of $6,000.

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

(e) A member retiring under the provisions of this section may receive retirement annuity payments on the day following his or her attaining age sixty-two. Upon receipt of properly

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executed forms from the agency and the member, the board shall process the member's retirement benefit and commence annuity payments as soon as administratively feasible.

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

If any member dies and the board is of the opinion after hearing that the dependent or dependents of the member are ineligible under the provisions of this article to receive any of the benefits provided herein, the board shall refund to the spouse, if surviving, but if not surviving, to the children of the member, and if there is no surviving spouse or children, to the dependent parents, a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of the member and paid into the fund. If there is no surviving spouse or children or dependent parent or parents, then a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of the member and paid into the fund will be paid to the member's estate. Whenever a refund is made to the surviving spouse or other dependents of the deceased member, the surviving spouse or other dependents shall not be entitled to any other rights or benefits from the fund.

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

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

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§15-2-39a. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective July 1, 2025: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

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§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

There is hereby created within the department of public safety the commission on drunk driving prevention which shall consist of eight members as follows: The superintendent of the department of public safety; the commissioner of the department of motor vehicles; the Alcohol Beverage Control Commissioner; the Governor's representative for highway safety; a prosecuting attorney appointed by the Governor from a list of three prosecuting attorneys submitted by the prosecuting attorney's association; a county sheriff appointed by the Governor from a list of three county sheriffs submitted by the county sheriff's association; a municipal police officer appointed by the Governor from a list of three officers submitted by the state fraternal order of police; a lay citizen of the state appointed by the Governor, who has demonstrated an interest in the prevention of drunk driving.

The superintendent of the department of public safety shall be the chairman, ex officio, of the commission and shall provide the necessary staff and meeting facilities to the commission. The appointed members shall serve for a term of two years and may be reappointed. Any appointed member who ceases to occupy the position which qualifies him for the appointment shall immediately vacate his membership on the commission. Each member shall serve until the appointment of his successor.

No member shall receive any compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

A majority of the members of the commission shall constitute a quorum for the transaction of business. Meetings shall be held at the call of the chairman or of a majority of its members.

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§15-2-41. Powers and duties of commission; rule-making authority; monitoring and reporting.

The commission shall have the following powers and duties:

(a) Develop and maintain a comprehensive program to prevent drunk driving and to enhance the enforcement of laws defining drunk driving offenses.

(b) Inquire and determine from state and local law- enforcement agencies the availability and need for equipment and additional personnel for the effective enforcement of laws defining drunk driving offenses.

(c) Subject to appropriations of the Legislature, administer the drunk driving prevention fund created by the provisions of section sixteen, article fifteen, chapter eleven of this code by providing grants to state and local law- enforcement agencies for the purchase of equipment or hiring of additional personnel for the effective enforcement of laws defining drunk driving offenses and such other items as the commission may define by legislative rule to be reasonable and necessary.

(d) Promulgate rules to guide and administer said fund and to establish procedures and criteria for grants to state and local law-enforcement agencies under this section, in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(e) Monitor, review and evaluate the expenditure, use and effectiveness of the fund and report to the Legislature annually on the exercise of its powers and duties under this section, including an annual accounting of expenditures and of the grants made under this section.

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§15-2-42. Drunk driving enforcement program established; purpose.

The superintendent of the department shall establish and maintain a drunk driving enforcement program for the purpose of enforcing drunk driving laws in the state, especially the investigation and apprehension of persons driving illegally on previously revoked or suspended operators' licenses for drunk driving related offenses. The superintendent shall develop a program in cooperation with local law-enforcement agencies to accomplish this purpose.

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§15-2-43. Awarding service revolver upon retirement and disposal of service weapon when replaced due to routine wear.

(a) Upon the retirement of a member of the West Virginia state police, the superintendent shall award to the retiring member his or her service revolver, without charge, upon determining:

(1) That the retiring member is retiring honorably with at least twenty years of service; or

(2) Such retiring member is retiring with less than twenty years of service based upon a determination that such member is totally physically disabled as a result of his or her service with the West Virginia state police.

(b) Notwithstanding the provisions of subsection (a) of this section, the superintendent may not award his or her service revolver to any member whom the superintendent finds to be mentally incapacitated or who constitutes a danger to any person or the community.

(c) The disposal of state police service weapons, when replaced due to routine wear, shall not fall under the jurisdiction of the agency for surplus property, within the Purchasing Division of the Department of Administration. The superintendent may offer these surplus weapons for sale to any active or retired member of the State Police, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.

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

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this fund shall be reduced, as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members or retirants of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement fund shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise

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satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. In this case, the actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement fund and the mortality table (or other tabular factor) specified in this retirement fund for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury

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Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. --

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. -- In the case of a member who has less than ten years of participation in the retirement fund (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual

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benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subsection and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

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§15-2-45. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this code. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the fund to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under section 401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary, or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. For purposes of this section, the term "required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section

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but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the fund is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in subsection (a) of this section; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or

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before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in subsection (a) of this section; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

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§15-2-46. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this fund, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least $500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions that are reasonably expected to total less than $200 during a year. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or(b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained

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by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means a member. In addition, the member's surviving spouse and the member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this fund or any other retirement system administered by the board.

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§15-2-47. Federal qualification requirements.

This retirement system is intended to meet the requirements of Section 401(a) of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d of chapter five to assure compliance with this section.

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§15-2-48. Specification of actuarial assumptions.

The board shall specify and adopt all actuarial assumptions for the fund at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the terms of the fund.

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§15-2-49. Benefits not forfeited if system terminates.

If the fund is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, are not forfeited.

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§15-2-50.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§15-2-51. State police reemployment.

(a) The Legislature finds:

(1) That the West Virginia state police is currently suffering from an unacceptably high number of vacant trooper positions, and that given the time factors and expense associated with the hiring and training of personnel with no prior law-enforcement experience, it is in the interest of the state to reemploy recently retired troopers in order to fill vacant positions;

(2) That no pension rights of any kind shall accrue or attach pursuant to reemployment under this section;

(3) That the State Police shall bear no responsibility for medical payments for work related injuries or illnesses of employees hired pursuant to this section, other than those commonly associated with state employees covered by workers' compensation.

(b) Notwithstanding any provision of this code to the contrary, any member of the West Virginia state police honorably retired pursuant to the provisions of section twenty-seven of this article between December 1,1997 and December 1, 2002, may, at the discretion of the superintendent and subject to executive order of the Governor specifying circumstances warranting such reemployment and establishing beginning and end dates for such reemployment, be reemployed subject to the provisions of this section.

(c) Notwithstanding any provision of this code to the contrary, any honorably retired member of the State Police who qualifies for reemployment pursuant to the provisions of this section and who is not currently certified as a law-enforcement officer under section five, article twenty-nine, chapter thirty of this code may be deemed to have met the entry level law-enforcement recertification requirements of 149 CSR 215, Section 15.3, upon successful completion of a course of instruction prescribed by the superintendent. Such course of instruction shall include at a minimum the following subject areas: Firearms training and certification, defensive driving, mechanics of arrest, law of arrest search and seizure, West Virginia motor vehicle law, criminal law update, and domestic crimes.

(d) Any member reemployed pursuant to the provisions of this section shall hold the nonsupervisory rank of corporal and shall receive the same compensation as a regularly enlisted member of the same rank. For purposes of determining length of service pursuant to section five of this article, any member reemployed pursuant to this section shall receive credit for all years of service accrued prior to their retirement, as well as service rendered after reemployment. Any member reemployed pursuant to this section shall exercise the same authority as a regularly enlisted member of the State Police, shall wear the same uniform and insignia, shall be subject to the same oath, shall execute the same bond, shall exercise the same powers and shall be subject to the same limitations as a regularly enlisted member of the State Police.

(e) Any member reemployed pursuant to the provisions of this section shall not be eligible

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for promotion or reclassification of any type, nor shall he or she be eligible for appointment to temporary rank pursuant to the provisions of section four of this article.

(f) Any reemployment offered subject to the provisions of this section shall be for a period not exceeding five years from the effective date of this section.

(g) Any retired member applying for reemployment under this section shall be required to pass such mental and physical examinations, and meet such other requirements as may be provided for in rules promulgated by the superintendent pursuant to this section.

(h) Notwithstanding the provisions of section ten of this article, the superintendent shall make provisions for coverage of personnel employed pursuant to this section by the workers' compensation division, Bureau of Employment Programs. In the event a member reemployed pursuant to this section sustains an illness or injury which is work related in origin, any cost associated with the treatment of same shall be defrayed in this manner and not from state police funds.

(i) In the event a work related illness or injury, as described within subsection (h) above, renders a member of the division employed pursuant to the provisions of this section permanently physically or mentally disabled, the provisions of subsections (a) and (b), section twenty-nine of this article shall apply, and the member's existing pension shall be recalculated as though the disabling event had occurred coincident with the member's original retirement. Any change in benefits resulting from this recalculation shall not be retroactive in nature. The provisions of subsection (c), section twenty-nine of this article shall not apply with respect to payments for medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees. Neither shall the provisions of this subsection apply in the event the member is disabled due to some cause or event which is determined not to be work related.

(j) Any individual reemployed pursuant to this section is not eligible to contribute to any pension plan administered by the Consolidated Public Retirement Board, nor may he or she establish or accrue any new pension eligibility pursuant to such reemployment.

(k) Notwithstanding any provision of this code to the contrary, any member reemployed pursuant to this section shall serve at the will and pleasure of the superintendent, and is subject to termination without cause. Any member reemployed pursuant to this section shall not be included in the classified service of the civil service system.

(l) Notwithstanding any provision of this code to the contrary, compensation paid to any member reemployed pursuant to this section shall be in addition to any retirement payments or pension benefits which he or she is already entitled to receive under section twenty-seven of this article.

(m) The provisions of this section shall terminate on April 1, 2004.

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§15-2-52. Termination of benefits; procedures.

(a) Whenever the board determines that a person seeking benefits under the provisions of this article has made false representation of a material fact in support of applying for or retaining benefits or has falsified or permitted to be falsified any record or records of the retirement system in support of benefits, the board shall terminate any present benefit approved as a result of the false statement or record. In addition, the board shall initiate appropriate action to recover any benefits paid by virtue of the false representation.

(b) Any termination of benefits pursuant to this section may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board may promulgate rules in accordance with the provisions of article three of said chapter regarding the procedure for termination of benefits and any repayment of benefits.

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§15-2-53. State law-enforcement association members annual leave program.

(a) Notwithstanding any provision of this code to the contrary, members of the largest statewide professional law-enforcement association representing members of the West Virginia State Police may donate annual leave time to the president of the association. The president may designate the vice president of the association or the chairman of the association's board of directors to act on his or her behalf. The West Virginia State Police will calculate the dollar value of the donated leave based on the hourly rate of the donor multiplied by the number of hours of annual leave to be donated and the donee will use the annual leave at the present dollar value of the donee's hourly rate. The donated annual leave may be used by the president or designee in the performance of his or her duties including: (1) Assistance to members; and (2) the legislative session and legislative meetings.

(b) When the president of the association or his or her designee uses the donated annual leave he or she is considered on personal annual leave of absence with pay just as if he or she used his or her annual leave. While the president of the association or his or her designee are using donated annual leave, all payroll deductions and employee status are maintained as if he or she had

used his or her regularly accrued annual leave. All donated leave that is not used by July 1 of every year will be forfeited to the state and no unused donated leave may be used to add to the president's or his or her designee's retirement.

(c) No member of the association shall be considered absent from service as a member of the West Virginia State Police while serving as president of the association, or as his or her designee in that capacity: Provided, That the period of service credit granted for that service shall not exceed ten years: Provided, however, That a member of the West Virginia State Police Retirement System who is serving or has served as president of the association, or as his or her designee, shall make deposits to the West Virginia State Police Retirement Fund, for the time of any absence, in an amount equal to the sum of the amount which both the employer and the employee would have contributed in his or her regular assignment for a like period of time: Provided further, That if the president of the association, or his or her designee, is a member of the West Virginia State Police Death, Disability and Retirement Fund, he or she may not receive service credit for time spent serving as president or the president's designee.

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§15-2-54. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of any errors, the board shall correct errors in the system in a timely manner whether the individual, entity, or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system*. — Any error resulting in an underpayment to the system may be corrected by the member or retirant remitting the required employee contribution or underpayment and the employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error is the responsibility of the employer. The employer may remit total payment and the employee reimburse the employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the system by an employer*. — When mistaken or excess employer contributions, including any overpayments have been made to the system by the employer, the board shall credit the employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the system by an employee*. — When mistaken or excess employee contributions or overpayments have been made to the system, the board shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq*. of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the employer employing the individual to pay the individual the amounts as wages, with the board crediting the employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

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(e) *Overpayments from the system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the system shall repay the amount of any overpayment to the system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the remaining overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the system pursuant to this subsection.

(f) *Underpayments from the system*. — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the system pursuant to this subsection.

(g) *Eligibility errors*. — If the board finds that an individual, employer, or both individual and employer currently or formerly participating in the retirement system is not eligible to participate, the board shall notify the individual and his or her employer of the determination and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) in this section, including interest.

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§15-2-55. Referral program for substance abuse treatment.

(a) The State Police shall create a program and may, in collaboration with the Office of Drug Control Policy and existing state government programs to refer persons to treatment for substance use who voluntarily seek assistance from the State Police.

(b) A person voluntarily seeking assistance through a program created pursuant to this section and who is not under arrest or the subject of a search warrant:

(1) Shall not be placed under arrest;

(2) Shall not be prosecuted for the possession of any controlled substance or drug paraphernalia surrendered to the State Police. Items surrendered pursuant to this subdivision shall be recorded by the State Police at the time of surrender and shall be destroyed; and

(3) Shall be promptly referred to a community mental health center, medical provider, or other entity for substance use treatment.

(c) A person is ineligible for placement through a program established pursuant to this section if the person:

(1) Has an outstanding arrest warrant issued by a West Virginia court or an extraditable arrest warrant issued by a court of another state;

(2) Places law enforcement or its representatives in reasonable apprehension of physical injury; or

(3) Is under the age of 18, is not a danger to self or others, or does not have the consent of a parent or guardian.

(d) Information gathered by a program created pursuant to this section related to a person who has voluntarily sought assistance under this section is exempt from disclosure under the provisions of chapter 29B of this code.

(e) Except for willful misconduct, the State Police and any employee of the State Police that provides referrals or services in accordance with subsection (b) of this section shall be immune from civil liability.

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§15-2-56. Handle with Care program.

(a) The purpose of this section is to ensure that the State Police, through its West Virginia Center for Children's Justice, oversee and administer the state's Handle with Care program.

(b) The superintendent shall:

(1) Direct and oversee the administration and implementation of the state's Handle with Care program;

(2) Employ one or more persons deemed necessary to administer the program;

(3) Establish and coordinate education and training of law enforcement and other parties considered necessary for implementation of the program;

(4) Apply for grant funding necessary to support the administration and implementation of the program; and

(5) Accept and expend grants, gifts, bequests, donations, and other funds from any source to ensure that the State Police can accomplish the mission of the program.

(c) Nothing herein shall require that the Legislature appropriate funds to accomplish the purpose of this section.

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