WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1945

ENROLLED

HOUSE BILL No. 25

(By Mr. [Signature]

PASSED March 21, 1945

In Effect June 1st, 1945

Passage
AN ACT to amend and reenact sections five, twenty-seven and twenty-eight, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred thirty-five, and by chapter ninety-one, acts of the Legislature, regular session, one thousand nine hundred thirty-seven, and by chapters thirty-four and thirty-five, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, and by chapter ninety-three, acts of the Legislature, regular session, one thousand nine hundred forty-one, and by chapter seventy, acts of the Legislature, regular session, one thousand nine hundred forty-three, relating to qualifications, appointment, initial grade and promotions of members of the department of public safety,
and to a death, disability and retirement fund for members and retired members of said department and dependent members of their families, and relating to retirement awards for retired or disabled members or former members of said department and dependent members of their families, and to a retirement board to control and disburse such fund.

Be it enacted by the Legislature of West Virginia:

That sections five, twenty-seven and twenty-eight, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended, be amended and reenacted to read as follows:

Article 2. Department of Public Safety.

Section 5. Qualifications, Appointment, Initial Grade and Promotions of Members.—Preference in making appointments shall be given wherever possible to honorably discharged soldiers, sailors and marines of the United States army and navy. Each applicant for appointment shall be a person not less than twenty-one nor more than thirty years of age, of sound constitution, of good moral character, and shall be required to pass such mental and
physical examinations as may be provided for by the
rules and regulations promulgated by the retirement
board provided for under section twenty-seven of this
act; provided, that a former member to whom, at or after
termination of his previous service, there were not re-
ferred moneys contributed by him to the retirement
fund, may, at discretion of the superintendent, be again
enlisted if upon subtracting the period of his former serv-
ice from the age of such former member when he shall
present himself to the superintendent to be again en-
listed shall leave a remainder not exceeding thirty. The
superintendent is authorized to pay at public expense all
reasonable fees and costs incurred in the making of such
examinations of applicants. No person shall be barred
from becoming a member of the department of public
safety because of his religious or political convictions.
No person shall be appointed or enlisted to membership
in said department at a grade or rank above the grade of
trooper and no trooper shall be promoted to any other
grade or rank until he shall have served at least two
29 years as a member of said department at the grade of
30 trooper.

Sec. 27. Death, Disability and Retirement Fund—Reti-
2 rement Board.—There is hereby created a death, dis-
3 ability and retirement fund for the benefit of members
4 of the department of public safety, and any dependent of
5 a retired or deceased member thereof. Into such fund
6 shall be paid such amounts as have heretofore been col-
7 lected by the superintendent of the department of public
8 safety on account of fees for arrest, court attendance and
9 mileage, seizures, rewards, or from any other source
10 permitted by law. There shall be paid into such fund
11 such amounts arising in the future from the above named
12 or any other sources permitted by law, designated by the
13 superintendent of the department of public safety, except
14 that no part of any fine shall be paid thereinto.
15 There shall be deducted from the monthly payroll of
16 each member of the department of public safety and
17 paid into such fund six per cent of the amount of his
18 salary, and an additional twelve per cent of the monthly
19 salary of each member of said department shall be paid
by the State of West Virginia monthly into such fund out of the biennial appropriation for said department. All moneys payable into such fund shall be deposited in the state treasury, and the treasurer and auditor shall keep a separate account thereof on their respective books.

The death, disability and retirement fund shall be administered by a retirement board which shall consist of the attorney general, state treasurer, the superintendent and two members in active service of the department of public safety; provided, that members of said retirement board shall not be entitled to receive any compensation in addition to the salary of their respective offices for any service rendered as a member of said retirement board; provided further, the superintendent may pay out of funds appropriated for operation of said department the reasonable expenses of members of said board necessarily incurred in connection with dispatch of any business properly before such board. The two members of said department shall be elected to membership on the retirement board by vote of the members of the department of public safety; such election to be
held on the first Tuesday in June next following the passage of this act and on the first Tuesday in June each two years thereafter. The attorney general, state treasurer and the superintendent of the department of public safety shall promulgate any and all necessary rules and regulations for holding in a fair and impartial manner the election on the first Tuesday in June next following the passage of this act and thereafter the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the retirement board shall die, resign from the board, resign or be dis-
charged from service in the department, make application for retirement, be retired, or become disabled, the office of such member of the retirement board shall be declared vacant by the superintendent of said department, and said superintendent, to supply such vacancy, shall appoint the member in active service of said department who as an unsuccessful candidate at the preceding election of members to said retirement board received the greatest number of votes. No member of the retirement board shall participate in any hearing at which his own petition for retirement or the petition of any member of said department who is related to him by blood or marriage shall be presented for consideration.

At its first meeting following each election of members to the retirement board said board shall elect one of its members to serve as chairman and a second member to serve as secretary thereof. The retirement board shall have the power to make rules and regulations, not inconsistent with the provisions hereof, governing procedure and order and manner of business by and before such board. The retirement board shall have the power
to make awards and to revise and terminate awards previously made for such times and under such terms and conditions as are hereinafter provided. The votes of a majority of the five members of the board shall be necessary to decision of any matter by the board. Decisions made by the board shall be supreme and final and there shall be no appeal therefrom.

It shall be the duty of the retirement board on or before the first day of July of each year to cause all future awards from such fund to be valued and, to the extent that moneys shall be available, reserves based on sound actuarial principles for payment thereof to be carried on the funds account as a liability against the reserve fund. The board shall have authority to employ an actuary for such purpose. The board shall cause a system of accounting to be installed and maintained to reflect currently and truly all transactions or developments pertaining to age of members and eligible dependents surviving deceased members, periods of service and aggregate earnings of all members eligible to participate in said fund and any other matter relating to maintenance of
said fund or administration thereof, and each year to
cause to be made and submitted to each member of said
department a statement of the condition of said fund.

Costs and expenses incurred in making actuarial studies,
audits and installations and maintenance of such account-
ing system shall be paid by the superintendent from funds
appropriated for operation of the department of public
safety.

All moneys paid into and accumulated in said death,
disability and retirement fund, except such amounts as
shall be designated or set aside by the retirement board
for payments of death, disability and retirement bene-
fits and awards, shall be invested by the state board of
public works in bonds of the government of the United
States, the State of West Virginia, or any political sub-
division thereof selected or approved by the retirement
board.

Sec. 28. Retirement; Death, Disability and Retirement

Awards and Benefits.—(a) The retirement board shall re-
tire any member of the department of public safety when
such member
(1) Shall have attained the age of fifty-five years and shall have completed twenty-five years of service as a member of said department, or

(2) Has completed twenty-five years of service as a member of said department and shall have attained the age of fifty-five years, or

(3) Has attained the age of fifty-five years, and shall have completed twenty-five years of service as a member of said department.

(b) The retirement board shall retire any member of said department of public safety when such member shall have lodged with the secretary of the retirement board the voluntary petition in writing of such member for retirement, and

(1) Has or shall have completed not less than twenty-five years of service as a member of said department, or

(2) Has or shall have attained the age of fifty years and has or shall have completed not less than twenty years of service as a member of said department, or

(3) Being under the age of fifty years has or shall have
completed twenty years of service as a member of said department.

(c) When the retirement board shall retire any member under any of the foregoing provisions of this section, said board shall, by order in writing, make an award directing that such member shall be entitled to receive annually and that there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member while in status of retirement one or the other of two amounts, whichever shall be the greater, namely:

(1) Either an amount equal to three per cent of the aggregate of salary paid to such member during the whole period of service of such member as a member of the department of public safety; or

(2) When such period of service has or shall have been more than

(a) Twenty years but less than twenty-one years, the sum of nine hundred sixty dollars;

(b) Twenty-one years but less than twenty-two years, the sum of one thousand eight dollars;
(c) Twenty-two years but less than twenty-three years, the sum of one thousand fifty-six dollars;
(d) Twenty-three years but less than twenty-four years, the sum of one thousand one hundred four dollars;
(e) Twenty-four years but less than twenty-five years, the sum of one thousand one hundred fifty-two dollars;
(f) Twenty-five years, the sum of one thousand two hundred dollars.

It is provided, however, that when a member has or shall have served twenty years or longer but less than twenty-five years as a member of said department and shall be retired under any of the foregoing provisions before he shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date such member shall attain the age of fifty years.

(d) Any member of the department of public safety who has been or shall be commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers’ corps, has been or shall be called to active duty in said armed forces since the
first day of September, one thousand nine hundred forty,
and prior to the close of hostilities in the wars now being
waged by the United States, shall be entitled to and re-
ceive credit on the minimum period of service required
by law for retirement on retirement pay from the service
of the department of public safety for a period equal to
the full time he shall, pursuant to such commission, en-
listment, induction or call, have served with said armed
forces; provided, such member shall (1) be honorably
discharged from said armed forces, and (2) within ninety
days after honorable discharge from said armed forces
present himself to the superintendent and offer to resume
service as an active member of the department; provided
further, that no such member shall be entitled to any
credit, privilege or benefit under the provisions of this
paragraph who shall by any voluntary act on his part,
whether by reenlistment, waiver of discharge, acceptance
of commission or otherwise, extend or participate in ex-
tension of the period of service of such member with such
armed forces beyond the period of service therewith for
which such member was originally commissioned, en-
listed, inducted or called; provided also, that the amount of retirement pay to which any such member shall be entitled shall be calculated and determined as if such member had continued in the active service of the department at the rank or grade to him appertaining at the time of such commission, induction, enlistment or call, during a period coextensive with the time such member shall have served with said armed forces pursuant to such commission, induction, enlistment or call. The superintendent of said department is authorized to transfer and pay over each month into said death, disability and retirement fund from moneys that shall be appropriated for said department a sum equal to eighteen per cent of the aggregate of salary which all said members would have been entitled to receive had they continued in the active service of said department during a period coextensive with the time such members shall have served with said armed forces pursuant to said commission, induction, enlistment or call. If any member on leave of absence and while serving with the armed forces of the United States pursuant to commission, enlistment, induc-
tion or call as aforesaid shall die as a result of illness or
injury from any cause while a member of such armed
forces of the United States, all moneys which shall have
been deducted from his salary as a member of the de-
partment and deposited in the death, disability and re-
tirement fund created by section twenty-seven of this
article shall, if such member was not at the time of his
death eligible for retirement benefits under any of the pro-
visions of this act, be withdrawn from said fund and paid
over to the widow of such member, if any, and if none, to
the children of such member, and if there be no widow or
children, to the dependent parent or parents, and if there
be a widow or children or dependent parents, then the
same shall remain in the fund.

(e) Any member of said department who has been or
shall become physically or mentally permanently disabled
by injury, illness or disease resulting from any occupa-
tional risk or hazard inherent in or peculiar to the services
required of members of said department and incurred pur-
suant to or while such member was or shall be engaged in
the performance of his duties as a member of said depart-
ment shall, if, in the opinion of the retirement board, he be by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to four per cent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department. If such disability shall be total and permanent to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to
five per cent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department.

The superintendent is authorized to expend moneys from funds appropriated for the department of public safety in payment of medical, surgical, laboratory, x-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of said department who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the foregoing benefits at public expense the superintendent shall,
at the request of such disabled member, refer such matter to the retirement board for hearing and final decision.

(f) If any member while in active service of said department has or shall become permanently disabled from any cause other than those set forth in the next preceding section not due to vicious habits, intemperance or wilful misconduct on his part, such member shall, if he be not eligible for retirement under the other provisions of this article, be retired by the retirement board and shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during a period equal to one-half the time such member has served as a member of said department, a sum equal to three per cent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department.

(g) The superintendent may require any member who has been or who shall be retired with compensation on
account of disability to submit to a physical and/or men-
tal examination by a physician or physicians selected or
approved by the retirement board and cause all costs in-
cident to such examination including hospital, laboratory,
x-ray, medical and physician fees to be paid out of funds
appropriated to defray the current expense of said depart-
ment, and a report of the findings of such physician or
physicians shall be submitted in writing to the retire-
ment board for its consideration. If from such report
or from such report and hearing thereon the retirement
board shall be of opinion and find that such disabled
member shall have recovered from such disability to the
extent that he is able to perform adequately the duties
of a member of said department, the superintendent shall
order such member to reassume active duty as a member
of said department and thereupon all payments from the
death, disability and retirement fund shall be termi-
nated.

(h) A member who has been or shall be retired shall
not while in retirement status exercise any of the powers
conferred upon active members by section eleven of this
article; but shall be entitled to receive free of cost to such member and retain as his separate property one complete standard uniform prescribed by section nine of this article, provided, that such uniform may be worn by a member in retirement status only on such occasions as shall be prescribed by the superintendent. The superintendent is authorized to maintain at public expense for the benefit of all members in retirement status that group life insurance mentioned in section nine of this article. The superintendent, when he shall be of opinion that the public safety shall require, may recall to active duty during such period as the superintendent shall determine any member who shall be retired under the provisions of subsections (a), (b) or (c) of this section, provided the consent of such member to reassume duties of active membership shall first be had and obtained. When any member in retirement shall reassume status of active membership such member, during the period he shall remain in active status, shall not be entitled to receive retirement pay or benefits but in lieu thereof shall be entitled to receive that rate of salary and allowance
pertinent to the rank or grade held by such member when retired. When such member shall be released from active duty he shall reassume the status of retirement and shall thereupon be entitled to receive appropriate benefits as provided by this act; provided, the amount of such benefits shall in no event be less than the amount determined by the order of the retirement board previously made in his behalf.

(i) The widow or the children under the age of eighteen years or dependent parent or parents of any member who has lost or shall lose his life by reason of injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members while such member was or shall be engaged in the performance of his duties as a member of said department, or if said member shall die from such causes after being retired on disability, shall be entitled to receive and shall be paid from the death, disability and retirement fund benefits as follows: To the widow annually, in equal monthly installments during her lifetime or until her remarriage, an amount equal to two per cent
of the total salary which would have been earned by said 
deceased member during twenty-five years of service in 
said department based on his average earnings while 
employed as a member of said department. In addition 
thereto such widow shall be entitled to receive and there 
shall be paid to her five dollars monthly for each child 
until such child shall attain the age of eighteen years. 
If such widow shall die or remarry or if there be no 
widow there shall be paid monthly to such child or chil-
dren from said death, disability and retirement fund the 
sum of fifteen dollars each until such child or children 
shall respectively attain the age of eighteen years. If 
there be no widow and no child or children, there shall 
be paid annually in equal monthly installments from said 
death, disability and retirement fund to the dependent 
parents of said deceased member during their joint life-
times a sum equal to the amount which a widow, without 
children, would have received, provided, that when there 
shall be but one dependent parent surviving, such parent 
shall be entitled to receive during his or her lifetime one-
273 half the amount which both parents, if living, would have
274 been entitled to receive.
275 (j) In any case where a member while in active service
276 of said department, before becoming eligible for retire-
277 ment under the provisions of subsections (a), (b) or (c)
278 of this section, has died or shall die from any other cause
279 not due to vicious habits, intemperance or wilful mis-
280 conduct on his part, there shall be paid annually in
281 equal monthly installments from said death, disability
282 and retirement fund to the widow of such member during
283 a period equal to one-half the time such member served
284 as a member of said department, or until the time during
285 such period said widow shall remarry, a sum equal to
286 one and one-half per cent of the total salary which
287 would have been earned by him during twenty-five years
288 of service in said department based on his average earn-
289 ings while employed as a member of said department.
290 If there be no widow or during the period aforesaid such
291 widow shall remarry there shall be paid from said fund
292 to each child of said deceased member the sum of fifteen
293 dollars monthly until such child or children respectively
shall attain the age of eighteen years. If there be no widow and no child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a widow would have been entitled to receive, provided, when there shall be but one dependent parent surviving then such dependent parent shall be entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(k) When a member of said department shall die after having been retired by the retirement board under the provisions of subsections (a), (b) or (c) of this section, there shall be paid annually in equal monthly installments from said fund to the widow of said member, during her lifetime or until her remarriage, an amount equal to one-half the retirement benefits said deceased member was receiving or was entitled to receive at the time of his death; and in addition thereto said widow shall be entitled to and there shall be paid to her from said fund the sum of five dollars monthly for each child
under the age of eighteen years until such child or children respectively shall attain the age of eighteen years; provided, that no widow of any member who shall die after having been retired by the retirement board shall be entitled to receive any benefits under the terms of this paragraph unless such widow shall have been married to such member during at least one full year prior to the date such member shall have been retired by the retirement board and, provided further, that a child born to said dependent wife after such member was placed on retirement shall not be entitled to any benefits nor shall such dependent wife be entitled to receive benefits for such child. If such widow shall not be entitled to benefits or shall die or remarry, or if there be no widow there shall be paid monthly from said fund to each child under the age of eighteen years of said deceased member the sum of fifteen dollars until such child or children respectively attain the age of eighteen years. If there be no widow or no widow eligible to receive benefits and no child or children there shall be paid annually in equal monthly installments from said fund to the dependent par-
ents of said deceased member during their joint lifetimes a
sum equal to the amount which a widow without children
would have been entitled to receive; provided, that when
there shall be but one dependent parent surviving such
parent shall be entitled to receive during his or her life-
time one-half the amount which both parents, if living,
would have been entitled to receive.

(1) When any widow of a member shall die or remarry
while receiving or being entitled to receive any benefits
under this act, such widow shall not from the date of such
remarriage, nor shall her estate from the date of her
death, be entitled to receive any benefits hereunder what-
soever; provided, that in any case where under the
terms of this act benefits are provided for a child or
children surviving the death or remarriage of such widow,
payment of such benefits to such child or children shall
be calculated for payment from the date such widow shall
die or remarry.

(m) Any member who shall be discharged by order of
the superintendent after such member has or shall have
served two full years or more as a member of said depart-
ment shall, at request of such member, be entitled to receive from said fund a sum equal to the aggregate of the principal amount of moneys deducted from his salary and paid into said death, disability and retirement fund as provided and required by section twenty-seven of this article; provided, that the superintendent shall forthwith refund to any member that has or shall have served more than two but less than twenty years as a member of said department and has resigned or shall resign or that has been or shall be discharged from the service for cause in accordance with recommendation of a majority of a board of five officers of the department, a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of such member and paid into said fund as aforesaid; provided further, if any such refund shall be made to any member such member shall not be entitled to any benefits provided by this act, and should any such member thereafter be again enlisted as a member of said department no credit on any period of service required of a member as a condition of retirement shall be allowed to such member on account of
ment shall, at request of such member, be entitled to receive from said fund a sum equal to the aggregate of the principal amount of moneys deducted from his salary and paid into said death, disability and retirement fund as provided and required by section twenty-seven of this article; provided, that the superintendent shall forthwith refund to any member that has or shall have served more than two but less than twenty years as a member of said department and has resigned or shall resign or that has been or shall be discharged from the service for cause in accordance with recommendation of a majority of a board of five officers of the department, a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of such member and paid into said fund as aforesaid; provided further, if any such refund shall be made to any member such member shall not be entitled to any benefits provided by this act, and should any such member thereafter be again enlisted as a member of said department no credit on any period of service required of a member as a condition of retirement shall be allowed to such member on account of
such former service; provided also, that when any member
has or shall have served as a member of said department
during twenty years or longer and shall, in the opinion of
the superintendent, become unfit for any reason for fur-
ther active service such member shall, in lieu of being
discharged, be retired by the retirement board under
the provision or provisions of this act most favorable to
such member.

(n) If any member while in active status shall die
after having served two full years or longer as a member
of said department and the retirement board shall be of
opinion after hearing thereon that the dependent or de-
pendents of said member are ineligible under the provi-
sions of this article to receive any of the benefits pro-
vided herein, the superintendent shall refund to the
widow, if surviving, but if not surviving, to the children of
such member, and if there be no widow or children, to the
dependent parents, a sum equal to the aggregate of the
principal amount of all moneys deducted from the salary
of such member and paid into said fund as aforesaid, and
if there be no widow or children or dependent parent or
399 parents, then the same shall remain in the fund. Whenever any such refund shall be made the widow or other dependents of such deceased member shall not be entitled to any other rights or benefits on account of said fund under the provisions of this act.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles O. Morris
Chairman Senate Committee

Jadlinsky
Chairman House Committee

Originated in the House

Takes effect June 1st, 1945

Howard Nye
Clerk of the Senate

Clerk of the House of Delegates

Donald W. Tucker
President of the Senate

John E. Como
Speaker House of Delegates

The within approv'd this the 8th day of March, 1945.

Governor.

Filed in the office of the Secretary of State of West Virginia MAR 8 1945

Wm. S. O'Brien, Secretary of State