WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED

SENATE BILL NO. 400

Originating in the

[Signature]

Committee on the Judiciary

PASSED March 13, 1976

In Effect [Signature] Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 4/1/76
AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-a, relating to benefits under the public employees retirement act, the municipal employees retirement plan, the policemen's and firemen's pension and relief funds, the death, disability and retirement fund of the department of public safety, the state teachers retirement system, certain supplemental and additional retirement plans, the judges' retirement system and any other retirement plan supported in whole or in part by public funds, by providing that officers and employees convicted of certain crimes, or determined to have committed conduct constituting all of the elements of such crimes, shall, together with their beneficiaries, be ineligible for benefits from such plans; providing findings and declarations; definitions; providing for notice of intention to terminate benefits, waiver and failure to reply; providing for jurisdiction of the circuit court for determination of eligibility; providing for appeal; providing for termination of benefits; providing for refund of contributions; providing for eligibility for new participation upon rehabilitation; providing for setoff; relating to rules of construction; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-a, to read as follows:
ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-1. Findings and declarations.

1 The Legislature finds and declares that every retirement plan instituted and created under the laws of this state has from the inception thereof contemplated and each now contemplates that the service rendered by any participating public officer or employee shall at all times be honorable. The Legislature further finds and declares that honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan.

§5-10A-2. Definitions.

1 As used in this article:
   (a) “Retirement plan” or “plan” means the public employees retirement act, pursuant to article ten, chapter five of this code; each municipal employees retirement plan, pursuant to article twenty-two, chapter eight of this code; each policemen's and firemen's pension and relief fund, pursuant to article twenty-two, chapter eight of this code; the death, disability and retirement fund of the department of public safety, pursuant to article two, chapter fifteen of this code; the state teachers retirement system, pursuant to article seven-a, chapter eighteen of this code; supplemental and additional retirement plans, pursuant to section four-a, article twenty-three, chapter eighteen of this code; the judges' retirement system, pursuant to article nine, chapter fifty-one of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability or other benefits to any person by reason of his service as an officer or employee of this state or of any political subdivision, agency or instrumentality thereof, whenever such plan is supported in whole or in part by public funds.
   (b) “Beneficiary” means any person eligible for or receiving benefits on account of the service for a public employer by a participant in a retirement plan.
   (c) “Benefits” means pension, annuity, disability or
any other benefits granted pursuant to a retirement plan.

(d) "Conviction" means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty or nolo contendere, and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) "Less than honorable service" means:

(1) Impeachment and conviction of a participant under the provisions of section nine, article four of the constitution of West Virginia, except for a misdemeanor; or

(2) Conviction of a participant of a felony for conduct related to his office or employment which he committed while holding such office or during such employment; or

(3) Conduct of a participant which constitutes all of the elements of a crime described in either of the foregoing subdivisions (1) or (2) but for which the participant was not convicted because:

(i) Having been indicted for such crime, he made a plea bargaining agreement pursuant to which he pleaded guilty to or nolo contendere to a lesser crime; or

(ii) Having been indicted for such crime, he was granted immunity from prosecution for the same; or

(iii) Having been named as an unindicted coconspirator in an indictment of another person for such a crime, which indictment resulted in the conviction of such other person, he was not prosecuted for such crime or conspiracy therefor.

(f) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his service as an officer or employee for a public employer.

(g) "Public employer" means the state of West Virginia and any political subdivision, agency, or instru-
mentality thereof for which there is established a retire-
ment plan.

(h) "Supervisory board" or "board" means the board
of trustees of the West Virginia public employees re-
tirement system; the board of trustees of any municipal
retirement fund; the board of trustees of any police-
men's or firemen's retirement plan; the retirement board
of the department of public safety; the state treas-
urer, state auditor and one other member of the
board of public works so designated by the governor
to sit on the supervisory board of the judges' retire-
ment plan (who shall for the purpose of this article con-
stitute the board); the designated members of the state
teachers' retirement system established pursuant to
section five, article seven-a, chapter eighteen of this
code; the governing board of any supplemental retire-
ment plan instituted pursuant to authority granted by
section four-a, article twenty-three, chapter eighteen of
this code, and any other board, commission or public
body having the duty to supervise and operate any re-
tirement plan.

§5-10A-3. Notice of intention to terminate benefits; waiver;
failure to reply.

Whenever a supervisory board, upon receipt of a veri-
fied complaint or otherwise, has reasonable cause to be-
lieve that a participant rendered less than honorable
service as defined in section two of this article, it shall
notify the affected participant or beneficiary that it be-
lieves that the participant rendered less than honorable
service and that the participant or beneficiary is thereby
ineligible to receive benefits. No supervisory board shall
issue such notice:

(1) If more than one year has elapsed since the judg-
ment of conviction upon which such notice is based be-
came final; or

(2) In the cases described in subdivision (3) of sub-
section (e) of section two of this article, if more than
one year has elapsed since, as the case may be: the plea
bargaining agreement, the grant of immunity, or, in the
event the participant was named as an unindicted co-
(3) With respect to conduct which occurred prior to the effective date of this article.

The notice shall contain a concise statement of the reasons why the board believes that the participant rendered less than honorable service and shall be made either by personal service or by certified mail, return receipt requested, to the address which the participant or beneficiary maintains for purposes of corresponding with the board. If notice is made by certified mail, service shall be deemed complete upon mailing and a completed receipt shall constitute proof of the receipt thereof. The notice shall inform the participant or beneficiary that he has the right to demand that the board seek a determination in circuit court of his eligibility for benefits and membership in the retirement plan by notifying the board of such demand within forty days. The notice shall also inform the participant or beneficiary that the board will terminate the benefits in accordance with section four of this article and refund the participant's contributions with interest less benefits previously paid as provided in section six thereof if the participant or beneficiary either waives the right to demand that the board take the matter before the circuit court or fails to respond to the board's notice within forty days after service.

§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

If a participant or beneficiary informs the supervisory board within forty days after service of the notice provided for in section three of this article that he demands that the board seek a determination in circuit court, the board shall forthwith file a petition in the circuit court in the county in which the board is located or in which the participant or beneficiary resides, seeking that the court determine that the participant rendered less than honorable service as defined in section two of this article and that the affected participant or beneficiary is thereby ineligible to receive benefits.
Jurisdiction is hereby conferred on circuit courts to make such determinations.

Upon the filing of such a petition by a supervisory board, the circuit court shall give such notice and opportunity to be heard to the affected parties as are consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.

A determination of the circuit court shall be a final order which may be appealed to the supreme court of appeals in the same manner as decisions in other civil actions.

§5-10A-5. Termination of benefits.

(a) The board shall terminate a participant's or beneficiary's membership in the plan and shall not thereafter pay any benefits to the participant or his beneficiaries if an affected participant or beneficiary either waives the right to demand that the board seek a determination of eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section three, or if a circuit court has determined that the participant rendered less than honorable service in accordance with section four of this article.

(b) In the event that the participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he wishes to exercise his right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action provided for by this section with respect to all the beneficiaries only upon a determination by the court that the participant has rendered less than honorable service.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of
§5-10A-7. Eligibility for new participation upon rehabilitation.

Nothing in this article shall prohibit a participant made ineligible for benefits by virtue of conviction of a crime under this article, and who has paid the full penalty imposed by law for such crime, from accepting a position as an officer or employee of the same or different public employer and joining a retirement plan as a new member; but he and his beneficiaries shall remain forever ineligible for any benefits arising from his former participation in a retirement plan.

§5-10A-8. Setoff.

The state of West Virginia or any of its political subdivisions shall have the right of setoff against any unpaid benefits which have accrued or may thereafter accrue under the plan, including any contributions by the participant, for any claim caused by less than honorable service by the participant. Notwithstanding any provision of the law to the contrary, any unpaid benefits which have accrued or may thereafter accrue, shall be subject to execution, garnishment, attachment or any other legal process for collection of a judgment for the recovery of loss or damages incurred by the state or its political subdivision, caused by the participant's less than honorable service.


If any provision of this article is determined to deprive a person of any property right which is vested and is indefeasible as of the effective date of this article, the provisions of this article shall nonetheless be effective as to any benefits or a part of any benefit under a retirement plan which shall be deemed to vest on or after the effective date of this article; and the right to receive any benefit under a retirement plan, which right
shall vest on or after the effective date of this article, is hereby conditioned upon the full compliance and observance of the provisions hereof and the rendering of honorable service throughout the service in public employment or public office in respect of which such benefit is payable.

§5-10A-10. Severability.

If any section, subsection, subdivision, provision, clause or phrase of this article or the application thereof to any person or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases thereof would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that the application thereof to any person or circumstance would be held to be unconstitutional or invalid.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ____________ this the ____________ day of ____________, 1976

[Signature]

Governor
PRESENTED TO THE GOVERNOR

Date 3/25/76

Time 2:00 p.m.