WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 237

(By Mr. Jackson, Of Logan)

by request

PASSED March 8, 1947

In Effect from Passage
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AN ACT to amend and reenact section twenty-eight, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred forty-five, and to add to said article sections twenty-eight-a to twenty-eight-k, inclusive, relating to retirement, and to death, disability and retirement awards and benefits for members of the department of public safety and former members of said department and dependent members of their families and to authorize the retirement board to control and disburse retirement funds for such purpose.

Be it enacted by the Legislature of West Virginia:

That section 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 and that sections twenty-eight-a to twenty-eight-k, inclusive, be added to said article, all to read as follows:

**Article 2. Department of Public Safety.**

Section 28. *Retirement; Awards and Benefits.* — (a)

2 The retirement board shall retire any member of the department of public safety when such member

4 (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

7 (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

10 (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 percent of the aggregate of salary paid to such member during the whole period of service 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 provisions of this section 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
Sec. 28-a. Credit on Service Required for Retirement to be Allowed Members for Time Served in Armed Forces in World War II.—Any member of the department of public safety who has been commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, has been 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 World War II, shall be entitled to and receive 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 has or shall, pursuant to such commission, enlistment, induction or call, have served with said armed forces: Provided, such member has been or shall (1) be honorably discharged from said armed forces, and (2) within ninety days after honorable discharge from said armed forces shall present himself to the superintendent and offer to resume service as an active member of the department: Provided, however,
That no such member shall be entitled to any credit, privilege or benefit under the provisions of this section who shall by any voluntary act on his part, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, extend or participate in extension 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, enlisted, inducted or called: Provided, Further, 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 co-extensive 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, induction 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 department and deposited in the death, disability and retirement 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 provisions of this article, 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 no widow or children or dependent par-
ents, then the same shall remain in the fund.

Sec. 28-B. Disability Incurred in Performance of Duty; Awards and Benefits.—Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services 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 shall, if, in the opinion of the retirement board, he is 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 permanent and total 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 depart-
ment 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 aforesaid 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.

Sec. 28-C. Disability From Other Causes; Awards and Benefits.—If any member while in active service of said department has or shall, in the opinion of the retirement board, become permanently disabled to the extent that such member cannot adequately perform the duties required of a member of the department from any cause other than those set forth in the next preceding section and not due to vicious habits, intemperance or wilful misconduct on his part, such member shall be retired
by the retirement board and, if such member at the time of such retirement under this section, shall have served less than twenty years as a member of said department, such member shall be entitled to receive annually and there shall be paid to such member, while in status of retirement, 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; but if such member, at the time of such retirement under the terms of this section, shall have served twenty years or longer as a member of said department, 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, commencing on the date such member shall be retired and continuing during the natural lifetime of such member while in status of retirement, one or the
other of the two amounts, based upon either the aggregate of salary paid to such member during the whole period of service of such member or the period of twenty years or longer during which such member at the time of such retirement has, or shall have served as a member of said department, whichever shall be the greater, to be determined in the manner provided by paragraphs (1) and (2) of subsection (c) of section twenty-eight of this article.

Sec. 28-D. Physical Examinations; Recall to Active Duty; Termination of Disability Awards.—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 mental examination by a physician or physicians selected or approved by the retirement board and cause all costs incident to such examination including hospital, laboratory, x-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expense of said department, and a report of the findings of such physician or physicians shall be submitted in writing to the retirement 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 terminated.

Sec. 28-E. Retired Member Not to Exercise Police
Authority; Retention of Group Insurance.—A member
who has been or shall be retired shall not while in re-
tirement 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; Pro-
vided, That such uniform may be worn by a member in
retirement status only on such occasions as shall be pre-
scribed 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 section twenty-eight of this article, 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 article; 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.
Sec. 28-F. Death of Member in Performance of Duty; Dependents; Awards and Benefits.—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 any cause after having been retired pursuant to the provisions of section twenty-eight (B) of this article, 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 ten 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 children from the death, dis-
ability and retirement fund the sum of twenty dollars
each until such child or children shall respectively at-
tain 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 re-
tirement fund to the dependent parents of said deceased
member during their joint lifetimes a sum equal to the
amount which a widow, without children, would have
received, Provided, That when there shall be but one de-
pendent parent surviving, such 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.

Sec. 28-G. Death of Member From Non-Service Con-
nected Causes; Dependents; Awards and Benefits.—In any
case where a member while in active service of said de-
partment, before having completed twenty years of serv-
ice as a member of said department, has died or shall die
from any cause other than those specified in section
twenty-eight (f) of this article and not due to vicious
habits, intemperance or wilful misconduct on his part,
there shall be paid annually in equal monthly installments
from said death, disability and retirement fund to the
widow of such member during a period equal to one-half
the time such member served as a member of said depart-
ment, or until the time during such period said widow
shall remarry, a sum equal to one and one-half 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 mem-
ber of said department. If there be no widow or during
the period aforesaid such widow shall remarry there
shall be paid from said fund to each child of said deceased
member the sum of twenty dollars monthly until such
child or children respectively shall attain the age of
eighteen years. If there be no widow and no child or child-
en there shall be paid annually in equal monthly install-
ments 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 depend-
ent 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.

Sec. 28-H. Death of Member After Retirement, or Af-
ter Serving Twenty Years—Dependents; Awards and
Benefits.—When any member of said department has here-
tofore completed or hereafter shall complete twenty
years of service or longer as a member of said department
and has died or shall die from any cause or causes other
than those specified in section twenty-eight (B) of this ar-
ticle before having been retired by the retirement board,
and when a member in retirement status has died or shall
die after having been retired by the retirement board un-
der the provisions of section twenty-eight of this article,
there shall be paid annually in equal monthly installments
from said fund to the widow of said member, commencing
on the date of the death of said member and continuing
during her lifetime or until her remarriage an amount
equal to one-half the retirement benefits said deceased
member was receiving while in status of retirement, or
would have been entitled to receive to the same effect as
if such member had been retired under the provisions of
section twenty-eight of this article immediately prior to
the time of his death; and in addition thereto said widow
shall be entitled to receive and there shall be paid to her
from said fund the sum of ten 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 section unless such widow shall have been mar-
rried 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 twenty 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 parents 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.

Sec. 28-I. Termination of Benefits for Dependents.--

When any widow of a member shall die or remarry while
receiving or being entitled to receive any benefits under
this article, 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 whatsoever; Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of such widow, payment of such benefits to such child or children shall be calculated for payment from the date such widow shall die or remarry.

Sec. 28-J. Discharge or Resignation of Members; Refunds to Members.—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 department shall, at the 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 shall refund shall be made to any member such member shall not be entitled to any benefits provided by this article, and should any such member thereafter be again enlisted as a member of said department no credit or 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, unless following such re-enlistment such member shall redeposit in said fund the amount of the refund, together with interest thereon at the rate of four per cent per annum from the date of withdrawal to the date of redeposit, in which case he shall receive the same credit on account of his former service as if no refund had been made; 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 further active service such member shall, in lieu of being discharged, be retired by the retirement board under the provision or provisions of this article most favorable to such member.

Sec. 28-K. Death of Member Not Eligible for Benefits:

Refund to Dependents.—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 dependents of said member are ineligible under the provisions of this article to receive any of the benefits provided 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 parents, then the same shall remain in the fund. Whenever any such refund shall be made the widow or other dependents of such deceased
18 member shall not be entitled to any other rights or bene-
19 fits on account of said fund under the provisions of this
20 article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. Allan  
Chairman Senate Committee

R.L. Matthews  
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Meyers  
Clerk of the Senate

Joseph  
Clerk of the House of Delegates

Arnold F. Vickers  
President of the Senate

John E. Almos  
Speaker House of Delegates

The within approved this the 13 day of Mar, 1947.

Conceg Madison  
Governor.

Filed in the Office of the Secretary of State of West Virginia  
WM. S. O'Brien,  
Secretary of State