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OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1976**



**ENROLLED**

**SENATE BILL NO. 400**

*Originating in the*

*( Committee on the Judiciary)*



PASSED ..... *March 13* ..... 1976

In Effect ..... *for* ..... Passage

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE *4/1/76*

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# ENROLLED

## Senate Bill No. 400

(Originating in the Committee on the Judiciary)

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

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

**§5-10A-2. Definitions.**

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the public em-  
3 ployees retirement act, pursuant to article ten, chapter  
4 five of this code; each municipal employees retirement  
5 plan, pursuant to article twenty-two, chapter eight of this  
6 code; each policemen's and firemen's pension and relief  
7 fund, pursuant to article twenty-two, chapter eight of this  
8 code; the death, disability and retirement fund of the de-  
9 partment of public safety, pursuant to article two, chapter  
10 fifteen of this code; the state teachers retirement system,  
11 pursuant to article seven-a, chapter eighteen of this code;  
12 supplemental and additional retirement plans, pursuant  
13 to section four-a, article twenty-three, chapter eighteen of  
14 this code; the judges' retirement system, pursuant to  
15 article nine, chapter fifty-one of this code; and any other  
16 plan established pursuant to this code for the payment  
17 of pension, annuity, disability or other benefits to  
18 any person by reason of his service as an officer  
19 or employee of this state or of any political subdivision,  
20 agency or instrumentality thereof, whenever such  
21 plan is supported in whole or in part by public  
22 funds.

23 (b) "Beneficiary" means any person eligible for or  
24 receiving benefits on account of the service for a public  
25 employer by a participant in a retirement plan.

26 (c) "Benefits" means pension, annuity, disability or

27 any other benefits granted pursuant to a retirement  
28 plan.

29 (d) "Conviction" means a conviction on or after the  
30 effective date of this article in any federal or state  
31 court of record whether following a plea of guilty, not  
32 guilty or nolo contendere, and whether or not the per-  
33 son convicted was serving as an officer or employee  
34 of a public employer at the time of the convic-  
35 tion.

36 (e) "Less than honorable service" means:

37 (1) Impeachment and conviction of a participant  
38 under the provisions of section nine, article four of  
39 the constitution of West Virginia, except for a misde-  
40 meanor; or

41 (2) Conviction of a participant of a felony for con-  
42 duct related to his office or employment which he com-  
43 mitted while holding such office or during such employ-  
44 ment; or

45 (3) Conduct of a participant which constitutes all of  
46 the elements of a crime described in either of the fore-  
47 going subdivisions (1) or (2) but for which the partici-  
48 pant was not convicted because:

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

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

54 (iii) Having been named as an unindicted cocon-  
55 spirator in an indictment of another person for such a  
56 crime, which indictment resulted in the conviction of  
57 such other person, he was not prosecuted for such crime  
58 or conspiracy therefor.

59 (f) "Participant" means any person eligible for or  
60 receiving any benefit under a retirement plan on ac-  
61 count of his service as an officer or employee for a public  
62 employer.

63 (g) "Public employer" means the state of West Vir-  
64 ginia and any political subdivision, agency, or instru-

65 mentality thereof for which there is established a retire-  
66 ment plan.

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

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

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

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

13 (2) In the cases described in subdivision (3) of sub-  
14 section (e) of section two of this article, if more than  
15 one year has elapsed since, as the case may be: the plea  
16 bargaining agreement, the grant of immunity, or, in the  
17 event the participant was named as an unindicted co-

18 conspirator for a crime, the conviction of another person  
19 for such crime; or

20 (3) With respect to conduct which occurred prior to  
21 the effective date of this article.

22 The notice shall contain a concise statement of the  
23 reasons why the board believes that the participant  
24 rendered less than honorable service and shall be made  
25 either by personal service or by certified mail, return  
26 receipt requested, to the address which the participant  
27 or beneficiary maintains for purposes of corresponding  
28 with the board. If notice is made by certified mail, ser-  
29 vice shall be deemed complete upon mailing and a com-  
30 pleted receipt shall constitute proof of the receipt thereof.  
31 The notice shall inform the participant or beneficiary  
32 that he has the right to demand that the board seek a  
33 determination in circuit court of his eligibility for bene-  
34 fits and membership in the retirement plan by notifying  
35 the board of such demand within forty days. The notice  
36 shall also inform the participant or beneficiary that the  
37 board will terminate the benefits in accordance with sec-  
38 tion four of this article and refund the participant's  
39 contributions with interest less benefits previously paid  
40 as provided in section six thereof if the participant or  
41 beneficiary either waives the right to demand that the  
42 board take the matter before the circuit court or fails to  
43 respond to the board's notice within forty days after  
44 service.

**§5-10A-4. Determination by circuit court of ineligibility; juris-  
diction; appeal.**

1 If a participant or beneficiary informs the supervisory  
2 board within forty days after service of the notice pro-  
3 vided for in section three of this article that he demands  
4 that the board seek a determination in circuit court, the  
5 board shall forthwith file a petition in the circuit court  
6 in the county in which the board is located or in which  
7 the participant or beneficiary resides, seeking that the  
8 court determine that the participant rendered less than  
9 honorable service as defined in section two of this article  
10 and that the affected participant or beneficiary is thereby  
11 ineligible to receive benefits.

12 Jurisdiction is hereby conferred on circuit courts to  
13 make such determinations.

14 Upon the filing of such a petition by a supervisory  
15 board, the circuit court shall give such notice and oppor-  
16 tunity to be heard to the affected parties as are consistent  
17 with the demands of due process and necessary for a  
18 fair determination of the matter. Upon completion of  
19 its hearings the court shall make such findings of fact  
20 and conclusions of law as are appropriate. Except in the  
21 case of exigent circumstances, the court shall make its  
22 determination within sixty days of the filing of the peti-  
23 tion by the board.

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

#### **§5-10A-5. Termination of benefits.**

1 (a) The board shall terminate a participant's or bene-  
2 ficiary's membership in the plan and shall not thereafter  
3 pay any benefits to the participant or his beneficiaries  
4 if an affected participant or beneficiary either waives the  
5 right to demand that the board seek a determination of  
6 eligibility in circuit court as set forth in section three of  
7 this article or fails to respond to the notice within forty  
8 days after service thereof as set forth in said section  
9 three, or if a circuit court has determined that the par-  
10 ticipant rendered less than honorable service in accor-  
11 dance with section four of this article.

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

#### **§5-10A-6. Refund of contributions.**

1 The supervisory board shall refund to a participant or  
2 beneficiary terminated from benefits by section five of

3 this article the contributions of the participant in the  
4 same manner and with the same interest as provided to  
5 those participants or beneficiaries otherwise eligible to  
6 withdraw the participant's contributions under the re-  
7 tirement plan, less the amount of any benefits which the  
8 participant or his beneficiaries have previously received.

**§5-10A-7. Eligibility for new participation upon rehabilitation.**

1 Nothing in this article shall prohibit a participant made  
2 ineligible for benefits by virtue of conviction of a crime  
3 under this article, and who has paid the full penalty  
4 imposed by law for such crime, from accepting a position  
5 as an officer or employee of the same or different public  
6 employer and joining a retirement plan as a new mem-  
7 ber; but he and his beneficiaries shall remain forever  
8 ineligible for any benefits arising from his former par-  
9 ticipation in a retirement plan.

**§5-10A-8. Setoff.**

1 The state of West Virginia or any of its political sub-  
2 divisions shall have the right of setoff against any unpaid  
3 benefits which have accrued or may thereafter accrue  
4 under the plan, including any contributions by the par-  
5 ticipant, for any claim caused by less than honorable  
6 service by the participant. Notwithstanding any pro-  
7 vision of the law to the contrary, any unpaid benefits  
8 which have accrued or may thereafter accrue, shall be  
9 subject to execution, garnishment, attachment or any  
10 other legal process for collection of a judgment for the  
11 recovery of loss or damages incurred by the state or its  
12 political subdivision, caused by the participant's less than  
13 honorable service.

**§5-10A-9. Rules of construction.**

1 If any provision of this article is determined to de-  
2 prive a person of any property right which is vested  
3 and is indefeasible as of the effective date of this article,  
4 the provisions of this article shall nonetheless be effec-  
5 tive as to any benefits or a part of any benefit under  
6 a retirement plan which shall be deemed to vest on or  
7 after the effective date of this article; and the right to  
8 receive any benefit under a retirement plan, which right

9 shall vest on or after the effective date of this article,  
10 is hereby conditioned upon the full compliance and ob-  
11 servance of the provisions hereof and the rendering of  
12 honorable service throughout the service in public em-  
13 ployment or public office in respect of which such benefit  
14 is payable.

**§5-10A-10. Severability.**

1 If any section, subsection, subdivision, provision,  
2 clause or phrase of this article or the application thereof  
3 to any person or circumstances is held unconstitutional  
4 or invalid, such unconstitutionality or invalidity shall  
5 not affect other sections, subsections, subdivisions, pro-  
6 visions, clauses or phrases or applications of the article,  
7 and to this end each and every section, subsection, sub-  
8 division, provision, clause and phrase of this article are  
9 declared to be severable. The Legislature hereby de-  
10 clares that it would have enacted the remaining sections,  
11 subsections, subdivisions, provisions, clauses and phrases  
12 of this article even if it had known that any sections,  
13 subsections, subdivisions, provisions, clauses and phrases  
14 thereof would be declared to be unconstitutional or in-  
15 valid, and that it would have enacted this article even  
16 if it had known that the application thereof to any  
17 person or circumstance would be held to be unconsti-  
18 tutional or invalid.

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

*James L. Davis*  
-----  
Chairman Senate Committee

*Clarence C. Chestnut Jr.*  
-----  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

*J. William, Jr.*  
-----  
Clerk of the Senate

*C. A. Blankenship*  
-----  
Clerk of the House of Delegates

*W. B. Battle*  
-----  
President of the Senate

*Lewis F. Thomas*  
-----  
Speaker House of Delegates

The within *approved* this the *31<sup>st</sup>*  
*March*  
day of \_\_\_\_\_, 1976

*Arva. P. Hays Jr.*  
-----  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/25/76

Time 2:00 p.m.