

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



237

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Senate Bill No. 237

(By MR. JACKSON, of Logan, by request)

[Passed March 8, 1947; in effect from passage.]

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
3 department of public safety when such member

4 (1) Shall have attained the age of fifty-five years and
5 shall have completed twenty-five years of service as a
6 member of said department, or

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

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

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

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

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

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

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

35 (1) Either an amount equal to three percent of the
36 aggregate of salary paid to such member during the
37 whole period of service as a member of the department
38 of public safety; or

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

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

43 (b) Twenty-one years but less than twenty-two years,
44 the sum of one thousand eight dollars;

45 (c) Twenty-two years but less than twenty-three
46 years, the sum of one thousand fifty-six dollars;

47 (d) Twenty-three years but less than twenty-four
48 years, the sum of one thousand one hundred four dollars.

49 (e) Twenty-four years but less than twenty-five years,
50 the sum of one thousand one hundred fifty-two dollars;

51 (f) Twenty-five years, the sum of one thousand two
52 hundred dollars.

53 It is provided, however, that when a member has or
54 shall have served twenty years or longer but less than
55 twenty-five years as a member of said department and
56 shall be retired under any of the provisions of this sec-
57 tion before he shall have attained the age of fifty years,
58 payment of monthly installments of the amount of re-
59 tirement award to such member shall commence on the

60 date such member shall attain the age of fifty years.

Sec. 28-a. *Credit on Service Required for Retirement*
2 *to be Allowed Members for Time Served in Armed Forces*
3 *in World War II.*—Any member of the department of
4 public safety who has been commissioned, enlisted or
5 inducted into the armed forces of the United States or,
6 being a member of the reserve officers' corps, has been
7 called to active duty in said armed forces since the first
8 day of September, one thousand nine hundred forty, and
9 prior to the close of hostilities in World War II, shall be
10 entitled to and receive credit on the minimum period of
11 service required by law for retirement on retirement pay
12 from the service of the department of public safety for
13 a period equal to the full time he has or shall, pursuant
14 to such commission, enlistment, induction or call, have
15 served with said armed forces: *Provided*, such member
16 has been or shall (1) be honorably discharged from said
17 armed forces, and (2) within ninety days after honorable
18 discharge from said armed forces shall present himself
19 to the superintendent and offer to resume service as an
20 active member of the department: *Provided, however*,

21 That no such member shall be entitled to any credit,
22 privilege or benefit under the provisions of this section
23 who shall by any voluntary act on his part, whether by
24 reenlistment, waiver of discharge, acceptance of com-
25 mission or otherwise, extend or participate in extension
26 of the period of service of such member with such armed
27 forces beyond the period of service therewith for which
28 such member was originally commissioned, enlisted, in-
29 ducted or called: *Provided, Further,* That the amount
30 of retirement pay to which any such member shall be
31 entitled shall be calculated and determined as if such
32 member had continued in the active service of the de-
33 partment at the rank or grade to him appertaining at the
34 time of such commission, induction, enlistment or call,
35 during a period coextensive with the time such member
36 shall have served with said armed forces pursuant to such
37 commission, induction, enlistment or call. The superin-
38 tendent of said department is authorized to transfer and
39 pay over each month into said death, disability and re-
40 tirement fund from moneys that shall be appropriated
41 for said department a sum equal to eighteen per cent

42 of the aggregate of salary which all said members would
43 have been entitled to receive had they continued in the
44 active service of said department during a period co-
45 extensive with the time such members shall have served
46 with said armed forces pursuant to said commission, in-
47 duction, enlistment or call. If any member on leave of
48 absence and while serving with the armed forces of the
49 United States pursuant to commission, enlistment, in-
50 duction or call as aforesaid shall die as a result of illness
51 or injury from any cause while a member of such armed
52 forces of the United States, all moneys which shall have
53 been deducted from his salary as a member of the de-
54 partment and deposited in the death, disability and re-
55 tirement fund created by section twenty-seven of this
56 article shall, if such member was not at the time of his
57 death eligible for retirement benefits under any of the
58 provisions of this article, be withdrawn from said fund
59 and paid over to the widow of such member, if any, and
60 if none, to the children of such member, and if there be
61 no widow or children, to the dependent parent or parents,
62 and if there be no widow or children or dependent par-

63 ents, then the same shall remain in the fund.

Sec. 28-B. *Disability Incurred in Performance of Duty;*
2 *Awards and Benefits.*—Any member of said department
3 who has been or shall become physically or mentally
4 permanently disabled by injury, illness or disease result-
5 ing from any occupational risk or hazard inherent in or
6 peculiar to the services required of members of said de-
7 partment and incurred pursuant to or while such mem-
8 ber was or shall be engaged in the performance of his
9 duties as a member of said department shall, if, in the
10 opinion of the retirement board, he is by reason of such
11 cause unable to perform adequately the duties required
12 of him as a member of said department, be retired from
13 active service by the retirement board and thereafter
14 such member shall be entitled to receive annually and
15 there shall be paid to such member from the death, dis-
16 ability and retirement fund in equal monthly install-
17 ments during the natural lifetime of such member or
18 until such disability shall sooner terminate, an amount
19 equal to four per cent of the total salary which would
20 have been earned by him during twenty-five years of

21 service in said department based on his average earnings
22 while employed as a member of said department. If such
23 disability shall be permanent and total to the extent that
24 such member is or shall be incapacitated ever to engage
25 in any gainful employment, such member shall be en-
26 titled to receive annually and there shall be paid to such
27 member from the death, disability and retirement fund
28 in equal monthly installments during the natural life-
29 time of such member or until such disability shall sooner
30 terminate, an amount equal to five per cent of the total
31 salary which would have been earned by him during
32 twenty-five years of service in said department based on
33 his average earnings while employed as a member of said
34 department.

35 The superintendent is authorized to expend moneys
36 from funds appropriated for the department of public
37 safety in payment of medical, surgical, laboratory, x-ray,
38 hospital, ambulance and dental expenses and fees, and
39 reasonable costs and expenses incurred in purchase of
40 artificial limbs and other approved appliances which may
41 be reasonably necessary for any member of said depart-

42 ment who has or shall become temporarily, permanently
43 or totally disabled by injury, illness or disease resulting
44 from any occupational risk or hazard inherent in or
45 peculiar to the service required of members of said de-
46 partment and incurred pursuant to or while such mem-
47 ber was or shall be engaged in the performance of his
48 duties as a member of said department. Whenever the
49 superintendent shall determine that any disabled mem-
50 ber is ineligible to receive any of the aforesaid benefits
51 at public expense the superintendent shall, at the request
52 of such disabled member, refer such matter to the retire-
53 ment board for hearing and final decision.

Sec. 28-C. *Disability From Other Causes; Awards and*
2 *Benefits.*—If any member while in active service of said
3 department has or shall, in the opinion of the retirement
4 board, become permanently disabled to the extent that
5 such member cannot adequately perform the duties re-
6 quired of a member of the department from any cause
7 other than those set forth in the next preceding section
8 and not due to vicious habits, intemperance or wilful
9 misconduct on his part, such member shall be retired

10 by the retirement board and, if such member at the time
11 of such retirement under this section, shall have served
12 less than twenty years as a member of said department,
13 such member shall be entitled to receive annually and
14 there shall be paid to such member, while in status of
15 retirement, from the death, disability and retirement
16 fund in equal monthly installments during a period equal
17 to one-half the time such member has served as a member
18 of said department, a sum equal to three per cent of the
19 total salary which would have been earned by him dur-
20 ing twenty-five years of service in said department based
21 on his average earnings while employed as a member of
22 said department; but if such member, at the time of such
23 retirement under the terms of this section, shall have
24 served twenty years or longer as a member of said de-
25 partment, such member shall be entitled to receive an-
26 nually and there shall be paid to such member from the
27 death, disability and retirement fund in equal monthly
28 installments, commencing on the date such member shall
29 be retired and continuing during the natural lifetime of
30 such member while in status of retirement, one or the

31 other of the two amounts, based upon either the aggre-
32 gate of salary paid to such member during the whole per-
33 iod of service of such member or the period of twenty
34 years or longer during which such member at the time
35 of such retirement has, or shall have served as a member
36 of said department, whichever shall be the greater, to be
37 determined in the manner provided by paragraphs (1)
38 and (2) of subsection (c) of section twenty-eight of this
39 article.

Sec. 28-D. *Physical Examinations; Recall to Active*
2 *Duty; Termination of Disability Awards.*—The superin-
3 tendent may require any member who has been or who
4 shall be retired with compensation on account of disability
5 to submit to a physical and/or mental examination by a
6 physician or physicians selected or approved by the re-
7 tirement board and cause all costs incident to such exam-
8 ination including hospital, laboratory, x-ray, medical and
9 physicians' fees to be paid out of funds appropriated to
10 defray the current expense of said department, and a
11 report of the findings of such physician or physicians shall
12 be submitted in writing to the retirement board for its

13 consideration. If from such report or from such report
14 and hearing thereon the retirement board shall be of
15 opinion and find that such disabled member shall have
16 recovered from such disability to the extent that he is
17 able to perform adequately the duties of a member of said
18 department, the superintendent shall order such member
19 to reassume active duty as a member of said department
20 and thereupon all payments from the death, disability
21 and retirement fund shall be terminated.

Sec. 28-E. *Retired Member Not to Exercise Police*
2 *Authority; Retention of Group Insurance.*—A member
3 who has been or shall be retired shall not while in re-
4 tirement status exercise any of the powers conferred upon
5 active members by section eleven of this article; but shall
6 be entitled to receive free of cost to such member and
7 retain as his separate property one complete standard
8 uniform prescribed by section nine of this article; *Pro-*
9 *vided,* That such uniform may be worn by a member in
10 retirement status only on such occasions as shall be pre-
11 scribed by the superintendent. The superintendent is
12 authorized to maintain at public expense for the benefit

13 of all members in retirement status that group life insur-
14 ance mentioned in section nine of this article. The super-
15 intendent, when he shall be of opinion that the public
16 safety shall require, may recall to active duty during
17 such period as the superintendent shall determine any
18 member who shall be retired under the provisions of sec-
19 tion twenty-eight of this article, provided the consent of
20 such member to reassume duties of active membership
21 shall first be had and obtained. When any member in re-
22 tirement shall reassume status of active membership such
23 member, during the period he shall remain in active status,
24 shall not be entitled to receive retirement pay or benefits
25 but in lieu thereof shall be entitled to receive that rate of
26 salary and allowance pertinent to the rank or grade held
27 by such member when retired. When such member shall
28 be released from active duty he shall reassume the status
29 of retirement and shall thereupon be entitled to receive
30 appropriate benefits as provided by this article; *Provided,*
31 The amount of such benefits shall in no event be less than
32 the amount determined by the order of the retirement
33 board previously made in his behalf.

Sec. 28-F. *Death of Member in Performance of Duty;*

2 *Dependents; Awards and Benefits.*—The widow or the
3 children under the age of eighteen years or dependent
4 parent or parents of any member who has lost or shall
5 lose his life by reason of injury, illness or disease result-
6 ing from any occupational risk or hazard inherent in or
7 peculiar to the service required of members while such
8 member was or shall be engaged in the performance of
9 his duties as a member of said department, or if said
10 member shall die from any cause after having been re-
11 tired pursuant to the provisions of section twenty-eight
12 (B) of this article, shall be entitled to receive and shall
13 be paid from the death, disability and retirement fund
14 benefits as follows: To the widow annually, in equal
15 monthly installments during her lifetime or until her re-
16 marriage, an amount equal to two per cent of the total
17 salary which would have been earned by said deceased
18 member during twenty-five years of service in said de-
19 partment based on his average earnings while employed
20 as a member of said department. In addition thereto such
21 widow shall be entitled to receive and there shall be paid

22 to her ten dollars monthly for each child until such child
23 shall attain the age of eighteen years. If such widow shall
24 die or remarry or if there be no widow there shall be paid
25 monthly to such child or children from the death, dis-
26 ability and retirement fund the sum of twenty dollars
27 each until such child or children shall respectively at-
28 tain the age of eighteen years. If there be no widow and
29 no child or children, there shall be paid annually in equal
30 monthly installments from said death, disability and re-
31 tirement fund to the dependent parents of said deceased
32 member during their joint lifetimes a sum equal to the
33 amount which a widow, without children, would have
34 received, *Provided*, That when there shall be but one de-
35 pendent parent surviving, such parent shall be entitled
36 to receive during his or her lifetime one-half the amount
37 which both parents, if living, would have been entitled to
38 receive.

Sec. 28-G. *Death of Member From Non-Service Con-*
2 *nected Causes; Dependents; Awards and Benefits.*—In any
3 case where a member while in active service of said de-
4 partment, before having completed twenty years of serv-

5 ice as a member of said department, has died or shall die
6 from any cause other than those specified in section
7 twenty-eight (f) of this article and not due to vicious
8 habits, intemperance or wilful misconduct on his part,
9 there shall be paid annually in equal monthly installments
10 from said death, disability and retirement fund to the
11 widow of such member during a period equal to one-half
12 the time such member served as a member of said depart-
13 ment, or until the time during such period said widow
14 shall remarry, a sum equal to one and one-half per cent
15 of the total salary which would have been earned by him
16 during twenty-five years of service in said department
17 based on his average earnings while employed as a mem-
18 ber of said department. If there be no widow or during
19 the period aforesaid such widow shall remarry there
20 shall be paid from said fund to each child of said deceased
21 member the sum of twenty dollars monthly until such
22 child or children respectively shall attain the age of
23 eighteen years. If there be no widow and no child or child-
24 ren there shall be paid annually in equal monthly install-
25 ments from said fund to the dependent parents of said

26 deceased member during their joint lifetimes a sum equal
27 to the amount which a widow would have been entitled
28 to receive, provided, when there shall be but one depend-
29 ent parent surviving then such dependent parent shall
30 be entitled to receive during his or her lifetime one-half
31 the amount which both parents, if living, would have
32 been entitled to receive.

Sec. 28-H. *Death of Member After Retirement, or Af-*
2 *ter Serving Twenty Years—Dependents; Awards and*
3 *Benefits.*—When any member of said department has here-
4 tofore completed or hereafter shall complete twenty
5 years of service or longer as a member of said department
6 and has died or shall die from any cause or causes other
7 than those specified in section twenty-eight (B) of this ar-
8 ticle before having been retired by the retirement board,
9 and when a member in retirement status has died or shall
10 die after having been retired by the retirement board un-
11 der the provisions of section twenty-eight of this article,
12 there shall be paid annually in equal monthly installments
13 from said fund to the widow of said member, commencing
14 on the date of the death of said member and continuing

15 during her lifetime or until her remarriage an amount
16 equal to one-half the retirement benefits said deceased
17 member was receiving while in status of retirement, or
18 would have been entitled to receive to the same effect as
19 if such member had been retired under the provisions of
20 section twenty-eight of this article immediately prior to
21 the time of his death; and in addition thereto said widow
22 shall be entitled to receive and there shall be paid to her
23 from said fund the sum of ten dollars monthly for each
24 child under the age of eighteen years until such child or
25 children respectively shall attain the age of eighteen
26 years; *Provided*, That no widow of any member who shall
27 die after having been retired by the retirement board
28 shall be entitled to receive any benefits under the terms
29 of this section unless such widow shall have been mar-
30 ried to such member during at least one full year prior
31 to the date such member shall have been retired by the
32 retirement board and; *Provided further*, That a child born
33 to said dependent wife after such member was placed on
34 retirement shall not be entitled to any benefits nor shall
35 such dependent wife be entitled to receive benefits for

36 such child. If such widow shall not be entitled to benefits
37 or shall die or remarry, or if there be no widow there shall
38 be paid monthly from said fund to each child under the
39 age of eighteen years of said deceased member the sum
40 of twenty dollars until such child or children respectively
41 attain the age of eighteen years. If there be no widow or
42 no widow eligible to receive benefits and no child or
43 children there shall be paid annually in equal monthly
44 installments from said fund to the dependent parents of
45 said deceased member during their joint lifetimes a sum
46 equal to the amount which a widow without children
47 would have been entitled to receive; *Provided*, That when
48 there shall be but one dependent parent surviving such
49 parent shall be entitled to receive during his or her life-
50 time one-half the amount which both parents, if living,
51 would have been entitled to receive.

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

2 When any widow of a member shall die or remarry while
3 receiving or being entitled to receive any benefits under
4 this article, such widow shall not from the date of such
5 remarriage, nor shall her estate from the date of her

6 death, be entitled to receive any benefits hereunder what-
7 soever; *Provided*, That in any case where under the terms
8 of this article benefits are provided for a child or children
9 surviving the death or remarriage of such widow, pay-
10 ment of such benefits to such child or children shall be
11 calculated for payment from the date such widow shall
12 die or remarry.

Sec. 28-J. *Discharge or Resignation of Members; Re-*
2 *funds to Members.*—Any member who shall be discharged
3 by order of the superintendent after such member has or
4 shall have served two full years or more as a member of
5 said department shall, at the request of such member,
6 be entitled to receive from said fund a sum equal to the
7 aggregate of the principal amount of moneys deducted
8 from his salary and paid into said death, disability and
9 retirement fund as provided and required by section
10 twenty-seven of this article; *Provided*, That the superin-
11 tendent shall forthwith refund to any member that has
12 or shall have served more than two but less than twenty
13 years as a member of said department and has resigned
14 or shall resign or that has been or shall be discharged

15 from the service for cause in accordance with recommen-
16 dation of a majority of a board of five officers of the depart-
17 ment, a sum equal to the aggregate of the principal amount
18 of all moneys deducted from the salary of such member
19 and paid into said fund as aforesaid; *Provided further*, If
20 any such shall refund shall be made to any member such
21 member shall not be entitled to any benefits provided by
22 this article, and should any such member thereafter be
23 again enlisted as a member of said department no credit or
24 any period of service required of a member as a condition
25 of retirement shall be allowed to such member on account
26 of such former service, unless following such re-enlist-
27 ment such member shall redeposit in said fund the am-
28 ount of the refund, together with interest thereon at the
29 rate of four per cent per annum from the date of with-
30 drawal to the date of redeposit, in which case he shall re-
31 ceive the same credit on account of his former service as
32 if no refund had been made; *Provided also*, That when
33 any member has or shall have served as a member of said
34 department during twenty years or longer and shall, in
35 the opinion of the superintendent, become unfit for any

36 reason for further active service such member shall, in
37 lieu of being discharged, be retired by the retirement
38 board under the provision or provisions of this article
39 most favorable to such member.

Sec. 28-K. *Death of Member Not Eligible for Benefits;*
2 *Refund to Dependents.*—If any member while in active
3 status shall die after having served two full years or lon-
4 ger as a member of said department and the retirement
5 board shall be of opinion after hearing thereon that the
6 dependent or dependents of said member are ineligible
7 under the provisions of this article to receive any of the
8 benefits provided herein, the superintendent shall refund
9 to the widow, if surviving, but if not surviving, to the
10 children of such member, and if there be no widow or
11 children, to the dependent parents, a sum equal to the
12 aggregate of the principal amount of all moneys deduct-
13 ed from the salary of such member and paid into said
14 fund as aforesaid, and if there be no widow or children
15 or dependent parent or parents, then the same shall re-
16 main in the fund. Whenever any such refund shall be
17 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. Miller

Chairman Senate Committee

R. L. Matthews

Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Meyer
Clerk of the Senate

J. J. Jupp
Clerk of the House of Delegates

Arnold M. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

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

Bascom Meade
Governor.



Filed in the Office of the Secretary of State
of West Virginia MAR 13 1947
WM. S. O'BRIEN,
SECRETARY OF STATE