WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED

HOUSE BILL No. 277

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

PASSED March 8, 1965

In Effect Ninety days from Passage

FILED IN THE OFFICE OF
JOSEPH W. MURPHY
SECRETARY OF STATE
THIS DATE 3-16-65
ENROLLED

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, disability and retirement fund heretofore created for the benefit of members of the department of public safety, and any dependent of a retired or deceased member thereof. Into such fund shall be paid such amounts as have heretofore been collected by the superintendent of the department of public safety on account of fees for arrest, court attendance and mileage, seizures, rewards, or from any other source permitted by law. For official services rendered in any criminal case, a member of the department of public safety shall be entitled to receive the same fees as a constable is entitled to receive for the same services pursuant to section twelve, article seventeen, chapter fifty of this code, when such fees are actually paid by or for the defendant in such criminal case, pursuant to the order made and entered therein, to the justice of the peace, the clerk of the court, or other officer
for the services of such member: *Provided*, That (1) such fees may be claimed and received by the member only for the account of said department; (2) all fees collected by a member pursuant to this section shall in every instance be remitted by such member to the superintendent of said department and deposited in the state treasury to the credit of said death, disability and retirement fund; and, (3) the superintendent of said department shall promulgate regulations to assure disposition, in the manner herein provided, of all fees received by members pursuant to this section: *Provided, however*, That under no circumstances shall any member of the department of public safety be entitled to any mileage fees for services rendered in criminal cases and under no circumstances shall any county court or municipal corporation be required to pay any fees or costs which the county court would be required to pay were the services rendered by a constable. There shall be paid into said death, disability and retirement fund all amounts arising in the future from the above-named sources and any other sources that may be designated by the superintendent of said
department and permitted by law, except that no part of any fine shall be paid into said death, disability and retirement fund.

There shall be deducted from the monthly payroll of each member of the department of public safety and paid into such fund six per cent of the amount of his salary, and an additional twelve per cent of the monthly 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 moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever; and shall be unassignable except as is provided in this article.

The death, disability and retirement fund shall be adm-
ministered 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, That the superintendent may pay out
of funds appropriated for operation of said department
the reasonable expenses of members of said board neces-
sarily incurred in connection with dispatch of any busi-
ness 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 depart-
ment 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 two years thereafter.
The attorney general, state treasurer and the superin-
tendent of the department of public safety shall promul-
gate any and all necessary rules and regulations for hold-
ing 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 discharged 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.
Enr. H. B. No. 777] 8

125 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.

131 The board shall have the 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 accounting 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 benefits 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 subdivision thereof selected or approved by the retirement board.

Sec. 28. Retirement; Awards and Benefits.—(a) The retirement board shall retire 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, (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 four per cent 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, pay-
ment of monthly installments of the amount of retire-
ment award to such member shall commence on the date
such member shall attain the age of fifty years.

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 re-
sulting 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 re-
quired of him as a member of said department, be re-
tired from active service by the retirement board and
thereafter such member shall be entitled to receive an-
ually 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 mem-
ber 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.

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 six 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-rays, 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 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 willful
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 four per
cent of the total salary which would have been earned by
him during twenty-five years of service in said depart-
ment 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 sub-section (c) of section twenty-eight of this article.

Sec. 28-f. Death of Member in Performance of Duty;

2 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 an 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 re-

tired 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 bene-

fits as follows: To the widow annually, in equal monthly

installments during her lifetime or until her remarriage,

an amount equal to two and one-half per cent of the total

salary which would have been earned by said deceased

member during twenty-five years of service in said de-

partment 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 thirty 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, disability and retirement fund the sum of thirty

dollars each until such child or children shall respec-

tively attain the age of eighteen years. If there be no

widow and no child or children, there shall be paid an-

nually in equal monthly installments from said death,
disability and retirement 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 dependent 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 Connected Causes; Dependents; Awards and Benefits.—In any case where a member while in active service of said department, before having completed twenty years of service 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 willful 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 her natural lifetime or until such time said widow remarries, a sum equal to two per cent of the total salary which would have been
14 earned by said member during twenty-five years of service in said department based on his average earnings while employed as a member of said department. If there be no widow there shall be paid from said fund to each child of said deceased member the sum of thirty 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.

Sec. 28-h. Death of Member after Retirement, or after Serving Twenty Years; Dependents; Awards and Benefits.—When any member of said department has heretofore 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 article
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 under
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 twenty dollars monthly for
each child under the age of eighteen years until such
child or children respectively shall attain the age of eight-
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 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 thirty 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 lifetime one half the amount which both parents, if living, would have been entitled to receive.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ______ approved ______ this the ___

day of ____________, 1965.

Governor
Presented to Governor's Office
Mar. 12, 1965
11:05 a.m.