WEST VIRGINIA CODE CHAPTER 7 ARTICLE 14D

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§7-14D-1. Short title.

This article is known and may be cited as the "West Virginia Deputy Sheriff Retirement System Act."

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§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a

different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service: *Provided*, That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two and one-half percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of §415 of the Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 *et seq*. of this code, either pursuant to §7-14D-7 of this code or §5-10-29 of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active member" means a member who is active and contributing to the plan.

(d) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(e) "Actuarial equivalent" 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 §415 of the Internal Revenue Code, "actuarial equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of §3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under §414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. 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.

(g) "Annual leave service" means accrued annual leave.

(h) "Annuity starting date" means the first day of the first calendar month following receipt

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of the retirement application by the board or the required beginning date, if earlier: *Provided*, That the member has ceased covered employment and reached early or normal retirement age.

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

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

(l) "Bona fide separation from service upon retirement" means that a member has completely terminated any employment relationship with the employer or any participating employer in the system 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 a participating employer. 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.

(m) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

(n) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq*. of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

(o) "Credited service" means the sum of a member's years of service, active military duty, disability service, unused annual leave service, and unused sick leave service.

(p) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

(q) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

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(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in subparagraph (A), (B), or (C), paragraph (1) of this subdivision.

(r) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(s) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

(t) "Early retirement age" means age 40 or over and completion of 20 years of service.

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

(v) "Effective date" means July 1, 1998.

(w) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period, the member received disability benefits under §7-14D-14 or §7-14D-15 of this code, then "final average salary" means the average of the full monthly salary determined paid to the member during that period multiplied by 12.

(x) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to

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§7-14D-6 of this code.

(y) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under this paragraph and paragraph (1) or (2) of this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains rather than the plan year in which the award, agreement, or payment is made.

(z) "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.

(aa) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision (v) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

(bb) "Monthly salary" means the portion of a member’s annual compensation which is paid to him or her per month.

(cc) "Normal form" means a monthly annuity which is one-twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

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(dd) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

(ee) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable 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. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state, but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(ff) "Participating public employer" means any county commission of any county in this state employing any deputy sheriff who is a member of the plan.

(gg) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 *et seq*. of this code.

(hh) "Plan" means the West Virginia Deputy Sheriff Death, Disability, and Retirement Plan established by this article.

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

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

(kk) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(ll) "Retirant" or "retiree" means any member who commences an annuity payable by the plan.

(mm) "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

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(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.

(nn) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(oo) "Retirement income payments" means the annual retirement income payments payable under the plan.

(pp) "Spouse" means the person to whom the member is legally married on the annuity starting date.

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

(rr) "Totally disabled" means a member's 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:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff 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 member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. A member's receipt of Social Security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

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(ss) Year of service. — A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service Years of Service Credited

Less than 500 0

500 to 999 1/3

1,000 to 1,499 2/3

1,500 or more 1

During a member's first and last years of covered employment, the member shall be credited with one-twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

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§7-14D-2a. Meaning of terms.

Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code of 1986, as it has been amended.

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§7-14D-3. Creation and administration of West Virginia Deputy Sheriffs Retirement System; specification of actuarial assumptions.

There is hereby created the West Virginia Deputy Sheriffs Retirement System. The purpose of this system is to provide for the orderly retirement of deputy sheriffs who become superannuated because of age or permanent disability and to provide certain survivor death benefits, and 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. The retirement system constitutes a body corporate. All business of the system shall be transacted in the name of the West Virginia Deputy Sheriffs Retirement System. The board shall specify and adopt all actuarial assumptions for the plan at its first meeting of every calendar year or as soon thereafter as may be practicable, which assumptions shall become part of the plan.

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§7-14D-4. Article to be liberally construed; supplements federal social security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for deputy sheriffs eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit a county to substitute this plan for federal social security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. 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 plan. The board may employ those persons it considers necessary or desirable to administer the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan 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 plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d of chapter five to assure compliance with the requirements of this section.

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§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided,* That any deputy sheriff who has concurrent employment in an additional job or jobs which would require the deputy sheriff to be a member of the West Virginia Municipal Police Officers and Firefighters Retirement System, the West Virginia Emergency Medical Services Retirement System or the West Virginia Natural Resources Police Officers Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. The membership of any person in the plan ceases: (1) Upon the withdrawal of accumulated contributions after the cessation of service; (2) upon retirement; (3) at death; or (4) upon the date, if any, when after the cessation of service, the outstanding balance of any loan obtained by the member pursuant to §7-14D-23 of this code, plus accrued interest, equals or exceeds the accumulated contributions of the member.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board, of his or her desire to become a member of the plan: *Provided,* That this time period is extended to January 30, 1999, in accordance with the decision of the Supreme Court of Appeals in *West Virginia Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No. 25212: *Provided, however,* That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the 10-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this plan: *Provided further,* That any deputy sheriff who elects during the time period from July 1, 1998 to January 30, 1999 or who so elects during the10-day time period occurring immediately following the day after the day the amendments made during the 1999 legislative session become law, to transfer from the Public Employees Retirement System to the plan created in this article shall contribute to the plan created in this article at the rate set forth in §7-14D-7 of this code retroactive to July 1, 1998. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section

shall be given credited service at the time of transfer for all credited service then standing to the deputy sheriff's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as a deputy sheriff. All the credited service standing to the transferring deputy sheriff's credit in the Public Employees Retirement Fund System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring deputy sheriff would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring deputy sheriff receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in §7-14D-8 of this code: *Provided,* That a member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date of this article, but was not employed as a deputy sheriff on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this subsection, the member's years of service and credited service in the Public Employees Retirement System prior to the effective date of this article shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code; or (2) the accumulated contributions returned to the member from the Public Employees Retirement System have been repaid pursuant to §7-14D-13 of this code. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes of this article.

(e) Once made, the election provided in this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by §7-14D-7 of this code.

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

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§7-14D-6. Creation of fund; investments.

(a) There is hereby created the "West Virginia deputy sheriff retirement fund" for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

(b) All moneys paid into and accumulated in the fund, except such amounts as are designated by the board for payment of benefits as provided in this article, shall be held in trust and invested in the consolidated pensions fund as administered by the state Investment Management Board as provided by law.

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§7-14D-7. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: *Provided*, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed 10 and one-half percent of the total payroll for the members in the employ of the county commission: *Provided, however*, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed 13 percent of the total payroll for the members in the employ of the county commission: *Provided further*, That effective July 1, 2023, the total amount of the contributions of the county commission shall be set actuarially by the Consolidated Public Retirement Board. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

(b) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq*. of this code shall make an additional contribution to the fund of eight and one-half percent of his or her monthly salary earned from any additional employment which requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq*. of this code. An additional amount shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board: *Provided*, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed 10.5 percent of the monthly salary of the employee: *Provided, however*, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed 13 percent of the monthly salary of the employee: *Provided further*, That effective July 1, 2023, the total amount of the contributions of the county commission shall be set actuarially by the Consolidated Public Retirement Board. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

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§7-14D-7a. Correction of errors; underpayments; overpayments.

(a) General rule: Upon learning of errors, the board shall correct errors in the retirement plan 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 board in the position each would have been in had the error not occurred.

(b) Underpayments to the plan: Any error resulting in an underpayment to the plan may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public 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 participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public 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 plan will result in the plan paying a retirant an additional amount, this additional payment 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 plan by an employer: When mistaken or excess employer contributions or other employer overpayments have been made to the plan, 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 plan. 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 made to the plan.

(d) Overpayments to the plan by an employee: When mistaken or excess employee contributions or overpayments have been made to the retirement 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 participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public 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 plan, 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

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overpayments.

(e) Overpayments from the plan: 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 plan shall repay the amount of any overpayment to the plan 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 plan pursuant to this subsection.

(f) Underpayments from the plan: If any error results in any member, retirant, beneficiary, entity or other individual receiving from the plan 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 plan pursuant to this subsection.

(g) Eligibility errors: If the board finds that an individual, employer, or both individual and employer formerly or currently participating in the plan is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the plan. Any erroneous payments to the retirement 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 plan to such individual shall be returned to the plan 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 plan, but was eligible to and required to be participating in the plan, 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 plan as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the plan shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

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§7-14D-8. Transfer from Public Employees Retirement System.

(a) The consolidated retirement board shall, within ninety days of the effective date of the transfer of a deputy sheriff from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System trust fund into the West Virginia deputy sheriff trust fund.

(b) The amount of assets to be transferred for each transferring deputy sheriff shall be computed as of July 1, 1998, using the actuarial valuation assumptions in effect for July 1, 1998, actuarial valuation of Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring deputy sheriff in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets;

(2) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members;

(3) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in subdivision (2) of this subsection;

(4) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(5) Compute the share of accrued liability as determined pursuant to subdivision (4) of this subsection, that is attributable to those deputy sheriffs in Public Employees Retirement System who have elected to transfer to the plan;

(6) Compute the percentage of active's accrued liability computed to the deputy sheriffs by dividing subdivision (5) by subdivision (4) of this subsection;

(7) Determine the asset share to be transferred from Public Employees Retirement System to the plan by multiplying subdivision (3) times subdivision(6) of this subsection.

(c) Once a deputy sheriff has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the transferring from the Public Employees Retirement System, and constitutes an agreement whereby the transferring deputy sheriff forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until such time as that deputy sheriff obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the deputy sheriff's retirement system.

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(d) The board shall cause a judicial determination to be made regarding the transfer of assets from the Public Employees Retirement System to the deputy sheriff's retirement system by causing a suit to be filed in the supreme court of this state seeking a writ of mandamus on or before July 31, 1998.

(e) Any deputy sheriff who elected, on or before January 30, 1999, to transfer to the plan created by this article, has until January 1, 2000, to pay any amounts required by section seven of this article as a result of the deputy sheriff's transfer to the deputy sheriff retirement fund.

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§7-14D-8a. Notice requirements; test case.

(a) Each county shall prepare a written notice to be delivered to each deputy sheriff employed prior to July 1, 1998. This notice shall clearly and accurately explain the benefits, financial implications and consequences to a deputy sheriff of electing to participate in the retirement plan created in this article, including the consequences and financial implications in regard to the benefits under the public employees insurance plan as set forth in article sixteen, chapter five of this code for those deputy sheriffs employed by a county which participates in that insurance plan. This notice shall be distributed to each deputy sheriff and the county shall obtain a signed receipt from each deputy sheriff acknowledging that the deputy sheriff was provided a copy of the notice required in this subsection. If a deputy sheriff makes the election provided for in section eight of this article, he or she shall be considered to have made a voluntary, informed decision in regard to the election to participate in the retirement system created in this article.

(b) The consolidated retirement board shall cause to be included in the judicial determination required in section eight of this article the issue regarding the possible loss of any rights in regard to benefits accorded the electing deputy under the West Virginia public employees insurance act, article sixteen, chapter five of this code, and whether a deputy sheriff, by electing to participate in the retirement plan created in this article, is being unlawfully discriminated against, or is being unlawfully deprived of a right or benefit to which he or she would otherwise be entitled.

(c) Nothing in this section may be construed to alter, affect or change any of the rights and benefits of any deputy sheriff who has insurance coverage under article sixteen, chapter five of this code as a result of being a spouse or dependant of a participant who is the primary insured under article sixteen, chapter five of this code.

(d) Nothing contained in this section may be construed to affect or pertain to any life insurance coverage under article sixteen, chapter five of this code.

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§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month following the board's receipt of the member's voluntary written application for retirement or the required beginning date, if earlier. Before receiving retirement income payments, the member shall have ceased covered employment and reached early or normal retirement age. The retirement income payments shall be in an amount as provided under section eleven of this article: Provided, That retirement income payments under this plan shall be subject to the provisions of this article. Upon receipt of a request for estimation of benefits, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and the estimated gross monthly annuity. Upon receipt of properly executed retirement application forms from the member, the board shall process the member's request and commence payments as soon as administratively feasible.

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§7-14D-9a. 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 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 to 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 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

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. 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 Treasury

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

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

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

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, fire-fighting 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 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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§7-14D-9b. Federal law minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this plan. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the plan 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 plan 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 shall 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: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this plan which satisfies the MDIB regulations. 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 plan 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

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greater than the life expectancy of that beneficiary, commencing on or before the following:

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

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

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §7-14D-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 §7-14D-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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§7-14D-9c. Direct rollovers.

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 plan, 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: (A) 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; (B) any distribution to the extent the distribution is required under Section 401(a)(9) of the Internal Revenue Code; (C) 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; (D) 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, 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 plan to the eligible retirement plan.

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§7-14D-9d. 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 a member solely for the purpose of purchasing permissive service credit, in whole or 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 such 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

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 nine-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 retirement 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 article.

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§7-14D-10. Retirement credited service through member's use, as option, of accrued annual or sick leave days.

Any member 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: Provided, That the accrued annual or sick leave may not be used to purchase health insurance under the Public Employees Insurance Agency until the member reaches the age of fifty-five. 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 twenty workdays and with any remainder of ten workdays or more to constitute a full month of additional credit and any remainder of less than ten 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 twelve months' credited service in any year's period.

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§7-14D-11. Retirement benefits.

This section provides for a member's accrued benefit payable starting at the member's annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under §7-14D-12 of this code, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §7-14D-9a of this code. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) *Normal retirement*. — A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued retirement benefit based on years of service and final average salary at termination of employment.

(b) *Early retirement*. — A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of 50 years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board.

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§7-14D-12. Annuity options.

(a) Prior to the effective date of retirement, but not thereafter, except as provided in subsection (c) of this section, a member may elect to receive retirement income payments in the normal form, or the actuarial equivalent of the normal form from the following options:

(1) Option A -- Joint and Survivor Annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who is a natural person with an insurable interest in the member's life. Upon the death of either the member or his or her beneficiary, the benefit shall continue as a life annuity to the survivor in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(2) Option B -- Contingent Joint and Survivor Annuity. -- A life annuity payable during the joint lifetime of the member and his or her beneficiary who must be a natural person with an insurable interest in the member's life. Upon the death of the member, the benefit shall continue as a life annuity to the beneficiary in an amount equal to fifty percent, sixty-six and two-thirds percent, seventy-five percent or one hundred percent of the amount paid while both were living as selected by the member. If the beneficiary dies first, the monthly amount of benefits may not be reduced, but shall be paid at the amount that was in effect before the death of the beneficiary. If the retiring member is married, the spouse shall sign a waiver of benefit rights if the beneficiary is to be other than the spouse.

(3) Option C -- Ten Years Certain and Life Annuity. -- A life annuity payable during the member's lifetime but in any event for a minimum of ten years. If the member dies before the expiration of ten years, the remaining payments shall be made to a designated beneficiary, if any, or otherwise to the member's estate.

(4) Option D -- Level Income Annuity. -- A life annuity payable monthly in an increased amount "A" from the time of retirement until the member is Social Security retirement age, and then a lesser amount "B" payable for the member's lifetime thereafter, with these amounts computed actuarially to satisfy the following two conditions:

(A) Actuarial equivalence. -- The actuarial present value at the date of retirement of the member's annuity if taken in the normal form must equal the actuarial present value of the term life annuity in amount "A" plus the actual present value of the deferred life annuity in amount "B"; and

(B) Level income. -- The amount "A" equals the amount "B" plus the amount of the member's estimated monthly Social Security primary insurance amount that would commence at the date amount "B" becomes payable. For this calculation, the primary insurance amount is estimated when the member applies for retirement, using Social Security law then in effect, using assumptions established by the board.

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(b) In the case of a member who has elected the options set forth in subdivisions(a)(1) or (2) of this section, and whose beneficiary dies prior to the member's death, the member may name an alternative beneficiary. If an alternative beneficiary is named within eighteen months following the death of the prior beneficiary, the benefit shall be adjusted to be the actuarial equivalent of the benefit the member is receiving just after the death of the member's named beneficiary. If the election is not made until eighteen months after the death of the prior beneficiary, the amount shall be reduced so that it is only ninety percent of the actuarial equivalent of the benefit the member is receiving just after the death of the member's named beneficiary.

(c) (1) In the case of a retired member who has elected an option set forth in subdivision (a)(1) or (2)of this section, and designated his or her spouse as beneficiary, upon divorce or annulment, the retirant may elect to change the retirement benefit options offered by those subdivisions to a life annuity in an amount adjusted on a fair basis to be of equal actuarial value of the annuity prospectively in effect relative to the retirant at the time the option is elected: Provided, That the retirant furnishes to the board satisfactory proof of entry of a final decree of divorce or annulment: Provided, however, That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the election is in effect: Provided further, That no cause of action against the board arises or may be maintained on the basis of having permitted the retirant to change the retirement benefit option pursuant to the provisions of this subdivision.

(2) Upon remarriage, a retirant may name the new spouse as an annuitant for any of the retirement benefit options offered by subdivision (a)(1) or (2) of this section: Provided, That the retirant shall furnish to the board proof of marriage: Provided, however, That the retirant certifies under penalty of perjury that no qualified domestic relations order, final decree of divorce or other court order that would restrict the designation is in effect: Provided further, That no cause of action against the board arises or may be maintained on the basis of having permitted the retirant to name a new spouse as annuitant for any of the survivorship retirement benefit options. The value of the new survivorship annuity shall be the actuarial equivalent of the retirant's benefit prospectively in effect at the time the new annuity is elected.

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§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions after offset of any outstanding loan balance, plus accrued interest, pursuant to §7-14D-23 of this code. Except as provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member of this plan who ceases employment in covered employment and active participation in this plan, and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn or offset accumulated contributions from either this plan or the Public Employees Retirement System relating to the prior covered employment unless following his or her return to covered employment and active participation in this plan, the member redeposits in this plan the amount of the withdrawn accumulated contributions submitted on salary earned while a deputy sheriff, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former service in covered employment as if no refund had been made. The repayment authorized by this subsection shall be made in a lump sum within 60 months of the deputy sheriff's reemployment in covered employment or if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §7-14D-5(b) of this code may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

(d) Every member who completes 60 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(e) In the event a member dies from any cause other than those specified in §7-14D-18 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

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

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§7-14D-14. Awards and benefits for disability – duty related.

(a) Any member who after the effective date of this article and during covered employment:

(1) Has been or becomes either totally or partially disabled by injury, illness, or disease; and

(2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or

(3) The disability was incurred while performing law-enforcement functions during either

scheduled work hours or at any other time; and

(4) In the opinion of the board based on a medical examination, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. Any member retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall have his or her monthly benefit payment increased by $400.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(d) If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

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§7-14D-15. Same – Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally or partially disabled from any cause other than those set forth in §7-14D-14 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of the board based on a medical examination, he or she is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth in either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive 66 and two-thirds percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(c) If the member is partially disabled, he or she shall receive 33 and one-third percent of his or her average full monthly compensation for the 12-month contributory period preceding the disability award, or the shorter period, if the member has not worked 12 months.

(d) If the member remains disabled until attaining 60 years of age, then the member shall receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

(e) The board shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code concerning member disability payments so as to ensure that the payments do not exceed 100 percent of the average current salary in any given county for the position last held by the member.

(f) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

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§7-14D-16. Awards and benefits for disability -- Physical examinations; termination of disability.

(a) The board may require any member who has applied for or is receiving disability benefits under this article to submit to a physical examination, mental examination or both, by a physician or physicians selected or approved by the board and may cause all costs incident to the examination and approved by the board to be paid from the fund. The costs may include hospital, laboratory, X ray, medical and physicians' fees. A report of the findings of any physician shall be submitted in writing to the board for its consideration. If, from the report, independent information, or from the report and any hearing on the report, the board is of the opinion and finds that: (1) The member has become reemployed as a law-enforcement officer; (2) two physicians who have examined the member have found that considering the opportunities for law enforcement in West Virginia, the member could be so employed as a deputy sheriff; or (3) other facts exist to demonstrate that the member is no longer totally disabled or partially disabled as the case may be, then the disability benefits shall cease. If the member was totally disabled and is found to have recovered, the board shall determine whether the member continues to be partially disabled. If the board finds that the member is no longer totally disabled but is partially disabled, then the member shall continue to receive partial disability benefits in accordance with this article. Benefits shall cease once the member has been found to be no longer either totally or partially disabled: Provided, That the board shall require recertification for each partial or total disability at regular intervals as specified by the guidelines adopted by the Deputy Sheriff Retirement System.

(b) If a retirant refuses to submit to a medical examination or submit a statement by his or her physician certifying continued disability in any period, his or her disability annuity may be discontinued by the board until the retirant complies. If the refusal continues for one year, all the retirants rights in and to the annuity may be revoked by the board.

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§7-14D-17. Prior disability.

Any deputy sheriff who became totally disabled as a result of illness or injury incurred in the line of duty prior to the effective date of this article may be a member of the plan at his or her election and is entitled to disability, death and retirement benefits under this article in lieu of any other disability, death or retirement benefits provided solely in conjunction with a retirement system of this state or his or her county of employment: Provided, That the deputy sheriff would have been eligible for disability under section fourteen of this article had that section been in effect at the time of the disability. The amounts of the benefits shall be determined as if the disability first commenced after the effective date of this article with monthly compensation equal to that average monthly compensation which the member was receiving in the plan year prior to the initial disability. For the purposes of this section, benefits paid pursuant to chapter twenty-three of this code are not death or retirement benefits provided solely in conjunction with a retirement system of this state or county of this state.

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§7-14D-18. Awards and benefits to surviving spouse – When member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as a deputy sheriff, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to §7-14D-14 of this code, 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 an amount equal to the greater of: (i) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §7-14D-20 and §7-14D-21 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

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§7-14D-19. Awards and benefits to surviving spouse – when member dies from nonservice-connected causes.

(a) In any case where a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than those specified in §7-14D-18 of this code and not due to vicious habits, intemperance, or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a retired member who had been a contributing member for at least 10 years, had not obtained the age of 60 and was receiving benefits pursuant to §7-14D-15 of this code dies and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (i) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (ii) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(c) Benefits for a surviving spouse received under this section, §7-14D-20, and §7-14D-21 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member’s covered employment.

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§7-14D-20. Additional death benefits and scholarships - dependent children.

(a) In addition to the spouse death benefits in §7-14D-18 and §7-14D-19 of this code, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies while receiving death benefits provided in §7-14D-18 or §7-14D-19 of this code or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse's entitlement under either §7-14D-18 and §7-14D-19 of this code. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments 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 only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: *Provided, however*, That if there is no surviving spouse, dependent child, nor 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, nor dependent parent of the deceased member, nor 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 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 so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq*. of this code which 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.

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§7-14D-21. Burial benefit.

Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses, settling the member's final affairs, or both. Any unspent balance shall be distributed as a part of the member's estate. Burial benefits awarded pursuant to this section are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

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§7-14D-22. Double death benefits prohibited.

A surviving spouse is not entitled to receive simultaneous death benefits under this article as a result of the death of two or more members to whom the spouse was married. Any spouse who becomes eligible for a subsequent death benefit under this article while receiving a death benefit under this article shall receive the higher benefit, but not both.

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§7-14D-23. Loans to members.

(a) A member who is not yet receiving disability or retirement income benefits from the plan may borrow from the plan no more than one time in any year an amount up to one half of his or her accumulated contributions, but not less than $500 nor more than $8,000: Provided, That the maximum amount of any loan shall not exceed the lesser of the following: (1) $8,000; or (2) fifty percent of his or her accumulated contributions. No member is eligible for more than one outstanding loan at any time. No loan may be made from the plan if the board determines that the loans constitute more than fifteen percent of the amortized cost value of the assets of the plan as of the last day of the preceding plan year. The board may discontinue the loans any time it determines that cash flow problems might develop as a result of the loans. Each loan shall be repaid through monthly installments over periods of six through sixty months and carry interest on the unpaid balance and an annual effective interest rate that is two hundred basis points higher than the most recent rate of interest used by the board for determining actuarial contributions levels: Provided, however, That interest charged shall be commercially reasonable in accordance with the provisions of Section 72(p)(2) of the Internal Revenue Code and federal regulations issued thereunder. Monthly loan payments shall be calculated to be as nearly equal as possible with all but the final payment being an equal amount. An eligible member may make additional loan payments or pay off the entire loan balance at any time without incurring any interest penalty. Upon full payment of the loan, a member may apply for a subsequent loan after sixty days beginning the first day of the month following receipt of final payment.

(b) If a withdrawal of accumulated contributions is payable to the borrower or his or her beneficiary before he or she repays the loan with interest, the loan balance due with interest to date shall be deducted from the withdrawal.

(c) A member with an unpaid loan balance who wishes to retire or who becomes eligible to receive disability benefits under any provisions of this article may have the loan repaid in full by accepting retirement income or disability payments reduced by deducting from the actuarial reserve for the accrued benefit the amount of the unpaid balance plus accrued interest, if any, and then converting the remaining of the reserve to a monthly pension or disability benefit payable in the form of the annuity desired by the member: Provided, That if payment of the member's monthly retirement income or disability income is suspended or terminated for any reason, upon recommencement of the payments, the actuarial reduction in benefit may be recalculated for additional interest accruals, to the extent determined necessary and appropriate by the board.

(d) A member who ceases service with an unpaid loan balance will no longer be a member when the unpaid loan balance, plus accrued interest, equals or exceeds the member's accumulated contributions.

(e) The entire unpaid balance of any loan, and interest due thereon, shall at the option of the board become due and payable without further notice or demand upon the occurrence with respect to the borrowing member of any of the following events of default: (1) Any payment

of principal and accrued interest on a loan remains unpaid after they become due and payable under the terms of the loan or after the grace period established in the discretion of the retirement board; (2) the borrowing member attempts to make an assignment for the benefit of creditors of his or her benefit under the retirement system; or (3) any other event of default set forth in rules promulgated by the board pursuant to the authority granted in section one, article ten-d, chapter five of this code: Provided, That any offset of an unpaid loan balance shall be made only at such time as the member is entitled to receive a distribution under the plan.

(f) Loans shall be evidenced by such form of obligations and shall be made upon such additional terms as to default, prepayment, security, and otherwise as the board may determine.

(g) Notwithstanding anything in this section to the contrary, the loan program authorized by this section shall comply with the provisions of Section 72(p)(2) and Section 401 of the Internal Revenue Code and the federal regulations issued thereunder. The board may: (1) Apply and construe the provisions of this section and administer the plan loan program in such a manner as to comply with the provisions of Sections 72(p)(2) and Section 401 of the Internal Revenue Code; (2) adopt plan loan policies or procedures consistent with these federal law provisions; and (3) take any actions it considers necessary or appropriate to administer the plan loan program created under this section in accordance with these federal law provisions. The board is further authorized in connection with the plan loan program to take any actions that may at any time be required by the Internal Revenue Service regarding compliance with the requirements of Section 72(p)(2) or Section 401 of the Internal Revenue Code, notwithstanding any provision in this article to the contrary.

(h) Notwithstanding anything in this article to the contrary, the loan program authorized by this section shall not be available to any deputy sheriff who becomes a member of the Deputy Sheriff Retirement System on or after July 1, 2005.

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§7-14D-24. Service as sheriff.

(a) Any member who, after the effective date of this article, is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by §7-14D-7 of this code. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person who, before the effective date of this article, was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least 20 years of credited service under the Public Employees Retirement System, with at least 16 of those 20 years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within 10 days of taking office as sheriff or within 10 days of the effective date of this provision.

(d) Any person who, before the effective date of this article, was elected sheriff of a county of West Virginia, and who, prior to being elected sheriff, was a deputy sheriff and also a previously elected sheriff, with credited service under the Public Employees Retirement System, with at least 16 of those years having been earned as combined service as a deputy sheriff and a previously elected sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That a person’s service as a sheriff shall be treated as covered employment under this article, and that person is not entitled to any credit for that service as a sheriff or deputy sheriff under any other retirement system of this state. A person making the election provided in this subsection shall do so within 30 days of taking office as a sheriff or within 30 days of the effective date of this provision.

(e) Notwithstanding any other provision of the code to the contrary, any member who was

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elected sheriff of a county of West Virginia to serve on or after January 1, 2013, and who has not commenced retirement in the Deputy Sheriff Retirement System or the Public Employees Retirement System, must notify the board in writing by July 31, 2020, of his or her intent to pay the difference in the employee contribution between the Public Employees Retirement System and the Deputy Sheriff Retirement System in order to transfer all service credit earned as a sheriff or purchased in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act from the Public Employees Retirement System to the Deputy Sheriff Retirement System. The board shall compute the difference in employee contributions owed up through September 30, 2020, on the total compensation for which assets are being transferred and notify the sheriff of the amount owed in writing by letter mailed no later than August 21, 2020. This difference in employee contributions must be paid in full by the sheriff to the Deputy Sheriff Retirement System no later than September 30, 2020. If timely paid, employee and employer contributions to the Deputy Sheriff Retirement System shall commence October 1, 2020.

(1) The board shall transfer assets from the Public Employees Retirement System into the Deputy Sheriff Retirement System no later than November 30, 2020.

(2) The amount of assets to be transferred for each transferring sheriff shall be computed as of July 1, 2019, using the actuarial valuation assumptions in effect for the July 1, 2019, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring sheriff in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(A) Compute the market value of the Public Employees Retirement System assets;

(B) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members;

(C) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in paragraph (B) of this subdivision;

(D) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(E) Compute the share of accrued liability as determined pursuant to paragraph (D) of this subdivision, that is attributable to those sheriffs in the Public Employees Retirement System who have elected to transfer to the plan;

(F) Compute the percentage of active member’s accrued liability computed to the sheriffs by dividing paragraph (E) by paragraph (D) of this subdivision; and

(G) Determine the asset share to be transferred from Public Employees Retirement System

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to the plan by multiplying paragraph (C) times paragraph (F) of this subdivision.

(f) Any member who was appointed sheriff of a county in West Virginia in which retirement contributions were not made to the Deputy Sheriff Retirement System or the Public Employees Retirement System may purchase service credit for the period he or she served as appointed sheriff by the member remitting the required employee contribution and any interest thereon, and the participating public employer remitting the required employer contribution and any interest thereon. Interest shall accumulate at a rate of 7.5 percent per annum. Payments for the purchase of service credit authorized by this section must be made in full on or before September 30, 2021.

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§7-14D-24a. Return to covered employment by retired member.

(a) Subject to the provisions of subsection (f) of this section, the annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. If there has been a bona fide separation from service upon retirement, the monthly annuity payment for the month in which the service resumes shall be prorated to the date of commencement of service, and the member shall again become a contributing member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Notwithstanding the provisions of subsection (a) of this section, the annuity of a member who retires under the provisions of this article shall not be suspended if the member resumes covered employment and the following conditions are met:

(1) The member has been retired for at least 180 days;

(2) The retired member did not retire as a result of a disability pursuant to the provisions of §7-14D-14 of this code;

(3) The retired member is a certified, or certifiable, law-enforcement officer as provided in §30-29-5 of this code;

(4) The sheriff of the county seeking to re-employ the retired member has fewer than five deputies in his or her employ and has been unable to recruit additional qualified deputy sheriffs despite the exercise of due diligence;

(5) The re-employment of the retired member is for a period not to exceed five years or until such time as the sheriff may recruit additional deputy sheriffs to provide for five full-time deputy sheriffs not hired pursuant to this subsection, whichever is sooner; and the sheriff is required to post the vacancy until it is filled by a non-retirant;

(6) The retired member may not again become a contributing member of the Deputy Sheriff Retirement System while performing services under the provisions of this subsection; and

(7) The employer of any deputy sheriff rehired pursuant to this subsection shall remit an employer contribution pursuant to §7-14D-7 of this code on the deputy sheriff's monthly salary.

(c) Any retired member who is seeking re-employment pursuant to the provisions of this section shall not be subject to the maximum age restriction set forth in §7-14-8 of this code.

(d) Unless acted upon by the Legislature, the provisions of subsections (b) and (c) of this section will sunset on July 1, 2026. On or before October 1, 2025, any employer of a member of the Deputy Sheriff Retirement System rehired pursuant to subsection (b) of this section

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must make a report to the Joint Standing Committee on Pensions and Retirement.

(e) Any member who retired under the early retirement provisions of §7-14D-11(b) of this code, and is subsequently reemployed in covered employment pursuant to subsection (a) of this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

(f) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer 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 plan. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (g) 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. The board may take any actions necessary or appropriate in accordance with the provisions of §7-14D-7a to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(g) Prior to any retirant subsequently becoming reemployed by a participating public employer, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the participating public employer 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 participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the participating public employer such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service upon retirement has occurred.

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§7-14D-25. 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, spouse or other beneficiary to benefits under this article, to the return of contributions, or to any retirement, death or disability payments under the provisions of this article, are exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever with the exception that the benefits or contributions under the system shall be 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.

WV Legislature

§7-14D-26. Fraud; penalties; and repayment.

Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record 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, by confinement in the county or regional jail not to exceed one year, or by both a fine and confinement. Any increased benefit received by any person as a result of the falsification or fraud shall be returned to the fund upon demand by the board.

WV Legislature

§7-14D-27. 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 years of service for the purpose of determining his or her years of credited service 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; and

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty.

(b) In addition, any member who while in covered employment 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 the 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 credited service, 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 county commission and offered to resume service as a deputy sheriff; 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 service allowable under subsections (a) and (b) of this section may not exceed five years.

(d) Any service credit allowed under this section may be credited one time only for each deputy sheriff, regardless of any changes in job title or responsibilities.

(e) Notwithstanding the preceding provisions of this section, contributions, benefits and

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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 retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement 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.

WV Legislature

§7-14D-28. Pro rata reduction of annuities.

Any provision in this article to the contrary notwithstanding, if at the end of any fiscal year the total of the annuities paid from the retirement fund during the said fiscal year is more than ten percent of the sum of the balances in the fund at the end of the said fiscal year, the said annuities payable in the next ensuing fiscal year shall be reduced, pro rata, so that the sum of the annuities so reduced shall not exceed ten percent of the sum of the said balances in the fund. The said pro rata reduction shall be applied to all annuities payable in the said ensuing fiscal year.

WV Legislature

§7-14D-29. Effective date; report to joint committee on government and finance; special starting date for benefits.

(a) The provisions of this article become effective July 1, 1998: Provided, That no payout of any benefits may be made to any person prior to January 1, 2000: Provided, however, That members who retired due to a disability may begin receiving the benefits at the rate and in the amount specified in either section fourteen or section fifteen of this article, as the case may be, from this fund after June 30, 1999: Provided further, That until June 30, 1999, those members who retired due to a disability may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the eighteen-month period before the payout of benefits begins, the Joint Committee on Government and Finance shall cause an interim study or studies to be conducted on potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: Provided, That after the effective date of this provision, the director of the Public Employees Insurance Agency shall promulgate a rule governing the funding of health insurance coverage for retirees under the plan provided for in this article who are in the fifty to fifty-five year age group, which rule may be filed as an emergency rule: Provided, however, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§7-14D-30. Limitation of county liability.

No county which has timely met all of its obligations under this article is liable for any payments or contributions to the deputy sheriff retirement plan which are owed to the plan by another county or counties. No county commission may deposit funds into the deputy sheriff retirement fund in excess of the amount specified in section seven of this article, the fees set forth in article fourteen-e of this chapter, the fees set forth in subsection (f)(2), section one, article ten-d, chapter five of this code, and the fees set forth in section seventeen, article three, chapter seventeen-a of this code.

WV Legislature

§7-14D-31. 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.

WV Legislature

§7-14D-32. Severability.

If any part of this article is declared unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this article, or the article in its entirety.

WV Legislature