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OFFICE OF
THE SECRETARY OF STATE
MARTINSBURG, WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976



ENROLLED

Committee Substitute for

HOUSE BILL No. 929

(By Mrs. *Neal* & Mr. *Donismore*)



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

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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 thereto a new section, designated section twenty-eight-l, all to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-28. Retirement; awards and benefits.

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

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

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

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

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

22 (c) When the retirement board retires any member under
23 any of the foregoing provisions of this section, the board shall,
24 by order in writing, make an award directing that the member
25 shall be entitled to receive annually and that there shall be
26 paid to the member from the death, disability and retirement
27 fund in equal monthly installments during the natural lifetime
28 of the member while in status of retirement one or the other
29 of two amounts, whichever is the greater, namely:

30 (1) An amount equal to four and one-half percent of the
31 aggregate of salary paid to the member during the whole
32 period of service as a member of the department of public
33 safety; or

34 (2) The sum of three thousand dollars.

35 When a member has or shall have served twenty years or
36 longer but less than twenty-five years as a member of the
37 department and shall be retired under any of the provisions of
38 this section before he shall have attained the age of fifty
39 years, payment of monthly installments of the amount of
40 retirement award to such member shall commence on the date
41 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.**

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

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

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

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

20 (3) That he is receiving no benefits from any other retire-
21 ment system for his active military duty; and

22 (4) That, except with respect to disability retirement pay
23 awarded under section twenty-eight-c of this article, he has
24 actually served with the department for twenty years exclusive
25 of his active military duty.

26 The amount of retirement pay to which any such member is
27 entitled shall be calculated and determined as if he had been
28 receiving for the period of his active military duty a monthly
29 salary from the department equal to the average monthly salary
30 which he actually received from the department for his total
31 service with the department exclusive of the active military
32 duty. The superintendent is authorized to transfer and pay into
33 the death, disability and retirement fund from moneys appro-
34 priated for the department a sum equal to eighteen percent of
35 the aggregate of the salaries on which the retirement pay of all
36 such members has been calculated and determined for their
37 periods of active military duty. In addition, any person who
38 while a member of the department of public safety was com-
39 missioned, enlisted or inducted into the armed forces of the
40 United States or, being a member of the reserve officers' corps,
41 was called to active duty in said armed forces between the first
42 day of September, one thousand nine hundred forty, and the
43 close of hostilities in World War II, or between the twenty-
44 seventh day of June, one thousand nine hundred fifty, and the
45 close of the armed conflict in Korea on the twenty-seventh day
46 of July, one thousand nine hundred fifty-three, between the
47 first day of August, one thousand nine hundred sixty-four and
48 the close of the armed conflict in Vietnam, or during any other
49 period of armed conflict by the United States whether sanc-
50 tioned by a declaration of war by the Congress or by executive
51 or other order of the president, shall be entitled to and receive
52 credit on the minimum period of service required by law for
53 retirement pay from the service of the department of public
54 safety for a period equal to the full time he has or shall, pur-
55 suant to such commission, enlistment, induction or call, have
56 served with said armed forces subject to the following:

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

59 (2) That within ninety days after honorable discharge from

60 the armed forces he has presented himself to the superinten-
61 dent and offered to resume service as an active member of the
62 department;

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

69 The amount of retirement pay to which any such member
70 shall be entitled shall be calculated and determined as if the
71 member has continued in the active service of the department
72 at the rank or grade to him appertaining at the time of such
73 commission, induction, enlistment or call, during a period co-
74 extensive with the time the member served with the armed
75 forces pursuant to the commission, induction, enlistment or
76 call. The superintendent of the department is authorized to
77 transfer and pay each month into the death, disability and re-
78 tirement fund from moneys appropriated for the department a
79 sum equal to eighteen percent of the aggregate of salary which
80 all such members would have been entitled to receive had they
81 continued in the active service of the department during a peri-
82 od coextensive with the time such members served with the
83 armed forces pursuant to the commission, induction, enlistment
84 or call: *Provided*, That the total amount of military service
85 credit allowable under this section shall not exceed five years.

**§15-2-28b. Awards and benefits for disability—Incurred in per-
formance of duty.**

1 Any member of said department who has been or shall be-
2 come physically or mentally permanently disabled by injury,
3 illness or disease resulting from any occupational risk or
4 hazard inherent in or peculiar to the services required of
5 members of said department and incurred pursuant to or
6 while such member was or shall be engaged in the perform-
7 ance of his duties as a member of said department shall, if, in
8 the opinion of the retirement board, he is by reason of such
9 cause unable to perform adequately the duties required of him
10 as a member of said department, be retired from active service

11 by the retirement board and thereafter such member shall be
12 entitled to receive annually and there shall be paid to such
13 member from the death, disability and retirement fund in equal
14 monthly installments during the natural lifetime of such mem-
15 ber or until such disability shall sooner terminate, an amount
16 equal to five percent of the total salary which would have been
17 earned by him during twenty-five years of service in said
18 department based on his average earnings while employed as
19 a member of said department. If such disability shall be
20 permanent and total to the extent that such member is or shall
21 be incapacitated ever to engage in any gainful employment, such
22 member shall be entitled to receive annually and there shall be
23 paid to such member from the death, disability and retirement
24 fund in equal monthly installments during the natural life-
25 time of such member or until such disability shall sooner term-
26 inate, an amount equal to eight percent of the total salary
27 which would have been earned by him during twenty-five
28 years of service in said department based on his average earn-
29 ings while employed as a member of said department.

30 The superintendent is authorized to expend moneys from
31 funds appropriated for the department of public safety in pay-
32 ment of medical, surgical, laboratory, X-ray, hospital, ambu-
33 lance and dental expenses and fees, and reasonable costs and
34 expenses incurred in purchase of artificial limbs and other
35 approved appliances which may be reasonably necessary for
36 any member of said department who has or shall become
37 temporarily, permanently or totally disabled by injury, illness
38 or disease resulting from any occupational risk or hazard
39 inherent in or peculiar to the service required of members of
40 said department and incurred pursuant to or while such mem-
41 ber was or shall be engaged in the performance of his duties
42 as a member of said department. Whenever the superintendent
43 shall determine that any disabled member is ineligible to re-
44 ceive any of the aforesaid benefits at public expense the super-
45 intendent shall, at the request of such disabled member, refer
46 such matter to the retirement board for hearing and final de-
47 cision.

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

1 If any member while in active service of said department

2 has or shall, in the opinion of the retirement board, become
3 permanently disabled to the extent that such member cannot
4 adequately perform the duties required of a member of the
5 department from any cause other than those set forth in the
6 next preceding section and not due to vicious habits, in-
7 temperance or willful misconduct on his part, such member
8 shall be retired by the retirement board and, if such member
9 at the time of such retirement under this section, shall have
10 served less than twenty years as a member of said department,
11 such member shall be entitled to receive annually and there
12 shall be paid to such member while in status of retirement,
13 from the death, disability and retirement fund in equal
14 monthly installments during a period equal to one half the
15 time such member has served as a member of said department,
16 a sum equal to four and one-half percent of the total salary
17 which would have been earned by him during twenty-five
18 years of service in said department based on his average
19 earnings while employed as a member of said department;
20 but if such member, at the time of such retirement under
21 the terms of this section, shall have served twenty years or
22 longer as a member of said department, such member shall
23 be entitled to receive annually and there shall be paid to
24 such member from the death, disability and retirement fund
25 in equal monthly installments, commencing on the date such
26 member shall be retired and continuing during the natural
27 lifetime of such member while in status of retirement, one or
28 the other of the two amounts, based upon either the aggregate
29 of salary paid to such member during the whole period of
30 service of such member or the period of twenty years or
31 longer during which such member at the time of such retire-
32 ment has, or shall have served as a member of said department,
33 whichever shall be the greater, to be determined in the manner
34 provided by subdivisions (1) and (2), subsection (c), section
35 twenty-eight of this article.

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

1 The widow or the dependent child or children or dependent
2 parent or parents of any member who has lost or shall lose
3 his life by reason of injury, illness or disease resulting from

4 an occupational risk or hazard inherent in or peculiar to the
5 service required of members while such member was or shall
6 be engaged in the performance of his duties as a member of
7 said department or if said member shall die from any cause
8 after having been retired pursuant to the provisions of section
9 twenty-eight-b of this article, shall be entitled to receive and
10 shall be paid from the death, disability and retirement fund
11 benefits as follows: To the widow annually, in equal monthly
12 installments during her lifetime or until her remarriage one or
13 the other of two amounts, whichever shall be the greater,
14 namely:

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

20 (2) The sum of three thousand dollars.

21 In addition thereto such widow shall be entitled to receive
22 and there shall be paid to her fifty dollars monthly for each
23 dependent child or children. If such widow shall die or
24 remarry or if there be no widow there shall be paid monthly
25 to such dependent child or children from the death, disability
26 and retirement fund the sum of fifty dollars each. If there
27 be no widow and no dependent child or children, there shall
28 be paid annually in equal monthly installments from said
29 death, disability and retirement fund to the dependent parents
30 of said deceased member during their joint lifetimes a sum
31 equal to the amount which a widow, without children, would
32 have received: *Provided*, That when there shall be but one
33 dependent parent surviving, such parent shall be entitled to
34 receive during his or her lifetime one half the amount which
35 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.

1 In any case where a member while in active service of said
2 department, before having completed twenty years of service as
3 a member of said department, has died or shall die from any
4 cause other than those specified in section twenty-eight-f of

5 this article and not due to vicious habits, intemperance or will-
 6 ful misconduct on his part, there shall be paid annually in
 7 equal monthly installments from said death, disability and re-
 8 tirement fund to the widow of such member during her natural
 9 lifetime or until such time said widow remarries, a sum equal
 10 to two and one-quarter percent of the total salary which would
 11 have been earned by said member during twenty-five years of
 12 service in said department based on his average earnings while
 13 employed as a member of said department. If there be no
 14 widow there shall be paid from said fund to each dependent
 15 child or children of said deceased member the sum of fifty
 16 dollars monthly. If there be no widow and no dependent child
 17 or children there shall be paid annually in equal monthly in-
 18 stallments from said fund to the dependent parents of said
 19 deceased member during their joint lifetime a sum equal to
 20 the amount which a widow would have been entitled to receive:
 21 *Provided*, That when there shall be but one dependent parent
 22 surviving then such dependent parent shall be entitled to re-
 23 ceive during his or her lifetime one half the amount which
 24 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.**

1 When any member of said department has heretofore com-
 2 pleted or hereafter shall complete twenty years of service or
 3 longer as a member of said department and has died or shall
 4 die from any cause or causes other than those specified in
 5 section twenty-eight-b of this article before having been retired
 6 by the retirement board, and when a member in retirement
 7 status has died or shall die after having been retired by the
 8 retirement board under the provisions of section twenty-eight
 9 of this article, there shall be paid annually in equal monthly
 10 installments from said fund to the widow of said member, com-
 11 mencing on the date of the death of said member and contin-
 12 uing during her lifetime or until remarriage an amount equal to
 13 one half the retirement benefits said deceased member was
 14 receiving while in status of retirement, or would have been
 15 entitled to receive to the same effect as if such member had
 16 been retired under the provisions of section twenty-eight of this

17 article immediately prior to the time of his death; and in addi-
18 tion thereto said widow shall be entitled to receive and there
19 shall be paid to her from said fund the sum of fifty dollars
20 monthly for each dependent child or children. If such widow
21 die or remarry, or if there be no widow there shall be paid
22 monthly from said fund to each dependent child or children of
23 said deceased member the sum of fifty dollars. If there be no
24 widow or no widow eligible to receive benefits and no depen-
25 dent child or children there shall be paid annually in equal
26 monthly installments from said fund to the dependent parents
27 of said deceased member during their joint lifetimes a sum
28 equal to the amount which a widow without children would
29 have been entitled to receive: *Provided*, That when there shall
30 be but one dependent parent surviving such parent shall be
31 entitled to receive during his or her lifetime one half the
32 amount which both parents, if living, would have been entitled
33 to receive.

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

1 In any case where under the terms of this article benefits
2 are provided for “dependent child or children” such phrase
3 shall mean any child or children born to or adopted by a
4 member of the department of public safety under the age of
5 eighteen or where such child or children after reaching eigh-
6 teen years of age continues as a full time student in an ac-
7 credited high school, college, university, business or trade
8 school, until such child reaches the age of twenty-three years
9 or where such child or children is an invalid as long as such
10 child or children remains an invalid, such benefits provided
11 for shall be paid. Benefits provided under the terms of this
12 article for “dependent child or children” shall be paid for so
13 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.

James L. Davis

Chairman Senate Committee

Lawrence C. Christman

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Josiah Jr.

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

H. B. Robertson Jr.

President of the Senate

Lewis N. N. Mans

Speaker House of Delegates

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

Arha N. J.

Governor



PRESENTED TO THE
GOVERNOR

ate 3/19/76
ne 4:40 p.m.