

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 189

(By Mr. McKOWN AND Mr. HUBBARD - ORIGINAL SPONSORS)

PASSED MARCH 1972

In Effect FROM Passage



OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

MAR 29 11 34 AM '72

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-29-72

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ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 189

(MR. MCKOWN and MR. HUBBARD, *original sponsors*)

[Passed March 8, 1972; in effect from passage.]

AN ACT to amend and reenact sections six, seven and eight, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility for and payment of pay or benefits under the retirement system for judges of courts of record; authorizing retirement after twenty-four years of service regardless of age; authorizing a judge with not less than ten years judicial service to receive credit for service as a prosecuting attorney; relating to the ineligibility of judges who are receiving pay or benefits from such retirement system to practice law or hold any public office or trust; and authorizing retirement under such system of judges because of disability after ten years of service.

Be it enacted by the Legislature of West Virginia:

That sections six, seven and eight, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-6. Eligibility for and payment of benefits.

1 Except as otherwise provided in sections five, twelve
2 and thirteen of this article, any person who is now serv-
3 ing, or who shall hereafter serve, as a judge of any court
4 of record of this state and shall have served as such
5 judge for a period of not less than sixteen full years and
6 shall have reached the age of sixty-five years, or who has
7 served as judge of such court or of that court and other

8 courts of record of the state for a period of sixteen full
9 years or more (whether continuously or not and whether
10 said service be entirely before or after this article be-
11 came effective, or partly before and partly after said
12 date, and whether or not said judge shall be in office on
13 the date he shall become eligible to benefits hereunder)
14 and shall have reached the age of sixty-five years, or who
15 is now serving, or who shall hereafter serve, as a judge
16 of any court of record of this state and shall have served
17 as such judge for a period of not less than twenty-four
18 full years, regardless of age, shall, upon a determination
19 and certification of his eligibility as provided in section
20 nine hereof, be paid from the fund annual retirement
21 benefits, so long as he shall live, in an amount equal to
22 seventy-five percent of the annual salary of the office
23 from which he has retired based upon such salary of such
24 office as such salary may be changed from time to time
25 during the period of his retirement and the amount of his
26 retirement benefits shall be based upon and be equal
27 to seventy-five percent of the highest annual salary of
28 such office for any one calendar year during the period
29 of his retirement, and shall be payable in monthly in-
30 stallments: *Provided*, That such retirement benefits shall
31 be paid only after said judge has resigned as such or, for
32 any reason other than his impeachment, his service as
33 such has ended: *Provided, however*, That the provisions
34 of this article shall apply to those judges who were in
35 office at the time it originally became effective, those
36 who have since become judges, those who have retired
37 under the provisions thereof, and those who shall here-
38 after serve as judges of the courts of record of this state.

39 In determining eligibility for the benefits provided by
40 this section, any portion of the term of office of any judge
41 of a court of record which shall have elapsed while such
42 judge was on active duty (including leaves, furloughs,
43 and time consumed going to his place of duty and return-
44 ing to his place of residence after discharge or release
45 from active duty) in the armed forces of the United
46 States shall be considered as served: *Provided further*,
47 That any judge who enters active duty in the armed

48 forces of the United States during his term of office and
49 after the effective date of this article shall during, or
50 within one year after such military service, pay into the
51 state treasury all contributions required by section four
52 of this article, and, by reason of such military service
53 not deducted from his salary: *Provided further*, That if a
54 judge of a court of record has served for a period of not
55 less than ten full years and has made payments into the
56 judges retirement fund as provided in this article for
57 each month during which he served as judge, following
58 the effective date of this section, any portion of time
59 which he had served as prosecuting attorney in any
60 county in this state shall qualify as years of service.

§51-9-7. Ineligibility to receive pay or benefits.

1 A judge who retires under the provisions of any sec-
2 tion of this article and accepts the pay or benefits pay-
3 able under this article shall not, while receiving said
4 pay or benefits, be permitted to hold any public office or
5 trust for which he receives compensation. If, after retire-
6 ment under the provisions of this article and while re-
7 ceiving pay or benefits payable under said article, he
8 shall be elected or appointed to any public office or trust
9 for which he receives any salary or other compensation,
10 his pay or benefits under this article shall be suspended
11 for such time only as he shall occupy such office or
12 trust.

13 A judge who retires because of disability and accepts
14 the pay or benefits payable under this article because of
15 his disability shall not, while receiving said pay or
16 benefits because of his disability, be permitted to practice
17 law. If, after disability retirement under the provisions
18 of this article and while receiving pay or benefits pay-
19 able under said article because of his disability, he shall
20 enter the practice of law, his pay or benefits under this
21 article because of his disability shall be suspended for
22 such time only as he shall be engaged in the practice
23 of law.

§51-9-8. Retirement upon disability.

1 Whenever a judge of a court of record of this state, who

2 is not disqualified from participation herein as provided
3 in section five of this article, who shall have served for
4 ten full years, shall become physically or mentally in-
5 capacitated to perform the duties of his office as judge
6 during the remainder of his term and shall make a
7 written application to the governor for his retirement,
8 setting forth the nature and extent of his disability and
9 tendering his resignation as such judge upon condition that
10 upon its acceptance he be retired with pay under the pro-
11 visions of this article, the governor shall make such inves-
12 tigation as he shall deem advisable and, if he shall deter-
13 mine that such disability exists and that the public serv-
14 ice is suffering and will continue to suffer by reason of
15 such disability, he shall thereupon accept the resignation
16 and, by written order filed in the office of the secretary
17 of state, direct the retirement of the judge for the un-
18 expired portion of the term for which such judge was
19 elected or appointed. The secretary of state shall there-
20 upon file a certified copy of said order with the state
21 auditor. When so accepted, said resignation shall create
22 a vacancy in said office of judge, which shall be filled by
23 appointment or election as provided by law. The retired
24 judge shall thereupon be paid annual retirement pay
25 during the remainder of his unexpired term in an
26 amount equal to the annual salary he was receiving at
27 the time of his retirement, which annual retirement pay,
28 so long as it shall be paid to him, shall be in lieu of
29 any and all retirement benefits such judge may other-
30 wise have received under the provisions of this article:
31 *Provided*, That when the payment of said retirement
32 pay shall have terminated, such judge, even though he
33 shall not have arrived at the age of sixty-five years,
34 shall, so long as the disability determined by the gover-
35 nor continues to exist, be paid the retirement benefits for
36 which provision is made in section six of this article.

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

James G. Peace

Chairman Senate Committee

Phyllis Ruedge

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Robinson

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

George Brent

President of the Senate

Lewis F. McManis

Speaker House of Delegates

The within *approved* this the *27th*
day of *March*, 1972.

Arch A. Shouse, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 3/11/72

Time 6:20 p.m.