WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
Committee Substitute for
HOUSE BILL No. 929

(By Mrs. Neal and Mrs. Beniceva)

PASSED March 13, 1976

In Effect ninety days from Passage

FILED IN THE OFFICE
JAMES R. MCCARTNEY
SECRETARY OF STATE
THIS DATE 3/26/76
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 929
(By Mrs. Neal and Mr. Dinsmore)

(Originating in the House Committee on Finance)

[Passed March 13, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-eight-l, relating to increasing retirement benefits; crediting members of the department of public safety with no more than five years toward their retirement for prior active duty with the United States armed forces; providing certain qualifications for such credit; providing credit toward their retirement for members of the department of public safety who have left the department to serve in the armed forces of the United States during any period of armed conflict as declared by the Congress or ordered by the president; providing certain qualifications for such credit; and defining dependent child or children.

Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-
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h, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding there-to a new section, designated section twenty-eight-l, all to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


(a) The retirement board shall retire any member of the department of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the department, including military service credit granted under section twenty-eight-a of this article.

(b) The retirement board shall retire any member of the department of public safety who has lodged with the secretary of the retirement board his voluntary petition in writing for retirement, and:

(1) Has or shall have completed twenty-five years of service as a member of the department (including military service credit granted under section twenty-eight-a of this article); or

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the department (excluding military service credit granted under section twenty-eight-a of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the department (excluding military service credit granted under section twenty-eight-a of this article).

(c) When the retirement board retires any member under any of the foregoing provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of the member while in status of retirement one or the other of two amounts, whichever is the greater, namely:
(1) An amount equal to four and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the department of public safety; or

(2) The sum of three thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the department and shall be retired under any of the provisions of this section before he shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date he attains the age of fifty years.

§15-2-28a. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

(b) Any member of the department of public safety who has previously served on active military duty shall be entitled to and receive credit on the minimum period of service required by law for retirement pay from the service of the department of public safety under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he has been honorably discharged from the armed forces;

(2) That he substantiates by appropriate documentation or evidence his period of active military duty;

(3) That he is receiving no benefits from any other retirement system for his active military duty; and
(4) That, except with respect to disability retirement pay awarded under section twenty-eight-c of this article, he has actually served with the department for twenty years exclusive of his active military duty.

The amount of retirement pay to which any such member is entitled shall be calculated and determined as if he had been receiving for the period of his active military duty a monthly salary from the department equal to the average monthly salary which he actually received from the department for his total service with the department exclusive of the active military duty. The superintendent is authorized to transfer and pay into the death, disability and retirement fund from moneys appropriated for the department a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all such members has been calculated and determined for their periods of active military duty. In addition, any person who while a member of the department of public safety was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers’ corps, was called to active duty in said armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the president, shall be entitled to and receive credit on the minimum period of service required by law for retirement pay from the service of the department of public safety for a period equal to the full time he has or shall, pursuant to such commission, enlistment, induction or call, have served with said armed forces subject to the following:

(1) That he has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from
the armed forces he has presented himself to the superintendent and offered to resume service as an active member of the department;

(3) That he has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces beyond the period of service for which he was originally commissioned, enlisted, inducted or called.

The amount of retirement pay to which any such member shall be entitled shall be calculated and determined as if the member has continued in the active service of the department at the rank or grade to him appertaining at the time of such commission, induction, enlistment or call, during a period coextensive with the time the member served with the armed forces pursuant to the commission, induction, enlistment or call. The superintendent of the department is authorized to transfer and pay each month into the death, disability and retirement fund from moneys appropriated for the department a sum equal to eighteen percent of the aggregate of salary which all such members would have been entitled to receive had they continued in the active service of the department during a period coextensive with the time such members served with the armed forces pursuant to the commission, induction, enlistment or call: Provided, That the total amount of military service credit allowable under this section shall not exceed five years.


Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting 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 required of him as a member of said department, be retired from active service.
by the retirement board and thereafter 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 five percent 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 eight percent 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-ray, 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.

§15-2-28c. Awards and benefits for disability—Due to other causes.

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, in-
temperance 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 and one-half percent 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;
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 retire-
ment has, or shall have served as a member of said department,
whichever shall be the greater, to be determined in the manner
provided by subdivisions (1) and (2), subsection (c), section
twenty-eight of this article.

§15-2-28f. Awards and benefits to dependents of member—When
ter member dies in performance of duty, etc.

The widow or the dependent child or children 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 retired 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
benefits as follows: To the widow annually, in equal monthly
installments during her lifetime or until her remarriage one or
the other of two amounts, whichever shall be the greater,
namely:

(1) An amount equal to five percent of the total salary
which would have been earned by said deceased member
during twenty-five years of service in said department based
on his average earnings while employed as a member of said
department.

(2) The sum of three thousand dollars.

In addition thereto such widow shall be entitled to receive
and there shall be paid to her fifty dollars monthly for each
dependent child or children. If such widow shall die or
remarry or if there be no widow there shall be paid monthly
to such dependent child or children from the death, disability
and retirement fund the sum of fifty dollars each. If there
be no widow and no dependent child or children, there shall
be paid annually 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.

§15-2-28g. Awards and benefits to dependents of member—When
member dies from nonservice-connected causes.

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 and one-quarter percent of the total salary which would have been 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 dependent child or children of said deceased member the sum of fifty dollars monthly. If there be no widow and no dependent 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 lifetime a sum equal to the amount which a widow would have been entitled to receive:

Provided, That 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.

§15-2-28h. Awards and benefits to dependents of members—When member dies after retirement or after serving twenty years.

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 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 addi-
tion thereto said widow shall be entitled to receive and there
shall be paid to her from said fund the sum of fifty dollars
monthly for each dependent child or children. If such widow
die or remarry, or if there be no widow there shall be paid
monthly from said fund to each dependent child or children of
said deceased member the sum of fifty dollars. If there be no
widow or no widow eligible to receive benefits and no depen-
dent 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.

§15-2-281. Dependent child or children—Qualifications.

In any case where under the terms of this article benefits
are provided for “dependent child or children” such phrase
shall mean any child or children born to or adopted by a
member of the department of public safety under the age of
eighteen or where such child or children after reaching eigh-
teen years of age continues as a full time student in an ac-
credited high school, college, university, business or trade
school, until such child reaches the age of twenty-three years
or where such child or children is an invalid as long as such
child or children remains an invalid, such benefits provided
for shall be paid. Benefits provided under the terms of this
article for “dependent child or children” shall be paid for so
long as they meet the foregoing qualifications and no longer.
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.

The within approved this the 24th day of __________, 1976.

Governor
RESENTED TO THE
GOVERNOR

Date 3/9/76
Time 4:40 p.m.