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**WEST VIRGINIA CODE CHAPTER 5**  
**ARTICLE 10A**

WV Legislature

**§5-10A-1. Findings and declarations.**

The Legislature finds and declares that every retirement plan instituted and created under the laws of this state has from the inception thereof contemplated and each now contemplates that the service rendered by any participating public officer or employee shall at all times be honorable. The Legislature further finds and declares that honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan.

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**§5-10A-2. Definitions.**

As used in this article:

(a) "Retirement plan" or "plan" means the Public Employees Retirement Act pursuant to article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund pursuant to article twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System pursuant to article twenty-two-a, chapter eight of this code; the West Virginia State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this code; the Teachers' Defined Contribution Retirement System pursuant to article seven-b, chapter eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter seven of this code; the higher education retirement plan and supplemental retirement plans pursuant to section four-a, article twenty-three, chapter eighteen of this code; the Judges' Retirement System pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

(b) "Beneficiary" means any person eligible for or receiving benefits on account of the service for a public employer by a participant or former participant in a retirement plan.

(c) "Benefits" means pension, annuity, disability or any other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) "Former participant" means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.

(f) "Less than honorable service" means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the

employment; or

(3) Conduct of a participant or former participant which constitutes all of the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because: (i) Having been indicted or having been charged in an information for the crime, he or she made a plea bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime: Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection; or (ii) having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime.

(g) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his or her service as an officer or employee for a public employer.

(h) "Public employer" means the State of West Virginia and any political subdivision, agency or instrumentality thereof for which there is established a retirement plan.

(i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by the previous provisions of section four-a, article twenty-three, chapter eighteen of this code; and any other board, commission or public body having the duty to supervise and operate any retirement plan.

**§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.**

(a) Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to believe that a participant or former participant rendered less than honorable service as defined in section two of this article, it shall notify the affected participant, former participant or beneficiary that it believes that the participant or former participant rendered less than honorable service and that the participant, former participant or beneficiary is thereby ineligible to receive benefits. A supervisory board may not issue a notice:

(1) If more than two years have elapsed since the judgment of conviction upon which the notice is based became final; or

(2) In cases described in subdivision (3), subsection (f), section two of this article, if more than two years have elapsed since, as the case may be: The plea bargaining agreement or the grant of immunity; or

(3) With respect to conduct which occurred prior to the effective date of this article.

(b) The notice shall contain a concise statement of the reasons why the board believes that the participant or former participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant, former participant or beneficiary maintains for purposes of corresponding with the board. If notice is made by certified mail, service shall be considered complete upon mailing and a completed receipt constitutes proof of the receipt of the notice. The notice shall inform the participant, former participant or beneficiary that he or she has the right to demand that the board seek a determination in circuit court of his or her eligibility for benefits and membership in the retirement plan by notifying the board of the demand within forty days. The notice shall also inform the participant, former participant or beneficiary that the board will terminate the benefits in accordance with section four of this article and refund the participant's or former participant's contributions with interest, less benefits previously paid as provided in section six of this article if the participant, former participant or beneficiary either waives the right to demand that the board take the matter before the circuit court or fails to respond to the board's notice within forty days after service.

**§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.**

(a) If a participant, former participant or beneficiary informs the supervisory board within forty days after service of the notice as provided in section three of this article that he or she demands that the board seek a determination in circuit court, the board shall immediately file a petition in the circuit court in the county in which the board is located or in which the participant, former participant or beneficiary resides seeking that the court determine that the participant or former participant rendered less than honorable service as defined in section two of this article and that the affected participant, former participant or beneficiary is thereby ineligible to receive benefits. The circuit courts have jurisdiction to make the determinations.

(b) Upon the filing of a petition by a supervisory board, the circuit court shall give to the affected parties notice and an opportunity to be heard consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.

(c) A determination of the circuit court shall be a final order which may be appealed to the Supreme Court of Appeals in the same manner as decisions in other civil actions.

**§5-10A-5. Termination of benefits.**

(a) The board shall terminate a participant's, former participant's or beneficiary's membership in any and all plans in which he or she is or has been a member and shall not thereafter pay any benefits to the participant, former participant or his or her beneficiaries if an affected participant, former participant or beneficiary either waives the right to demand that the board seek a determination of eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section or if a circuit court has determined that the participant or former participant rendered less than honorable service in accordance with section four of this article: Provided, That this article does not authorize the termination of benefits received by a beneficiary that are received as a result of the beneficiary's own membership in a plan or the beneficiary's status as a beneficiary of a member other than the participant or former participant.

(b) If the participant or former participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he or she wishes to exercise the right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action as provided in this section with respect to all the beneficiaries only upon a determination by the court that the participant or former participant has rendered less than honorable service.

**§5-10A-6. Refund of contributions.**

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of this article the contributions of the participant in the same manner and with the same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the participant's contributions under the retirement plan, less the amount of any benefits which the participant or his or her beneficiaries have previously received: Provided, That a member of the Teachers' Defined Contribution Retirement System whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions shall remain in the Teachers' Defined Contribution Retirement System and be used to offset future employer contributions for each contributing employer: Provided, however, That any former member of the Teachers' Defined Contribution Retirement System who affirmatively elected to transfer to the State Teachers' Retirement System pursuant to article seven-d, chapter eighteen of this code and whose benefits have been terminated pursuant to section five of this article shall be refunded only his or her employee contributions and the earnings on those contributions; and any vested employer contributions from the Teachers' Defined Contribution Retirement System shall remain in the State Teachers Retirement System to be used to offset future employer contributions for each contributing employer.

**§5-10A-7. Eligibility for new participation upon rehabilitation.**

Nothing in this article prohibits a participant or former participant made ineligible for benefits by virtue of conviction of a crime under this article and who has paid the full penalty imposed by law for the crime from accepting a position as an officer or employee of the same or different public employer and joining a retirement plan as a new member; but the new member and his or her beneficiaries shall remain forever ineligible for any benefits arising from the new member's former participation in a retirement plan.

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**§5-10A-8. Setoff; unpaid benefits subject to execution, freezing of account upon finding of probable cause.**

(a) The State of West Virginia or any of its political subdivisions shall have the right of setoff against any unpaid benefits which have accrued or may thereafter accrue under the plan, including any contributions by the participant or former participant for any claim caused by less than honorable service by the participant or former participant.

(b) Notwithstanding any provision of this article to the contrary, upon being notified by an agency of the State of West Virginia or any of its political subdivisions that an employee has been charged by criminal complaint, indictment or information with an offense which constitutes less than honorable service and larceny of funds or property from a state agency or political subdivision, the retirement board shall withhold payment or refunding of any participant's or former participant's contributions until it receives an order from a court of competent jurisdiction reflecting that the charge has been dismissed, reflecting that the participant or former participant is found not guilty, ordering the release of all or part of the funds or directing restitution to the state or political subdivision.

(c) Notwithstanding any provision of the law to the contrary, any unpaid benefits which have accrued or may thereafter accrue are subject to execution, garnishment, attachment or any other legal process for collection of a judgment for the recovery of loss or damages incurred by the state or its political subdivision caused by the participant's or former participant's less than honorable service.

**§5-10A-9. Rules of construction.**

If any provision of this article is determined to deprive a person of any property right which is vested and is infeasible as of the effective date of this article, the provisions of this article shall nonetheless be effective as to any benefits or a part of any benefit under a retirement plan which shall be deemed to vest on or after the effective date of this article; and the right to receive any benefit under a retirement plan, which right shall vest on or after the effective date of this article, is hereby conditioned upon the full compliance and observance of the provisions hereof and the rendering of honorable service throughout the service in public employment or public office in respect of which such benefit is payable.

**§5-10A-10. Severability.**

If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.

**§5-10A-11. Notification from prosecuting attorneys.**

The prosecuting attorneys of the counties of this state shall, within sixty days of a conviction or a plea agreement meeting the definition of less than honorable service, report the conviction or plea agreement to the executive director of the board, including with the report the indictment, plea agreement and any order finding the defendant guilty.

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