

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

HOUSE BILL No. 777

(By Mr. Speaker, Mr. White, and
Mr. Bowling)



PASSED March 8, 1965

In Effect Ninety days from Passage



FILED IN THE OFFICE OF
JOE F. BURNETT
SECRETARY OF STATE
THIS DATE 3-16-65

777

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House Bill No. 777

(By MR. SPEAKER, MR. WHITE, and MR. BOWLING)

[Passed March 8, 1965; in effect ninety days from passage.]

AN ACT to amend and reenact sections twenty-seven, twenty-eight, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, and twenty-eight-h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a retirement, awards and benefit system for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-seven, twenty-eight, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g and twenty-eight-h, article two, chapter fifteen of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted so as to read as follows:

Section 27. Death, Disability and Retirement Fund;
2 Fees to Which Members Entitled for Benefit of Fund;
3 Retirement Board.—There shall be continued the death,
4 disability and retirement fund heretofore created for the
5 benefit of members of the department of public safety,
6 and any dependent of a retired or deceased member
7 thereof. Into such fund shall be paid such amounts as
8 have heretofore been collected by the superintendent of
9 the department of public safety on account of fees for
10 arrest, court attendance and mileage, seizures, rewards,
11 or from any other source permitted by law. For official
12 services rendered in any criminal case, a member of the
13 department of public safety shall be entitled to receive
14 the same fees as a constable is entitled to receive for the
15 same services pursuant to section twelve, article seven-
16 teen, chapter fifty of this code, when such fees are actu-
17 ally paid by or for the defendant in such criminal case,
18 pursuant to the order made and entered therein, to the
19 justice of the peace, the clerk of the court, or other officer

20 for the services of such member: *Provided*, That (1) such
21 fees may be claimed and received by the member only for
22 the account of said department; (2) all fees collected by
23 a member pursuant to this section shall in every instance
24 be remitted by such member to the superintendent of
25 said department and deposited in the state treasury to
26 the credit of said death, disability and retirement fund;
27 and, (3) the superintendent of said department shall
28 promulgate regulations to assure disposition, in the man-
29 ner herein provided, of all fees received by members pur-
30 suant to this section: *Provided, however*, That under no
31 circumstances shall any member of the department of
32 public safety be entitled to any mileage fees for services
33 rendered in criminal cases and under no circumstances
34 shall any county court or municipal corporation be re-
35 quired to pay any fees or costs which the county court
36 would be required to pay were the services rendered by
37 a constable. There shall be paid into said death, disabil-
38 ity and retirement fund all amounts arising in the future
39 from the above-named sources and any other sources
40 that may be designated by the superintendent of said

41 department and permitted by law, except that no part
42 of any fine shall be paid into said death, disability and
43 retirement fund.

44 There shall be deducted from the monthly payroll of
45 each member of the department of public safety and paid
46 into such fund six per cent of the amount of his salary,
47 and an additional twelve per cent of the monthly salary
48 of each member of said department shall be paid by the
49 state of West Virginia monthly into such fund out of the
50 biennial appropriation for said department. All moneys
51 payable into such fund shall be deposited in the state
52 treasury, and the treasurer and auditor shall keep a sep-
53 arate account thereof on their respective books.

54 The moneys in this fund, and the right of a member to
55 a retirement allowance, to the return of contributions, or
56 to any benefit under the provisions of this article, are
57 hereby exempt from any state or municipal tax; shall not
58 be subject to execution, garnishment, attachment or any
59 other process whatsoever; and shall be unassignable ex-
60 cept as is provided in this article.

61 The death, disability and retirement fund shall be ad-

62 ministered by a retirement board which shall consist of
63 the attorney general, state treasurer, the superintendent
64 and two members in active service of the department of
65 public safety: *Provided*, That members of said retirement
66 board shall not be entitled to receive any compensation
67 in addition to the salary of their respective offices for any
68 service rendered as a member of said retirement board:
69 *Provided further*, That the superintendent may pay out
70 of funds appropriated for operation of said department
71 the reasonable expenses of members of said board neces-
72 sarily incurred in connection with dispatch of any busi-
73 ness properly before such board. The two members of
74 said department shall be elected to membership on the
75 retirement board by vote of the members of the depart-
76 ment of public safety; such election to be held on the first
77 Tuesday in June next following the passage of this act
78 and on the first Tuesday in June two years thereafter.
79 The attorney general, state treasurer and the superin-
80 tendent of the department of public safety shall promul-
81 gate any and all necessary rules and regulations for hold-
82 ing in a fair and impartial manner the election on the

83 first Tuesday in June next following the passage of this
84 act and thereafter the retirement board consisting of the
85 attorney general, state treasurer, superintendent and the
86 two duly elected members of said department shall have
87 authority to promulgate and, from time to time, revise
88 rules and regulations for holding all subsequent elections
89 in a fair and impartial manner. All elections shall be
90 held under the direction of the superintendent of said
91 department in accordance with said rules and regulations.
92 The members of the department chosen to serve on said
93 retirement board shall hold office for a period of two years
94 commencing on the first day of July next following the
95 date of such election. When any member elected to the
96 retirement board shall die, resign from the board, resign
97 or be discharged from service in the department, make
98 application for retirement, be retired, or become disabled,
99 the office of such member of the retirement board shall
100 be declared vacant by the superintendent of said depart-
101 ment, and said superintendent, to supply such vacancy
102 shall appoint the member in active service of said depart-
103 ment who as an unsuccessful candidate at the preceding

104 election of members to said retirement board received
105 the greatest number of votes. No member of the retire-
106 ment board shall participate in any hearing at which his
107 own petition for retirement or the petition of any mem-
108 ber of said department who is related to him by blood or
109 marriage shall be presented for consideration.

110 At its first meeting following each election of members
111 to the retirement board said board shall elect one of its
112 members to serve as chairman and a second member to
113 serve as secretary thereof. The retirement board shall
114 have the power to make rules and regulations, not incon-
115 sistent with the provisions hereof, governing procedure
116 and order and manner of business by and before such
117 board. The retirement board shall have the power to
118 make awards and to revise and terminate awards previ-
119 ously made for such times and under such terms and con-
120 ditions as are hereinafter provided. The votes of a ma-
121 jority of the five members of the board shall be neces-
122 sary to decision of any matter by the board. Decisions
123 made by the board shall be supreme and final and there
124 shall be no appeal therefrom.

125 It shall be the duty of the retirement board on or be-
126 fore the first day of July of each year to cause all future
127 awards from such fund to be valued and, to the extent
128 that moneys shall be available, reserves based on sound
129 actuarial principles for payment thereof to be carried on
130 the funds account as a liability against the reserve fund.
131 The board shall have the authority to employ an actuary
132 for such purpose. The board shall cause a system of ac-
133 counting to be installed and maintained to reflect cur-
134 rently and truly all transactions or developments pertain-
135 ing to age of members and eligible dependents surviving
136 deceased members, periods of service and aggregate earn-
137 ings of all members eligible to participate in said fund
138 and any other matter relating to maintenance of said fund
139 or administration thereof, and each year to cause to be
140 made and submitted to each member of said department
141 a statement of the condition of said fund. Costs and ex-
142 penses incurred in making actuarial studies, audits and
143 installations and maintenance of such accounting system
144 shall be paid by the superintendent from funds appropri-
145 ated for operation of the department of public safety.

146 All moneys paid into and accumulated in said death,
147 disability and retirement fund, except such amounts as
148 shall be designated or set aside by the retirement board
149 for payments of death, disability and retirement benefits
150 and awards, shall be invested by the state board of public
151 works in bonds of the government of the United States,
152 the state of West Virginia, or any political subdivision
153 thereof selected or approved by the retirement board.

Sec. 28. Retirement; Awards and Benefits.—(a) The

2 retirement board shall retire any member of the depart-
3 ment 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,

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

13 (b) The retirement board shall retire any member of

14 said department of public safety when such member shall
15 have lodged with the secretary of the retirement board
16 the voluntary petition in writing of such member for re-
17 tirement, 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
34 of two amounts, whichever shall be the greater, namely:

35 (1) Either an amount equal to four per cent 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, the
42 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 section

57 before he shall have attained the age of fifty years, pay-
58 ment of monthly installments of the amount of retire-
59 ment award to such member shall commence on the date
60 such member shall attain the age of fifty years.

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 re-
5 sulting from any occupational risk or hazard inherent
6 in or peculiar to the services required of members of
7 said department and incurred pursuant to or while such
8 member was or shall be engaged in the performance of
9 his duties as a member of said department shall, if, in
10 the opinion of the retirement board, he is by reason of
11 such cause unable to perform adequately the duties re-
12 quired of him as a member of said department, be re-
13 tired from active service by the retirement board and
14 thereafter such member shall be entitled to receive an-
15 nually and there shall be paid to such member from the
16 death, disability and retirement fund in equal monthly
17 installments during the natural lifetime of such mem-

18 ber or until such disability shall sooner terminate, an
19 amount equal to five per cent of the total salary which
20 would have been earned by him during twenty-five years
21 of service in said department based on his average earn-
22 ings while employed as a member of said department.
23 If such disability shall be permanent and total to the
24 extent that such member is or shall be incapacitated ever
25 to engage in any gainful employment, such member shall
26 be entitled to receive annually and there shall be paid
27 to such member from the death, disability and retirement
28 fund in equal monthly installments during the natural
29 lifetime of such member or until such disability shall
30 sooner terminate, an amount equal to six per cent of
31 the total salary which would have been earned by him
32 during twenty-five years of service in said department
33 based on his average earnings while employed as a mem-
34 ber of said 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-rays,
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 de-
42 partment who has or shall become temporarily, perma-
43 nently or totally disabled by injury, illness or disease
44 resulting from any occupational risk or hazard inherent
45 in or peculiar to the service required of members of
46 said department and incurred pursuant to or while such
47 member was or shall be engaged in the performance of
48 his duties as a member of said department. Whenever
49 the superintendent shall determine that any disabled
50 member is ineligible to receive any of the aforesaid bene-
51 fits at public expense the superintendent shall, at the
52 request of such disabled member, refer such matter to
53 the retirement 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 willful
9 misconduct on his part, such member shall be retired by
10 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
17 equal to one half the time such member has served as a
18 member of said department, a sum equal to four per
19 cent of the total salary which would have been earned by
20 him during twenty-five years of service in said depart-
21 ment based on his average earnings while employed as a
22 member of said department; but if such member, at the
23 time of such retirement under the terms of this section,
24 shall have served twenty years or longer as a member of
25 said department, such member shall be entitled to receive
26 annually and there shall be paid to such member from
27 the 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 aggregate
32 of salary paid to such member during the whole
33 period 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
37 be determined in the manner provided by paragraphs
38 (1) and (2) of sub-section (c) of section twenty-eight
39 of this article.

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 resulting
6 from an 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
9 of 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-b
12 of this article, shall be entitled to receive and shall be
13 paid from the death, disability and retirement fund bene-
14 fits as follows: To the widow annually, in equal monthly
15 installments during her lifetime or until her remarriage,
16 an amount equal to two and one-half 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
21 such widow shall be entitled to receive and there shall
22 be paid to her thirty dollars monthly for each child until
23 such child shall attain the age of eighteen years. If such
24 widow shall die or remarry or if there be no widow there
25 shall be paid monthly to such child or children from the
26 death, disability and retirement fund the sum of thirty
27 dollars each until such child or children shall respec-
28 tively attain the age of eighteen years. If there be no
29 widow and no child or children, there shall be paid an-
30 nually in equal monthly installments from said death,

31 disability and retirement fund to the dependent parents
32 of said deceased member during their joint lifetimes a
33 sum equal to the amount which a widow, without chil-
34 dren, would have received: *Provided*, That when there
35 shall be but one dependent parent surviving, such parent
36 shall be entitled to receive during his or her lifetime one
37 half the amount which both parents, if living, would have
38 been entitled to receive.

Sec. 28-g. Death of Member from Non-Service Con-
2 **nected Causes; Dependents; Awards and Benefits.—In**
3 any case where a member while in active service of said
4 department, before having completed twenty years of
5 service as a member of said department, has died or shall
6 die 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 willful misconduct on his part,
9 there shall be paid annually in equal monthly install-
10 ments from said death, disability and retirement fund
11 to the widow of such member during her natural lifetime
12 or until such time said widow remarries, a sum equal to
13 two per cent of the total salary which would have been

14 earned by said member during twenty-five years of serv-
15 ice in said department based on his average earnings
16 while employed as a member of said department. If
17 there be no widow there shall be paid from said fund to
18 each child of said deceased member the sum of thirty
19 dollars monthly until such child or children respectively
20 shall attain the age of eighteen years. If there be no
21 widow and no child or children there shall be paid an-
22 nually in equal monthly installments from said fund to
23 the dependent parents of said deceased member during
24 their joint lifetimes a sum equal to the amount which a
25 widow would have been entitled to receive, provided,
26 when there shall be but one dependent parent surviving
27 then such dependent parent shall be entitled to receive
28 during his or her lifetime one half the amount which
29 both parents, if living, would have been entitled to re-
30 ceive.

Sec. 28-h. Death of Member after Retirement, or after
2 **Serving Twenty Years; Dependents; Awards and Bene-**
3 **fits.**—When any member of said department has hereto-
4 fore completed or hereafter shall complete twenty years

5 of service or longer as a member of said department and
6 has died or shall die from any cause or causes other than
7 those specified in section twenty-eight-b of this article
8 before having been retired by the retirement board, and
9 when a member in retirement status has died or shall die
10 after having been retired by the retirement board under
11 the provisions of section twenty-eight of this article, there
12 shall be paid annually in equal monthly installments
13 from said fund to the widow of said member, commenc-
14 ing on the date of the death of said member and continu-
15 ing 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 twenty dollars monthly for
24 each child under the age of eighteen years until such
25 child or children respectively shall attain the age of eight-

26 een years; *Provided*, That no widow of any member who
27 shall die after having been retired by the retirement
28 board shall be entitled to receive any benefits under the
29 terms of this section unless such widow shall have been
30 married to such member during at least one full year
31 prior to the date such member shall have been retired
32 by the retirement board: *And provided further*, That a
33 child born to said dependent wife after such member was
34 placed on retirement shall not be entitled to any benefits
35 nor shall such dependent wife be entitled to receive bene-
36 fits for such child. If such widow shall not be entitled to
37 benefits or shall die or remarry, or if there be no widow
38 there shall be paid monthly from said fund to each child
39 under the age of eighteen years of said deceased member
40 the sum of thirty dollars until such child or children re-
41 spectively attain the age of eighteen years. If there be no
42 widow or no widow eligible to receive benefits and no child
43 or 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
48 when there shall be but one dependent parent surviving
49 such parent shall be entitled to receive during his or her
50 lifetime one half the amount which both parents, if liv-
51 ing, would have been entitled to receive.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Roy Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Thomas Heagy
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard Watson
President of the Senate

H. L. White
Speaker House of Delegates

The within *approved* this the *16*
day of *March*, 1965.

Steve C. Smith
Governor



Presented to Governor's Office

Mar. 12, 1965

11:05 a.m.