WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED
SENATE BILL NO. 189

(By Mr. McCauley and Mr. Hubert--original sponsors)

PASSED MARCH 1972

In Effect FROM Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72
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 and thirteen of this article, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other
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courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he has retired based upon such salary of such office as such salary may be changed from time to time during the period of his retirement and the amount of his retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his retirement, and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after said judge has resigned as such or, for any reason other than his impeachment, his service as such has ended: Provided, however, That the provisions of this article shall apply to those judges who were in office at the time it originally became effective, those who have since become judges, those who have retired under the provisions thereof, and those who shall hereafter serve as judges of the courts of record of this state.

In determining eligibility for the benefits provided by this section, any portion of the term of office of any judge of a court of record which shall have elapsed while such judge was on active duty (including leaves, furloughs, and time consumed going to his place of duty and returning to his place of residence after discharge or release from active duty) in the armed forces of the United States shall be considered as served: Provided further, That any judge who enters active duty in the armed
forces of the United States during his term of office and
after the effective date of this article shall during, or
within one year after such military service, pay into the
state treasury all contributions required by section four
of this article, and, by reason of such military service
not deducted from his salary: Provided further, That if a
judge of a court of record has served for a period of not
less than ten full years and has made payments into the
judges retirement fund as provided in this article for
each month during which he served as judge, following
the effective date of this section, any portion of time
which he had served as prosecuting attorney in any
county in this state shall qualify as years of service.

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

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

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


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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect 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 ________, 1972.

Governor
PRESENTED TO THE
GOVERNOR

Date  3/11/72  
Time  6:20 p.m.