# WEST VIRGINIA CODE CHAPTER 15 ARTICLE 2A

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## §15-2A-1. Short title.

This article shall be known and may be cited as the "West Virginia State Police Retirement System Act".

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**§15-2A-2. Definitions as used in this article, unless the context clearly requires a different meaning:**

(1) "Accumulated contributions" means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

(2) "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.

(3) "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.

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

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "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.

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

(8) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the agency for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the agency. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

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

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or

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physical disability upon evidence satisfactory to the board.

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

(11) "Disability service" means service credit received by a member, expressed in months, fractions thereof or both, equal to one half of the whole months, fractions thereof, or both, during which time a member receives disability benefits under §15-2A-9 or §15-2A-10 of this code.

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

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

(14) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and § 401(a)(17) of the Internal Revenue Code.

(15) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(16) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(17) "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 purely administrative in nature.

(18) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

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(19) "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.

(20) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(21) "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.

(22) "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.

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

(24) "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 § 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.

(25) "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.

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(26) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(27) "Salary" means the compensation of an employee, excluding any overtime payments.

(28) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(29) "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 subdivision, 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: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(30) "Years of service" means the months of service acquired by a member while in active employment with the agency and any disability service, if applicable, divided by 12. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

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## §15-2A-3. Continuation and administration of West Virginia State Police Retirement System; leased employees; federal qualification requirements.

(a) The West Virginia State Police Retirement System is continued. It is contemplated that substantially all of the members of the retirement system shall be qualified public safety employees as defined in section two of this article. Any West Virginia state trooper employed by the agency on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the board so long as he or she remains employed by the State Police: Provided, That any state trooper who has concurrent employment in an additional job or jobs which would require the state trooper to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System or the West Virginia Emergency Medical Services Retirement System shall abide by the statutory provisions of said retirement system related to concurrent employment and participate in only one retirement system administered by the board.

(b) Any individual who is a leased employee shall not be eligible to participate in the system. For purposes of this system, 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.

(c) The board created pursuant to article ten-d, chapter five of this code shall administer the retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia State Police Retirement System.

(d) This fund is intended to meet the federal qualification requirements of Section 401(a) and related sections 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 employees, members, retirants 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, chapter five of this code to assure compliance with this section.

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## §15-2A-4. Participation in system; continuation of fund.

The West Virginia State Police Retirement Fund is continued for the benefit of the members and retirants of the system created pursuant to this article and the dependents of any deceased or retired member of the system. All moneys paid into and accumulated in the fund, except any amounts designated or set aside by the board for payments of benefits as provided in this article, shall be invested by the West Virginia Investment Management Board as provided by law.

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## §15-2A-4a. Specification of actuarial assumptions.

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

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## §15-2A-5. Employee contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each employee and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary: Provided, That after July 1, 2008, if the funding percentage of the fund determined by the board falls below the ninety-percent threshold, then the employee rate of contribution shall be increased to thirteen percent of the amount of the employee's salary until the ninety-percent or better funding level is again achieved. Once that funding level is achieved the employee contribution rate will be reduced to twelve percent.

(b) The State of West Virginia's contributions to the retirement system, as determined by the board, shall be a percent of the employees' total annual base salary related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and retirants and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the board over a period of years determined actuarially appropriate. The state's contributions shall be paid monthly into the fund created pursuant to section four of this article out of the annual appropriation for the agency.

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

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## §15-2A-6. Retirement; commencement of benefits.

(a) A member may retire with full benefits upon attaining the age of 50 and completing 25 or more years of service or attaining the age of 52 and completing 20 years or more of service by filing with the board his or her voluntary application in writing for retirement. A member who is less than age 52 may retire upon completing 20 years or more of service: *Provided*, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of 52.

(b) When the board retires a member with full benefits under the provisions of this section, the board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement: *Provided*, That beginning July 1, 2019, the member is entitled to receive an annuity equal to three percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service at the time of retirement: *Provided, however*, That the amendments to this subsection enacted during the regular session of the Legislature, 2019, apply to current retirants. Any annuity calculated pursuant to the provisions of this subsection are subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §15-2A-6a of this code. The retirant's annuity shall begin the first day of the calendar month following the month in which the member's application for the annuity is filed with the board on or after his or her attaining age and service requirements and termination of employment.

(c) In no event may the provisions of §5-16-13 of this code be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.

(d) A member shall receive service credit for any disability service.

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## §15-2A-6a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and Treasury 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 retirement system 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 retirement system, 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 system 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 system and the mortality table (or other tabular factor) specified in this retirement system 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

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Treasury 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 system (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 the end 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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## §15-2A-6b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's interest and take precedence over any inconsistent provisions of this retirement system. 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 retirement system 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 §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. 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 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 retirement system 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

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(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 §15-2A-2 of this code; 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 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 §15-2A-2 of this code; or

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

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**§15-2A-6c. 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 system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution 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; and (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code. 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 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, however, 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 an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee'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 system or any other retirement system administered by the board.

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## §15-2A-6d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of an employee solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402 (c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with the policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: Provided, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be



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automatically reduced, limited or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section six-a of this article.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this chapter.

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## §15-2A-6e. State police reemployment.

(a) Notwithstanding any provision of this article to the contrary, a retirant who becomes reemployed by the agency after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the agency fails to comply with subsection (b) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement; provided further that the board may take any actions necessary or appropriate in accordance with the provisions of §15-2A-23 of this code to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(b) Prior to any retirant subsequently becoming employed by the agency, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the agency shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the agency shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the agency such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service has occurred.

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## §15-2A-7. Annual annuity adjustment.

(a) Every retirant of the fund who is sixty-three years of age or older and who is retired by the board under the provisions of section six of this article; every retirant who is retired under the provisions of section nine or ten of this article; and every surviving spouse receiving a benefit pursuant to section twelve, thirteen or fourteen of this article is eligible to receive an annual retirement annuity adjustment equal to one percent of his or her retirement award or surviving spouse 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 retirant or surviving spouse from the fund in equal monthly installments while the retirant or surviving spouse are receiving annuity payments. The annuity adjustments shall supplement the retirement awards and benefits provided in this article.

(b) Any retirant or surviving spouse who receives a benefit pursuant to the provisions of section nine, ten, twelve, thirteen or fourteen 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 surviving spouse has been in receipt of surviving spouse payments for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year's annuity adjustment.

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## §15-2A-8. Refunds to certain members upon discharge of resignation; deferred retirement.

(a) Any employee who is discharged by order of the superintendent or otherwise terminates employment with the agency is, at the written request of the member to the board, entitled to receive from the fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her base 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 by this article 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.

(c) Every employee who completes ten years of service with the agency is eligible, upon separation of employment, to either withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the retirant and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and section six-a of this article. The retirant may choose, in lieu of a life annuity, an annuity in a reduced amount payable during the retirant'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 the monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the retirant could otherwise have chosen. Any retirant choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section seven of this article. A retiring member under the provisions of this section may receive retirement annuity payments on the first day of the month following his or her attaining age sixty-two and upon receipt of the application for retirement. The board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and, upon receipt of properly executed forms from the agency and member, the board shall process the member's request for and commence payments as soon as administratively feasible.

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**§15-2A-9. Awards and benefits for disability – Incurred in performance of duty.**

(a) Any employee of the agency 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 based on a medical examination, he or she is, by reason of that cause, unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in other gainful employment in a field other than law enforcement, be retired from active service by the board. The retirant thereafter is entitled to receive annually from the fund in equal monthly installments during his or her lifetime, or until the retirant attains the age of 55 or until the disability eligibility sooner terminates, one or the other of two amounts, whichever is greater:

(1) An amount equal to six tenths of the base salary received in the preceding 12-month employment period: *Provided*, That if the member had not been employed with the agency for 12 months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $6,000. The first day of the month following the date in which the retirant attains age 55, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age 55 shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article: *Provided*, That 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, however*, That a retirant on a 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 as 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.

(b) If, in the opinion of the board based on a medical examination, any member who has not yet entered retirement status on the basis of age and service, and who becomes physically or mentally disabled by injury, illness, or disease on a probable permanent basis 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 or is engaged in the performance of his or her duties as an employee of the agency to the extent that the employee is incapacitated ever to engage in any gainful employment, the employee 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 sooner terminates, an amount equal to the base salary received by the employee in the preceding full 12-month



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employment period. Until a member has worked 12 months, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.

(c) Disability benefit payments made pursuant to subsection (a) or (b) of this section will begin the first day of the month following board approval and termination of employment or as ordered by a court of competent jurisdiction.

(d) The superintendent of the agency 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 other approved appliances which may be reasonably necessary for any retirant who is 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 employee was or shall be engaged in the performance of duties as an employee of the agency. Whenever the superintendent determines that any disabled retirant is ineligible to receive any of the benefits in this section at public expense, the superintendent shall, at the request of the disabled 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. 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.

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## §15-2A-10. Same -- Due to other causes.

(a) If any employee while in active service of the agency becomes partially or totally disabled on a probable permanent basis 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. There shall be paid annually to the retirant from the fund in equal monthly installments, commencing on the date the retirant is retired and continuing during the lifetime of the retirant or until the retirant attains the age of fifty-five; while in status of retirement an amount equal to one-half the base salary received by the retirant in the preceding full twelve-month period: Provided, That if the retirant had not been employed with the agency for twelve full months prior to the disability, the amount of monthly base salary shall be annualized for the purpose of determining the benefit.

(b) The first day of the month following the date in which the retirant attains age fifty-five, the retirant shall receive the benefit provided in section six of this article as it would apply to his or her final average salary based on earnings from the agency through the day immediately preceding his or her disability. The recalculation of benefit upon a retirant attaining age fifty-five shall be considered to be a retirement under the provisions of section six of this article for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

(c) Disability benefit payments made pursuant to this section will begin the first day of the month following board approval and termination of employment or as ordered by a court of competent jurisdiction: Provided, That in no circumstance may the disability payments begin prior to termination of employment in order to avoid an in-service distribution.

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## §15-2A-11. Same -- Physical examinations; termination.

(a) The board may require any disabled retirant to submit to a physical or mental examination or both a physical and mental examination by a physician or physicians selected or approved by the board and the physician or physicians shall submit a report of the findings of the physician or physicians 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 any gainful employment, but unable to adequately perform the duties of a law-enforcement officer, the board shall order, in the case of a disabled retirant receiving benefits under the provisions of section nine of this article, that the disabled retirant be paid annually from the fund an amount equal to six tenths of the base salary paid to the retirant in the last full twelve-month employment period. The board shall order, in the case of a disabled retirant receiving benefits under the provisions of section ten of this article, that the disabled retirant be paid from the fund an amount equal to one fourth of the base salary paid to the retirant in the last full twelve-month employment period: Provided, That if the retirant had not been employed with the agency for twelve full months prior to the disability, 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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## §15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.

(a) Not later than thirty days after an employee becomes a member of the fund, the employer shall forward to the board a copy of the physician's report of a physical examination which incorporates the standards or procedures described in section seven, article two, chapter fifteen of this code. A copy of the physicians's report shall be placed in the employee's retirement system file maintained by the board.

(b) Application for a disability benefit may be made by an employee or, if the employee is under an incapacity, by a person acting with legal authority on 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 agency 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 legislative rules proposed in accordance with article three, chapter twenty-nine-a of this code. 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 job description, 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.

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

(d) The board shall notify an employee 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 employee 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 aggrieved shall notify the board within twenty days of the employee's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.

(e) The board may require a disabled retirant to file an annual statement of earnings and any other information required in rules which may be adopted by the board. The board may waive the requirement that a disabled retirant 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 the disabled retirant. If a disabled retirant refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed.

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(f) 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, on the first day of the month following the board's action.

(g) If the board obtains information that a partially disabled disability retirant is employed as a law-enforcement officer, the disability retirant's disability annuity shall be terminated by the board, upon recommendation of the board's disability review committee, the first day of the month following the board's action.

(h) 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.

(I) 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 eligibility requirements of age and years of service.

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## §15-2A-11b. Annual report on each employer's 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 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 agency 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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**§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.**

(a) The surviving spouse, the dependent child or children or dependent parent or parents of any employee who has lost or shall lose 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 employee was engaged in the performance of his or her duties as an employee of the agency, or the survivor of a retirant who dies from any cause after having been retired pursuant to the provisions of section nine of this article, 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, one or the other of two amounts, which shall become payable the first day of the month following the employee's or retirant's death and which shall be the greater of:

(1) An amount equal to nine-tenths of the base salary received in the preceding full twelve-month employment period by the deceased employee: Provided, That if the employee had not been employed with the agency for twelve full months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $10,000.

(b) In addition, the surviving spouse is entitled to receive and shall be paid $150 monthly for each dependent child. 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 one third 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 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: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying 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 these institutions as long as the

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recipient makes application to the board on an approved form and under rules 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 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 of the month following the date the deceased member 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 of the month 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 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(e) It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, 2005, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005, is expressly made retrospective to April 9, 2005.

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## §15-2A-13. Same -- When member dies from nonservice-connected causes before serving twenty years.

(a) In any case where an employee while in active service 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 member during his or her lifetime, or until the surviving spouse remarries, a sum equal to one half of the base salary received in the preceding full twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the agency for twelve full months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit. 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 one fourth 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 during their joint lifetimes a sum equal to the amount that a surviving spouse would have been entitled to receive: Provided, however, That when there is one dependent parent surviving, then 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: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: And provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(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 of the month following the date the deceased member 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 of the month 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 surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

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## §15-2A-14. Awards and benefits to dependents of member -- When member dies after retirement or after serving twenty years.

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and 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 member or retirant, during the lifetime or until remarriage of the surviving spouse, an amount equal to two thirds of the retirement benefit which the deceased retirant was receiving while in status of retirement or would have been entitled to receive to the same effect as if the member had been retired under the provisions of this article immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than $5,000. In addition, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the fund the sum of $100 monthly for each dependent child. 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 member a sum equal to one fourth 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 member 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 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: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(b) The retirant may choose a higher percentage of surviving spouse benefits by taking an actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit would be actuarially equivalent to the normal spouse benefit and initial benefit. The board shall design these benefit options and provide them as choices for the retirant to select. For the purposes of this subsection, "initial benefit" means the benefit received by the retirant upon retirement.

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## §15-2A-15. Exemption from taxation, garnishment and other process; exception for certain qualified domestic relations orders.

The moneys in the fund and the right of a member or retirant to a retirement allowance, to the return of contributions or to any benefit under the provisions of this article are hereby exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contributions under this system 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.

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## §15-2A-16. Fraud; penalties.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record or records of the retirement system in any attempt to defraud that system is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not to exceed $1,000, or confinement in the county jail not to exceed one year or both.

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## §15-2A-17. Awards and benefits to dependents of member -- Termination.

When any surviving spouse of a member or retirant dies or remarries while receiving or being entitled to receive any benefits under any section except section twelve of this article, the surviving spouse may not from the date of his or her remarriage, nor may the estate from the date of death of the deceased member's or retirant's surviving spouse, be entitled to receive any benefits under this article 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.

WV Legislature

## §15-2A-18. Authority to continue payments to certain dependents.

The board may continue payments of a surviving spouse's entitlement in full to any dependent child who continues 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.

WV Legislature

**§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined Armed Forces in time of armed conflict; qualified military service.**

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award 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 receiving no benefits from any other retirement system for his or her active military duty; and

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

(b) 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 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 agency, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall 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 ninety days after honorable discharge from the Armed Forces, he or she presented himself or herself to the superintendent and offered to resume service as an active member 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.

(c) The total amount of military service credit allowable under this section may not exceed



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five years for any member of the agency.

(d) Notwithstanding 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 shall determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five 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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## §15-2A-20. Benefits not forfeited if system terminates.

If the retirement system 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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## §15-2A-21. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

(a) For purposes of this section, an annual leave or sick leave day shall be the equivalent of eight hours of leave.

(b) Any member accruing annual leave or sick leave days may, after April 9, 2005, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of two workdays' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal 20 workdays and with any remainder of 10 workdays or more to constitute a full month of additional credit and any remainder of less than 10 workdays to be dropped and not used, notwithstanding any provisions of the code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than 12 months' credited service in any year's period.

(c) A person who first becomes a member of the retirement system on or after July 1, 2015, accruing annual leave or sick leave days may, after the effective date of this section, elect to use the days at the time of retirement to acquire additional credited service in this retirement system. The days shall be applied on the basis of one days' credit granted for each one day of accrued annual or sick leave days, with each month of retirement service credit to equal 20 days and with any remainder of 10 days or more to constitute a full month of additional credit and any remainder of less than 10 days to be dropped and not used, notwithstanding any provisions of this code to the contrary. The credited service shall be allowed and not considered to controvert the requirement of no more than 12 months' credited service in any year's period.

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## §15-2A-22. Limitations on benefit increases.

(a) The state will 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 the system as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of that pension system will 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. The Consolidated Public Retirement Board shall include the six year amortization in the determination of the adequacy of the employer contribution percentage for the system.

(c) The state will not increase any existing benefits or create any new benefits for active members due to retirement, death or disability of the system unless the actuarial accrued liability of the plan shall be at least eighty-five percent funded as of the last day of the prior fiscal year as determined in the 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. Any additional unfunded actuarial accrued liability due to any improvement in active members benefits shall be fully amortized over not more than ten years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. The Consolidated Public Retirement Board shall include the ten year amortization in the determination of the adequacy of the employer contribution percentage for the system.

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## §15-2A-23. Correction of errors; underpayments; overpayments.

(a) *General rule*. — Upon learning of any errors, the board shall correct errors in the retirement 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 shall be 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 or other overpayments have been made to the system by an 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 retirement 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 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 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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