

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

Committee Substitute for

HOUSE BILL No. 1008

(By Mrs. Neal & Mr. Stacy)



PASSED April 9, 1977

In Effect July 1, 1977 Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1008

(By MRS. NEAL and MR. STACY)

[Passed April 9, 1977; in effect July 1, 1977.]

AN ACT to amend and reenact article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia department of public safety reorganization act; continuing the department of public safety; providing for reorganization of the department; providing for companies, districts and detachments within the department; providing for training of members and other peace officers; providing for appointment of commissioned and noncommissioned officers, other members and temporary positions as advisors to the superintendent; providing for salaries, bond, compensation and leave for members in the national guard or reserves; creating a procedure for appeals, convening of appeals boards, and selection of board members by lot; providing for establishment of a cadet selection board; appointment and qualifications for membership; providing for equal employment opportunity; providing for employment of civilian employees; providing for appointment of chaplains; promotions and promotion evaluation board; uniforms, provision of authorized weapons and equipment, and group insurance; territorial jurisdiction of department; establishing mission and purpose of department of public safety; powers of superintendent and members; providing limitations upon members; prescribing oath for superintendent and members; disposition of prisoners; prohibiting interference with

members and giving false or misleading information to officers and providing a penalty therefor; prohibiting unauthorized use of uniform or insignia or impersonation of a member and providing a penalty therefor; prescribing members from performing duties for private persons and providing a penalty therefor; making it unlawful to bribe members, etc., and providing a penalty therefor; authorized transfers, prohibiting transfers for disciplinary purposes and notice and expenses in transfers; discipline of members, suspension, demotion, discharge and right to appeal; assignment of assistant attorney general and employment of legal counsel; duty of department to maintain statistics as to aliens, etc.; criminal identification bureau; rules and regulations generally; carrying weapons; and retirement and continuation of death, disability and retirement fund, retirement awards and benefits for disability incurred in performance of duty and otherwise, physical examination, recall to duty and termination, awards and benefits to dependents for death in performance of duty and otherwise, awards and benefits when member dies after retirement or after serving twenty years, termination of benefits to dependents, refunds to members upon discharge or resignation, refunds to dependents and use of the term "dependent child or children"; removing penalty for resignation without consent of superintendent; removing provisions permitting governor to discharge a company; removing requirement of governor's consent for disciplined member to be reappointed; and removing requirement for common carriers to provide transportation to members at no cost.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-1. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Department of Public Safety Reorganization
3 Act."

§15-2-2. Superintendent; departmental headquarters.

1 The department of public safety, heretofore established,
2 shall be continued. The governor shall nominate, and by
3 and with the advice and consent of the Senate, appoint a
4 superintendent to^{be} the executive and administrative head of
5 the department. The superintendent shall hold the rank of
6 colonel and is entitled to all rights, benefits and privileges of
7 regularly enlisted members. On the date of his appointment,
8 the superintendent shall be at least thirty years of age. Before
9 entering upon the discharge of the duties of his office, he shall
10 execute a bond in the penalty of ten thousand dollars, payable
11 to the state of West Virginia and conditioned upon the faith-
12 ful performance of his duties. Such bond both as to form and
13 security shall be approved as to form by the attorney general,
14 and to sufficiency by the governor.

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15 Before entering upon the duties of his office the superinten-
16 dent shall subscribe to the oath hereinafter provided. The
17 headquarters of the department, shall be located in Kanawha
18 county.

§15-2-3. Companies, districts and detachments; how ^s established.

1 The superintendent shall create, appoint and equip a depart-
2 ment of public safety, which shall consist of the number of
3 companies, districts and detachments as are required for the
4 proper administration of the department. Each company, dis-
5 trict or detachment shall be composed of the number of officers
6 and members the superintendent determines are required for
7 the efficient operation of the department.

8 The superintendent shall provide adequate facilities for the
9 training of all members of the department and shall prescribe
10 a basic training course for newly enlisted members. He shall
11 also provide advanced or in-service training from time to time
12 for all members of the department. The superintendent shall
13 hold training classes for other peace officers in the state with-
14 out cost to such officers, except actual expenses for food, lodg-
15 ing and school supplies.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

1 The superintendent shall appoint, from the enlisted member-

2 ship of the department, a deputy superintendent who shall hold
3 the rank of lieutenant colonel and be next in authority to the
4 superintendent. The superintendent shall appoint, from the
5 enlisted membership of the department, the number of other
6 officers and members he deems necessary to operate and main-
7 tain the executive offices, training school, scientific laboratory,
8 keep records relating to crimes and criminals, coordinate
9 traffic safety activities, maintain a system of supplies and
10 accounting and perform other necessary services.

11 The ranks within the membership of the department shall be
12 colonel, lieutenant colonel, major, captain, lieutenant, master
13 sergeant, first sergeant, sergeant, corporal, trooper first class or
14 trooper. Each such member while in uniform shall wear the
15 insignia of rank as provided by law and departmental regula-
16 tions.

17 The superintendent may appoint from the membership of the
18 department eleven principal supervisors who shall receive the
19 compensation and hold the temporary rank of lieutenant
20 colonel, major or captain at the will and pleasure of the
21 superintendent. Such appointments shall be exempt from any
22 merit standards established by the promotion evaluation
23 board. Any person appointed to a temporary rank under the
24 provisions of this article shall retain his permanent rank and
25 shall remain eligible for promotion if his permanent rank is
26 below that of captain. Upon the termination of a temporary
27 appointment by the superintendent, the member shall be
28 entitled to the full rights and privileges of his permanent rank
29 and shall remain eligible for subsequent appointment to a
30 temporary rank.

**§15-2-5. Salaries; bond; leave time for members called to duty in
national guard or reserves.**

1 Members of the department shall receive annual salaries
2 pursuant to appropriation by the Legislature, payable at least
3 monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of
5 nineteen thousand five hundred ninety-three dollars; any
6 major shall receive an annual salary of seventeen thousand
7 seven hundred thirty-five dollars; any captain shall receive an

8 annual salary of sixteen thousand three hundred thirteen
9 dollars; any lieutenant shall receive an annual salary of
10 fifteen thousand, three hundred eleven dollars; any master
11 sergeant or first sergeant shall receive an annual salary of
12 fourteen thousand three hundred sixty-seven dollars; any
13 sergeant shall receive an annual salary of thirteen thousand six
14 hundred sixty-six dollars; any corporal shall receive an annual
15 salary of twelve thousand nine hundred thirty dollars; any
16 trooper first class shall receive an annual salary of twelve
17 thousand one hundred forty dollars; and any newly enlisted
18 trooper shall receive a salary of eight hundred seventy-nine dol-
19 lars monthly during the period of his basic training, and upon
20 the satisfactory completion of such training and assignment to
21 active duty each such trooper shall receive, during the remaind-
22 er of his first year's service, a salary of nine hundred fifty dol-
23 lars monthly. During the second year of his service in the de-
24 partment each trooper shall receive an annual salary of eleven
25 thousand six hundred sixty-five dollars; during the third year
26 of his service each such trooper shall receive an annual salary
27 of eleven thousand eight hundred thirty-seven dollars; and
28 during the fourth year and fifth year of such trooper's service
29 and for each year thereafter he shall receive an annual salary
30 of eleven thousand nine hundred ninety-five dollars. Each
31 member of the department whose salary is specified herein
32 shall receive and be entitled to an increase in salary over
33 that hereinbefore set forth, for grade in rank, based on length
34 of service, including that heretofore and hereafter served
35 with the department, as follows: At the end of five years of
36 service with the department, such member shall receive a
37 salary increase of three hundred dollars to be effective during
38 his next three years of service and a like increase at three-
39 year intervals thereafter, with such increases to be cumulative.

40 In applying the foregoing salary schedule where salary in-
41 creases are provided for length of service, members of the de-
42 partment in service at the time this article becomes effective
43 shall be given credit for prior service and shall be paid such
44 salaries as the same length of service will entitle them to re-
45 ceive under the provisions hereof.

46 Each member of the department, except the superintendent

47 and civilian employees, shall execute before entering upon the
48 discharge of his duties, a bond with security in the sum of five
49 thousand dollars payable to the state of West Virginia, condi-
50 tioned upon the faithful performance of his duties, and such
51 bond shall be approved as to form by the attorney general
52 and to sufficiency by the governor.

53 Any member of the department who is called to perform
53 active duty for training or inactive duty training in the national
54 guard or any reserve component of the armed forces of the
55 United States annually shall be granted upon request leave
56 time not to exceed thirty days for the purpose of performing
57 such active duty for training or inactive duty training, and the
58 time so granted shall not be deducted from any leave ac-
59 cumulated as a member of the department.

§15-2-6. Departmental appeals boards; appeal procedures.

1 Appeals of transfers, suspensions, demotions in rank and
2 discharges shall be heard by boards of appeals convened pur-
3 suant to the provisions of this section. The boards shall each
4 consist of seven members and five members shall constitute a
5 quorum. A new board shall be convened to hear and deter-
6 mine each new appeal filed by a member of the department.
7 There may be more than one board in existence at the same
8 time meeting on different appeals. A member of the retire-
9 ment board is eligible to serve on an appeals board.

10 The members of a board shall be chosen by lot by the
11 superintendent with one member to be chosen from among all
12 the members of each of the seven ranks of trooper through
13 lieutenant, inclusive. No department member may serve on
14 an appeals board if his rank is the same, or if he is a member
15 of the same detachment, as the person making the appeal. If
16 the person making the appeal is a member of one of the
17 ranks of lieutenant through trooper, inclusive, then a captain
18 shall be chosen by lot from among all members of that rank
19 to serve on the board. Within ten days after he has been
20 notified of his selection and assignment to serve on a board, a
21 member may for cause request to be relieved of such assign-
22 ment. The superintendent shall determine whether the reasons
23 alleged by the member are sufficient cause to relieve the

34 member of such assignment. If such request is granted by the
35 superintendent, a new board member shall be selected by lot
36 from the same rank to replace the member who has been re-
37 lieved of such assignment.

38 A chairman shall be selected by the members of the board.
39 Each member of a board shall be reimbursed for all reasonable
40 and necessary expenses actually incurred in attending meetings
41 of a board. All expenses of a board shall be paid from ap-
42 propriations to the department.

43 Within fifteen days after a member of the department has
44 received a notice of transfer or a statement of charges and an
45 order of suspension, demotion in rank or discharge by the
46 superintendent, he may appeal the transfer or order to an
47 appeals board by filing a written notice of appeal with the
48 superintendent. The superintendent shall promptly record
49 and file each appeal, select a board, notify each new board
50 member of his selection, and furnish to each board member
51 a copy of the notice or order appealed from and the notice of
52 appeal. A hearing by an appeals board shall be held within
53 thirty days after the superintendent has received a member's
54 notice of appeal. At least fifteen days prior to the hearing date,
55 the board shall notify the superintendent and the member
56 making the appeal of the date, time and place of the hearing.

57 Any member of the department who makes such appeal, as
58 aforesaid, may be represented by an attorney or by any mem-
59 ber of the department or retired member who is receiving
60 benefits from the death, disability and retirement fund. The
61 superintendent may be represented by counsel of his choice.
62 In the appeal of a transfer, the member has the burden of
63 proof that the transfer is not for the purpose of the operational
64 needs of the department. In any other appeal the superin-
65 tendent has the burden of proof as to the charges alleged. The
66 procedure in any hearing before the board shall be informal
67 and without adherence to the technical rules of evidence re-
68 quired in proceedings in courts of records. All evidence sub-
69 mitted to the board shall be submitted under oath. The chair-
70 man, or any member of the board, shall have authority to
71 administer oaths to witnesses.

72 The board shall designate a reporter for any such hearing
73 who shall record and transcribe all of the proceedings. Upon
74 his demand, the member making the appeal shall have a public
75 hearing on the charges, and in the absence of such demand, the
76 board may determine whether or not the hearing should be
77 public. Any hearing may be continued, recessed or adjourned
78 by the board.

79 The superintendent shall provide reasonable space for the
80 conduct of hearings. The charges of the reporter shall be paid
81 by the superintendent from available appropriations. At the
82 conclusion of the hearing, the board shall determine whether
83 or not the superintendent's order shall be sustained. The
84 board's decision shall be issued in writing, with copies thereof
85 being sent by the board to the superintendent and to the ap-
86 pealing member by certified mail, return receipt requested. A
87 hearing shall be conducted by at least five members of the
88 board and the decision of the board shall be made by a
89 majority vote of all the members of the board.

90 Either party aggrieved by a decision of a board of appeals
91 may appeal the decision to the circuit court of Kanawha County
92 within sixty days of receipt of a copy of the board's decision.

93 The court shall hear the appeal upon the record and deter-
94 mine all questions submitted to it on appeal.

95 In the event any decision sustaining the superintendent's
96 order or notice is reversed upon judicial review, which reversal
97 is final, the superintendent shall return the member to his
98 status prior to the superintendent's order or notice, with full
99 payment of any compensation withheld and with full credit
100 for service between the date the superintendent issued his
101 order or notice and the date of the final judicial decision re-
102 versing the decision of the board.

**§15-2-7. Cadet selection board; qualifications for and appoint-
ment to membership in department; civilian employees.**

1 (a) The superintendent shall establish within the depart-
2 ment of public safety a cadet selection board which shall be
3 representative of commissioned and noncommissioned officers
4 within the department.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on the
7 current list of eligible applicants established by the cadet
8 selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of the
11 armed forces of the United States and to residents of West Vir-
12 ginia. Each applicant for appointment shall be a person not less
13 than twenty-one nor more than thirty years of age, of sound
14 constitution and good moral character; shall be required to
15 pass such mental examination and meet other requirements as
16 may be provided for in regulations promulgated by the cadet
17 selection board; and shall be required to pass such physical
18 examination as may be provided for in regulations promulgated
19 by the retirement board: *Provided*, That ^{former} member may, at the
20 discretion of the superintendent, be reenlisted if the period of
21 his former service subtracted from his age does not exceed
22 thirty years.

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23 (d) No person may be barred from becoming a member of
24 the department because of his religious or political convictions.

25 (e) The superintendent shall adhere to the principles of
26 equal employment opportunity set forth in article eleven,
27 chapter five of this code, and shall take positive steps to
28 encourage applications for department membership from fe-
29 males and minority groups within the state.

30 (f) Except for the superintendent, no person may be ap-
31 pointed or enlisted to membership in the department at a grade
32 or rank above the grade of trooper.

33 (g) The superintendent shall appoint such civilian em-
34 ployees as may be necessary, and all such employees may be
35 included in the classified service of the civil service system
36 except those in positions exempt under the provisions of
37 article six, chapter twenty-nine of this code.

§15-2-8. Chaplains.

1 The superintendent may also appoint for each company not
2 more than two chaplains, residing within the state of West Vir-
3 ginia, who shall serve without pay, and who may not be re-

4 quired to perform any duties of members of the department,
5 nor shall any bond be required. The superintendent is
6 authorized to furnish each such chaplain one official uniform,
7 with proper chaplain insignia, to be worn at any ceremonial
8 occasion conducted officially by the department where the
9 presence of a member of the clergy is customary. Such chap-
10 lains may be reimbursed by the superintendent for all rea-
11 sonable and necessary expenses actually incurred in attending
12 such ceremonies.

§15-2-9. Promotions; promotion evaluation board to be established.

1 The superintendent shall establish within the department of
2 public safety a promotion evaluation board, which shall be
3 representative of commissioned and noncommissioned officers
4 within the department. The promotion evaluation board shall
5 prescribe merit standards for promotion and maintain lists of
6 eligible candidates.

7 The superintendent shall promote a member to the per-
8 manent rank of trooper first class, corporal, sergeant, first
9 sergeant, master sergeant, or lieutenant from among the top
10 three names on the current list of eligible candidates established
11 by the promotion evaluation board for each rank.

**§15-2-10. Uniforms; authorized equipment, weapons and supplies;
local headquarters; quarters for members; life insur-
ance; medical and hospital fees for injuries and illnesses
of members incurred in line of duty.**

1 (a) The standard uniform to be used by the department
2 of public safety after the effective date of this article shall
3 be as follows: Forestry green blouse with West Virginia
4 state police emblem on sleeve; black shoulder strap, one-
5 inch black stripe around sleeve, four inches from end of
6 sleeve; forestry green breeches with one-inch black stripe
7 down the side; trousers (slacks) with one-inch black stripe
8 down the side for officers and clerks regularly enlisted
9 in the department; forestry green shirts with West Virginia
10 state police emblem on sleeve; black shoulder straps; forestry
11 green mackinaw with West Virginia state police emblem on
12 sleeve; black shoulder straps; one-inch black stripe around
13 sleeve four inches from end of sleeve; campaign hat of olive

14 drab color; black Sam Browne belt with holster; black
15 leggings and shoes; the officers' uniform will have one and
16 one-quarter inch black stripe around the sleeve of blouse and
17 mackinaw four inches from end of sleeve circumposed with
18 one-half inch gold braid, also black collars on blouse, with
19 two silver shoulder bars for captains, one silver shoulder bar
20 for first lieutenant. For noncommissioned officers the uniform
21 blouse and shirt will have thereon black chevrons of the ap-
22 propriate rank.

23 (b) The superintendent shall establish the weapons and
24 enforcement equipment which shall be authorized for use by
25 members of the department, and shall provide for periodic
26 inspection of such weapons and equipment. He shall provide
27 for the discipline of members using other than authorized
28 weapons and enforcement equipment.

29 (c) The superintendent shall provide the members of the
30 department with suitable arms and weapons, and, when he
31 deems it necessary, with suitably equipped automobiles, motor-
32 cycles, watercraft, airplanes and other means of conveyance,
33 to be used by the department of public safety, the governor,
34 and other officers and executives in the discretion of the
35 governor, in times of flood, disaster, and other emergencies,
36 for traffic study and control, criminal and safety work, and in
37 other matters of official business. He shall also provide the
38 standard uniforms for all members of the department, for
39 officers, noncommissioned officers and troopers herein provided
40 for. All uniforms and all arms, weapons and other property
41 furnished the members of the department by the state of
42 West Virginia shall be and remain the property of the state.

43 (d) The superintendent is authorized to purchase and
44 maintain on behalf of members group life insurance not to
45 exceed the amount of five thousand dollars on behalf of each
46 member.

47 (e) The superintendent is authorized to contract and fur-
48 nish at department expense medical and hospital services
49 for treatment of illness or injury of a member which shall be
50 determined by the superintendent to have been incurred by
51 such member while engaged in the performance of duty and
52 from causes beyond control of such members.

53 (f) The superintendent shall establish and maintain local
54 headquarters at such places in West Virginia as are in his
55 judgment suitable and proper to render the department of
56 public safety most efficient for the purpose of preserving the
57 peace, protecting property, preventing crime, apprehending
58 criminals and carrying into effect all other provisions of this
59 article. The superintendent shall provide, by lease or other-
60 wise, for housing and quarters for the accommodation of the
61 members of the department of public safety, and shall provide
62 all equipment and supplies necessary for them to perform their
63 duties.

§15-2-11. Territorial jurisdiction.

1 The jurisdiction of the department shall extend anywhere in
2 the state of West Virginia.

**§15-2-12. Mission of the department; powers of superintendent, of-
ficers and members; patrol of turnpike.**

1 (a) The West Virginia department of public safety shall
2 have the mission of statewide enforcement of criminal and
3 traffic laws with emphasis on providing basic enforcement
4 and citizen protection from criminal depredation throughout
5 the state and maintaining the safety of the state's public
6 streets, roads and highways.

7 (b) The superintendent and each of the officers and mem-
8 bers of the department are hereby empowered;

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this state,
11 or of the United States, and when a witness to the perpetra-
12 tion of any offense or crime, or to the violation of any law
13 of this state, or of the United States, may arrest without
14 warrant; to arrest and detain any persons suspected of
15 the commission of any felony or misdemeanor whenever
16 complaint is made and warrant is issued thereon for such
17 arrest, and any person so arrested shall be forthwith brought
18 before the proper tribunal for examination and trial in
19 the county where the offense for which any such arrest
20 has been made was committed;

21 (2) To serve criminal process issued by any court or

22 magistrate anywhere within this state (they shall not serve
23 civil process); and

24 (3) To cooperate with local authorities in detecting crime
25 and in apprehending any person or persons engaged in
26 or suspected of the commission of any crime, misdemeanor
27 or offense against the law of this state, or of the United States,
28 or of any ordinance of any municipality in this state; and
29 to take affidavits in connection with any application to
30 the department of highways, department of motor vehicles
31 and department of public safety of West Virginia for any
32 license, permit or certificate that may be lawfully issued by
33 these departments of state government.

34 (c) Members of the department of public safety are
35 hereby created forest patrolmen and game and fish wardens
36 throughout the state to do and perform any duties and
37 exercise any powers of such officers, and may apprehend
38 and bring before any court or magistrate having jurisdiction
39 of such matters, anyone violating any of the provisions of
40 chapters twenty, sixty and sixty-one of this code, and the
41 department of public safety shall at any time be subject to
42 the call of the West Virginia alcohol beverage control com-
43 missioner to aid in apprehending any person violating any
44 of the provisions of said chapter sixty of this code. They
45 shall serve and execute warrants for the arrest of any person
46 and warrants for the search of any premises issued by any
47 properly constituted authority, and shall exercise all of the
48 powers conferred by law upon a sheriff. They shall not serve
49 any civil process or exercise any of the powers of such officer
50 in civil matters.

51 (d) Any member of the department of public safety
52 knowing or having reason to believe that anyone has violated
53 the law may make complaint in writing before any court or
54 officer having jurisdiction and procure a warrant for such
55 offender, execute the same and bring such person before
56 the proper tribunal having jurisdiction. He shall make return
57 on all such warrants to such tribunals and his official title
58 shall be "member of the department of public safety." Mem-
59 bers of the department of public safety may execute any
60 summons or process issued by any tribunal having jurisdiction

61 requiring the attendance of any person as a witness before
62 such tribunal and make return thereon as provided by
63 law, and any return by a member of the department of public
64 safety showing the manner of executing such warrant or
65 process shall have the same force and effect as if made by
66 a sheriff.

67 (e) Each member of the department of public safety, when
68 called by the sheriff or any county, or when the governor by
69 proclamation so directs, shall have full power and authority
70 within such county, or within the territory defined by the gover-
71 nor, to direct and command absolutely the assistance of any
72 sheriff, deputy sheriff, chief of police, policeman, game and fish
73 warden, and peace officer of the state, or of any county or
74 municipality therein, or of any able-bodied citizen of the United
75 States, to assist and aid in accomplishing the purposes ex-
76 pressed in this article. When so called, any officer or person
77 shall, during the time his assistance is required, be for all
78 purposes, a member of the department of public safety and
79 subject to all the provisions of this article.

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80 (f) The superintendent may also assign members of the de-
81 partment to perform police duties on any turnpike, or toll road,
82 or any section thereof, operated by the West Virginia turnpike
83 commission: *Provided*, That such turnpike commission shall
84 reimburse the department of public safety for salaries paid to
85 such members, and shall either pay directly or reimburse the
86 department for all other expenses of such group of members in
87 accordance with actual or estimated costs determined by the
88 superintendent.

§15-2-13. Limitations upon members.

1 No member of the department of public safety may in any
2 way interfere with the rights or property of any person except
3 for the prevention of crime.

4 No member of the department of public safety may in any
5 way become active or take part in any political contest or at
6 any time participate in any political party caucus, committee,
7 primary, assembly or convention, or in any general or special
8 election, except to cast his ballot.

9 No member of the department of public safety may be de-
10 tailed or ordered to duty at or near any voting precinct where

11 any election or convention is held on the day of such election or
12 convention; nor shall any member thereof remain in, about or
13 near such voting precinct or place of convention, except to cast
14 his vote. After voting he shall forthwith retire from such voting
15 precinct. No member of the department may act as an election
16 official. If any member of the department of public safety is
17 found guilty of violating any of the provisions of this section he
18 shall be dismissed from the department by the superintendent
19 as hereinafter provided.

20 No officer or member of the department of public safety
21 may, in any labor trouble or dispute between employer and em-
22 ployee, aid or assist either party thereto, but shall in such cases
23 see that the statutes and laws of this state are enforced in a
24 legal way and manner.

§15-2-14. Oath of superintendent and members.

1 The superintendent and each of the other members of the de-
2 partment of public safety, before entering upon the discharge of
3 his duties, shall take and subscribe to an oath which shall be in
4 form and effect as follows, to wit: State of West Virginia,

5 County of _____, to wit:

6 I, _____, do solemnly swear that I will sup-
7 port the Constitution of the United States, the Constitution
8 of the State of West Virginia, and I will honestly and faithfully
9 perform the duties imposed upon me under the provisions
10 of law as a member of the department of public safety to the
11 best of my skill and judgment.

12 _____

13 Taken, subscribed and sworn to before me, this the _____
14 day of _____,

15 _____

16 All such oaths, except that of the superintendent, shall be
17 filed and preserved in the office of the department of public
18 safety.

§15-2-15. Disposition of prisoners.

1 It shall be the duty of all officers of the state, or of
2 any county or municipality thereof, or jailers having the

3 charge and custody of any jail or place of detention, to
4 receive any prisoners arrested by any officer or mem-
5 ber of the department of public safety and to detain them
6 in custody until ordered released by a tribunal of competent
7 jurisdiction, and any such officer, jailer or person having
8 custody of any jail or place of detention who shall fail or
9 refuse so to receive and detain such prisoner shall be guilty
10 of a misdemeanor, and, upon conviction thereof, shall be
11 fined not less than twenty-five dollars nor more than two
12 hundred dollars, or imprisoned in the county jail for not more
13 than sixty days, or both fined and imprisoned.

**§15-2-16. Interference with officers or members; false information;
penalty.**

1 Any person who shall at any time intercept, molest or
2 interfere with any officer or member of the department of
3 public safety while on duty, or any state, county or municipal
4 officer or person then under the charge and direction of
5 some officer or member of the department of public safety
6 while on duty, or who knowingly gives false or misleading in-
7 formation to a member of the department, shall be guilty of a
8 misdemeanor, and, upon conviction thereof, shall be fined
9 not less than twenty-five dollars nor more than two hundred
10 dollars, or imprisoned in the county jail for not more than
11 sixty days, or both fined and imprisoned.

**§15-2-17. Unauthorized use of uniform, badge or other insignia;
impersonation of member; penalty.**

1 Every person who is not a member of the department is
2 hereby forbidden to wear, use, order to be used or worn, copy
3 or imitate in any respect or manner the uniform prescribed for
4 members of the department of public safety, and any person
5 who shall violate the provisions of this article, for which no
6 other penalty is expressly provided, and any person who shall
7 falsely represent himself to be an officer or member of the
8 department of ~~the~~ public safety, or to be under the order of
9 direction of any officer or member of said department, or
10 who shall, unless an officer or member thereof, wear the uni-
11 form prescribed for members of said department, or the
12 badge or other insignia adopted or used by said department,
13 shall be guilty of a misdemeanor, and, upon conviction thereof,

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14 shall be fined not more than two hundred dollars, or imprisoned in the county jail for not more than six months, or both
15 fined and imprisoned.
16

§15-2-18. Officers or members performing duties for private persons; general penalty.

1 If any officer or member of the department of public safety
2 hires himself to any person, firm or corporation to guard his
3 private property, or demands or receives from any person, firm
4 or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his
5 duties under the regulations of the superintendent and the
6 provisions of this article, shall be guilty of a felony, and, upon
7 conviction thereof, shall be confined in the penitentiary for not
8 less than one nor more than five years, and any such officer
9 or member of the department of public safety who violates
10 any other provisions of this article, for which no other penalty
11 is expressly provided, shall be guilty of a misdemeanor, and,
12 upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned
13 in the county jail for not more than four months, or both fined
14 and imprisoned.
15
16

§15-2-19. Bribing, etc., officers or members; penalty.

1 If any person, firm or corporation shall give or offer to give
2 any money or other thing of value to any officer or member of
3 the department of public safety as a consideration for the
4 performance of, or the failure to perform, any duty of such
5 officer or member of the department of public safety under
6 the rules and regulations of the superintendent and the provisions of this article, he or it shall be guilty of a felony, and
7 if a person, upon conviction thereof, shall be confined in the
8 penitentiary for a term of not less than one year nor more than
9 five years, and if a firm or corporation, shall be fined not
10 less than three thousand dollars nor more than ten thousand
11 dollars.
12

§15-2-20. Transfer authorized; use for disciplinary purposes prohibited; notice required under certain circumstances; relocation expense; regulation of member's residence.

1 The superintendent may transfer members to meet the

2 operational needs of the department. A transfer may not be
3 made as a disciplinary measure.

4 Whenever any member of the department is to be transferred
5 from one station to another station, for a period of time in
6 excess of sixty days, the superintendent shall give written notice
7 of such proposed transfer to such member at least fifteen days
8 in advance of such transfer. The superintendent shall not, how-
9 ever, be required to give such notice in the event the transfer
10 is at the request of the member who is to be transferred. In
11 the event that a member appeals a transfer in accordance with
12 section six of this article, the transfer shall not take effect pend-
13 ing the appeal before the board. If the board upholds the
14 transfer, such transfer shall be effective upon the issuance of
15 the board's decision and shall remain in effect pending any ap-
16 peal of such decision by the member.

17 Whenever any member of the department is transferred from
18 one station to another station, for a period of time in excess of
19 sixty days, all reasonable and necessary transportation expenses
20 actually incurred in moving the household furniture and effects
21 of such member and of his immediate family from his former
22 station to his new station shall be paid by the department: *Pro-*
23 *vided*, That if any such member owns and resides in a mobile
24 home, the department shall pay all reasonable and necessary
25 transportation expenses actually incurred in moving such
26 mobile home from such member's former station to his new
27 station, but the department may not pay transportation ex-
28 penses for moving such mobile home in excess of the amount
29 which would have been paid for moving an equivalent amount
30 of household furniture and effects had such member not owned
31 such mobile home.

32 A member transferred shall also be given a relocation ex-
33 pense of three hundred dollars if the transfer necessitated re-
34 location of the member's family.

35 The superintendent shall not restrict a member from residing
36 in a county other than that in which the member is stationed,
37 except that the superintendent may promulgate by appropriate
38 written regulation to be applied uniformly throughout the de-
39 partment a restriction as to either: (1) The number of miles

40 distant from his station which a member may reside, or (2) the
41 time necessary under ordinary traffic conditions for a member
42 to travel between his residence and station.

43 The member may appeal the superintendent's order of trans-
44 fer to the board of appeals created for such purpose or to the
45 circuit court of Kanawha county in accordance with the pro-
46 visions of section six of this article and all of the original papers
47 in such cases shall be delivered to the appeals board or the
48 circuit court, as the case may be. The right of a member to
49 appeal a transfer shall not apply until the member has com-
50 pleted the eighteen-month probationary period with the de-
51 partment.

§15-2-21. Suspension, demotion or discharge of members; right of appeal.

1 The superintendent may suspend, demote in rank or dis-
2 charge from the service any member of the department of
3 public safety for any of the following causes: Refusing to
4 obey the lawful orders of his superior officer, neglect of duty,
5 drunkenness, immorality, inefficiency, abuse of his authority,
6 interference with the lawful right of any person, participation
7 in political activities, primaries, conventions or elections,
8 conviction for a crime or any action proscribed under this
9 article. The superintendent shall cause an investigation to be
10 made when notice of any one or more of such causes is brought
11 to his attention and shall determine whether or not the member
12 should be suspended, demoted in rank or discharged. If the
13 superintendent orders the member suspended, demoted in rank
14 or discharged, a written statement of the charges and a written
15 order of suspension, demotion in rank or discharge shall be
16 delivered personally to the member by his commanding offi-
17 cer, or next in command in the absence of his commanding
18 officer. The superintendent shall explicitly set forth in any
19 such written statement of charges the details giving rise to the
20 cause or causes upon which he ordered such suspension, de-
21 motion in rank or discharge. The member may appeal the
22 superintendent's order to the board of appeals created for such
23 purpose or to the circuit court of Kanawha county in accor-
24 dance with the provisions of section six of this article and all of

25 the original papers in such cases shall be delivered to the ap-
26 peals board or the circuit court, as the case may be.

27 The right to appeal a suspension or discharge shall not apply
28 to members until they have completed their probationary
29 period with the department, which shall be for a period of
30 eighteen months.

**§15-2-22. Assignment of assistant attorney general; employment of
legal counsel.**

1 (a) The attorney general may, upon request of the superin-
2 tendent, assign an assistant attorney general to the depart-
3 ment.

4 (b) Notwithstanding the provisions of section one, article
5 three, chapter five of this code, the superintendent may
6 authorize any member of the department to employ an attorney
7 of such member's choice to act in proceedings wherein criminal
8 charges are brought against such member because of action in
9 line of duty. For such attorney's services an amount deter-
10 mined by the judge in whose court the action is pending, not
11 to exceed one thousand dollars, may be expended in any one
12 case.

**§15-2-23. Duties of superintendent as to statistics, aliens and labor
conditions.**

1 The superintendent of the department of public safety is
2 authorized from time to time to collect statistics and distribute
3 information throughout the state, and in this to cooperate with
4 the state superintendent of public schools and other educational
5 agencies of the state, to secure the naturalization and Ameri-
6 canization of all foreign-born inhabitants; to employ all agen-
7 cies in his power to secure a harmonious feeling and under-
8 standing between the employers of labor and their employees;
9 and to secure this end he may call upon the educational and
10 other state institutions for public speakers, and is authorized to
11 hold public meetings at any point in the state where, in his
12 judgment, such meetings will be of advantage to carry out
13 the spirit of this law.

§15-2-24. Criminal identification bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

1 (a) The superintendent of the department shall establish,
2 equip and maintain at the departmental headquarters a
3 criminal identification bureau, for the purpose of receiving
4 and filing fingerprints, photographs, records and other infor-
5 mation pertaining to the investigation of crime and the appre-
6 hension of criminals, as hereinafter provided. The superin-
7 tendent shall appoint or designate a supervisor to be in charge
8 of the criminal identification bureau and such supervisor shall
9 be responsible to the superintendent for the affairs of the
10 bureau. Members of the department assigned to the criminal
11 identification bureau shall carry out their duties and assign-
12 ments in accordance with internal management rules and
13 regulations pertaining thereto promulgated by the superin-
14 tendent.

15 (b) The criminal identification bureau shall cooperate with
16 identification bureaus of other states and of the United States
17 to develop and carry on a complete interstate, national and
18 international system of criminal identification.

19 (c) The criminal identification bureau may furnish finger-
20 prints, photographs, records or other information to authorized
21 law-enforcement and governmental agencies of the United
22 States and its territories, of foreign countries duly authorized
23 to receive the same, of other states within the United States
24 and of the state of West Virginia upon proper request stating
25 that the fingerprints, photographs, records or other informa-
26 tion requested are necessary in the interest of and will be
27 used solely in the administration of official duties and the
28 criminal laws.

29 (d) The criminal identification bureau may furnish, with
30 the approval of the superintendent, fingerprints, photographs,
31 records or other information to any private or public agency,
32 person, firm, association, corporation or other organization,
33 other than a law-enforcement or governmental agency as to
34 which the provisions of subsection (c) of this section shall

35 govern and control, but all requests under the provisions of
36 this subsection (d) for such fingerprints, photographs, records
37 or other information must be accompanied by a written
38 authorization signed and acknowledged by the person whose
39 fingerprints, photographs, records or other information is to
40 be released.

41 (e) The criminal identification bureau may furnish finger-
42 prints, photographs, records and other information of persons
43 arrested or sought to be arrested in this state to the identifica-
44 tion bureau of the United States government and to other
45 states for the purpose of aiding law enforcement.

46 (f) Persons in charge of any penal or correctional institu-
47 tion, including any city or county jail, in this state shall take,
48 or cause to be taken, the fingerprints and description of all
49 persons lawfully committed thereto or confined therein and
50 furnish the same in duplicate to the criminal identification
51 bureau, department of public safety. Such fingerprints shall
52 be taken on forms approved by the superintendent of the
53 department of public safety. All such officials as herein named
54 may, when possible to do so, furnish photographs to the crim-
55 inal identification bureau of such persons so fingerprinted.

56 (g) Members of the department of public safety, and all
57 other state law-enforcement officials, sheriffs, deputy sheriffs,
58 and each and every peace officer in this state, shall take or
59 cause to be taken the fingerprints and description of all persons
60 arrested or detained by them, charged with any crime or offense
61 in this state, in which the penalty provided therefor is confine-
62 ment in any penal or correctional institution, or of any person
63 who they have reason to believe is a fugitive from justice or an
64 habitual criminal, and furnish the same in duplicate to the crim-
65 inal identification bureau of the department of public safety on
66 forms approved by the superintendent of said department.
67 All such officials as herein named may, when possible to do
68 so, furnish to the criminal identification bureau, photographs
69 of such persons so fingerprinted. For the purpose of obtaining
70 data for the preparation and submission to the governor and
71 the Legislature by the department of public safety of an annual
72 statistical report on crime conditions in the state, the clerk of
73 any court of record, the magistrate of any magistrate court and
74 the mayor or clerk of any municipal court before which a

75 person appears on any criminal charge shall report to the
76 criminal identification bureau the sentence of the court or
77 other disposition of the charge and the prosecuting attorney
78 of every county shall report to the criminal identification
79 bureau such additional information as the bureau may require
80 for such purpose, and all such reports shall be on forms
81 prepared and distributed by the department of public safety,
82 shall be submitted monthly and shall cover the period of the
83 preceding month.

84 (h) All persons arrested or detained pursuant to the require-
85 ments of this article shall give fingerprints and information re-
86 quired by paragraphs (f) and (g) of this section. Any person
87 who has been fingerprinted or photographed in accordance with
88 the provisions of this section, who is acquitted of the charges
89 upon which he or she was arrested, and who has no previous
90 criminal record, may, upon the presentation of satisfactory
91 proof to the department, have such fingerprints or photographs,
92 or both, returned to them.

93 (i) All state, county and municipal law-enforcement agen-
94 cies shall submit to the bureau uniform crime reports setting
95 forth their activities in connection with law enforcement. It
96 shall be the duty of the bureau to adopt and promulgate rules
97 and regulations prescribing the form, general content, time and
98 manner of submission of such uniform crime reports. Willful
99 or repeated failure by any state, county or municipal law-
100 enforcement official to submit the uniform crime reports re-
101 quired by this article shall constitute neglect of duty in public
102 office. The bureau shall correlate the reports submitted to it
103 and shall compile and submit to the governor and the Legisla-
104 ture semiannual reports based on such reports. A copy of such
105 reports shall be furnished to all prosecuting attorneys and law-
106 enforcement agencies.

107 (j) Neglect or refusal of any person mentioned in this sec-
108 tion to make the report required herein, or to do or perform
109 any act on his or her part to be done or performed in connec-
110 tion with the operation of this section, shall constitute a misde-
111 meanor, and such person shall, upon conviction thereof, be
112 punished by a fine of not less than twenty-five dollars nor more
113 than two hundred dollars, or by imprisonment in the county jail

114 for a period of not more than sixty days, or both. Such neglect
115 shall constitute misfeasance in office and subject such persons
116 to removal from office. Any person who willfully removes,
117 destroys, or mutilates any of the fingerprints, photographs,
118 records or other information of the department of public safety,
119 shall be guilty of a misdemeanor, and such person shall, upon
120 conviction thereof, be punished by a fine of not more than one
121 hundred dollars, or by imprisonment in the county jail for a
122 period of not more than six months, or both.

§15-2-25. Rules and regulations generally; carrying of weapons.

1 Subject to the written approval of the governor and the
2 provisions of this article, the superintendent may make and
3 promulgate proper rules and regulations for the government,
4 discipline and control of the department of public safety, and
5 shall also cause to be established proper rules and regulations
6 for the examinations of all applicants for appointment thereto.
7 The members of the department of public safety shall be per-
8 mitted to carry arms and weapons, and no license shall be re-
9 quired for such privilege.

**§15-2-26. Continuation of death, disability and retirement fund;
retirement board.**

1 There shall be continued the death, disability and retirement
2 fund heretofore created for the benefit of members of the de-
3 partment of public safety and any dependent of a retired or
4 deceased member thereof.

5 There shall be deducted from the monthly payroll of each
6 member of the department of public safety and paid into such
7 fund six percent of the amount of his salary, and an additional
8 twelve percent of the monthly salary of each member of said
9 department shall be paid by the state of West Virginia monthly
10 into such fund out of the ^{annual} ~~biennial~~ appropriation for said depart-
11 ment. All moneys payable into such fund shall be deposited in
12 the state treasury, and the treasurer and auditor shall keep a
13 separate account thereof on their respective books.

14 The moneys in this fund, and the right of a member to a
15 retirement allowance, to the return of contributions, or to
16 any benefit under the provisions of this article, are hereby

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17 exempt from any state or municipal tax; shall not be subject
18 to the execution, garnishment, attachment or any other process
19 whatsoever; and shall be unassignable except as is provided
20 in this article.

21 The death, disability and retirement fund shall be adminis-
22 tered by a retirement board which shall consist of the attorney
23 general, state treasurer, the superintendent and two members in
24 active service of the department: *Provided*, That members of
25 said retirement board shall not be entitled to receive any com-
26 pensation in addition to the salary of their respective offices
27 for any service rendered as a member of said retirement board:
28 *Provided, however*, That the superintendent may pay out of
29 funds appropriated for operation of said department the rea-
30 sonable expenses of members of said board necessarily incurred
31 in connection with dispatch of any business properly before
32 such board. The two members of said department shall be
33 elected to membership on the retirement board by vote of the
34 members of the department of public safety; such election to be
35 held on the first Tuesday in June next following the passage of
36 this article and on the first Tuesday in June each two years
37 thereafter. The attorney general, state treasurer and the
38 superintendent of the department of public safety shall pro-
39 mulgate any and all necessary rules and regulations for holding
40 in a fair and impartial manner the election on the first Tuesday
41 in June next following the passage of this article and thereafter
42 the retirement board consisting of the attorney general,
43 state treasurer, superintendent and the two duly elected
44 members of said department shall have authority to promulgate
45 and, from time to time, revise rules and regulations for holding
46 all subsequent elections in a fair and impartial manner. All
47 elections shall be held under the direction of the superintendent
48 of said department in accordance with said rules and regula-
49 tions. The members of the department chosen to serve on said
50 retirement board shall hold office for a period of two years
51 commencing on the first day of July next following the date of
52 such election. When any member elected to the retirement
53 board shall die, resign from the board, resign or be discharged
54 from service in the department, make application for retire-
55 ment, be retired, or become disabled, the office of such member
56 of the retirement board shall be declared vacant by the superin-

57 tendent of said department, and said superintendent, to fill such
58 vacancy, shall appoint the member in active service of said de-
59 partment who as an unsuccessful candidate at the preceding
60 election of members to said retirement board received the great-
61 est number of votes. No member of the retirement board shall
62 participate in any hearing at which his own petition for retire-
63 ment or the petition of any member of said department who is
64 related to him by blood or marriage shall be presented for con-
65 sideration.

66 At its first meeting following each election of members to the
67 retirement board said board shall elect one of its members to
68 serve as chairman and a second member to serve as secretary
69 thereof. The retirement board shall have the power to make
70 rules and regulations, not inconsistent with the provisions here-
71 of, governing procedure and order and manner of business by
72 and before such board. The retirement board shall have the
73 power to make awards and to revise and terminate awards pre-
74 viously made for such times under such terms and conditions as
75 are hereinafter provided. The votes of a majority of the five
76 members of the board shall be necessary to decision of any
77 matter by the board. Decisions made by the board shall be
78 supreme and final and there shall be no appeal therefrom.

79 It shall be the duty of the retirement board on or before
80 the first day of July of each year to cause all future awards
81 from such fund to be valued and, to the extent that moneys
82 shall be available, reserves based on sound actuarial principles
83 for payment thereof to be carried on the funds account as a
84 liability against the reserve fund. The board shall have the
85 authority to employ an actuary for such purpose. The board
86 shall cause a system of accounting to be installed and main-
87 tained to reflect currently and truly all transactions or develop-
88 ments pertaining to age of members and eligible dependents
89 surviving deceased members, periods of service and aggregate
90 earnings of all members eligible to participate in said fund and
91 any other matter relating to maintenance of said fund or ad-
92 ministration thereof, and each year to cause to be made and
93 submitted to each member of said department a statement of
94 the condition of said fund. Costs and expenses incurred in
95 making actuarial studies, audits and installations and main-

96 tenance of such accounting system shall be paid by the super-
 97 intendent from funds appropriated for operation of the de-
 98 partment of public safety.

99 All moneys paid into and accumulated in said death, dis-
 100 ability and retirement fund, except such amounts as shall
 101 be designated or set aside by the retirement board for pay-
 102 ments of death, disability and retirement benefits and awards,
 103 shall be invested by the state board of investments as provided
 104 by law.

§15-2-27. 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 the provisions of section twenty-eight
 6 of this article.

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

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

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

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

23 (c) When the retirement board retires any member under
 24 any of the following provisions of this section, the board shall,
 25 by order in writing, make an award directing that the member
 26 shall be entitled to receive annually and that there shall be paid

27 to the member from the death, disability and retirement fund in
28 equal monthly installments during the natural lifetime of the
29 member while in status of retirement one or the other of two
30 amounts, whichever is the greater.

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

35 (2) The sum of three thousand dollars.

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

**§15-2-28. 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 mili-
2 tary duty" means full-time active duty with the armed forces
3 of the United States, namely, the United States air force,
4 army, coast guard, marines or navy; and service with the
5 national guard or reserve military forces of any of such
6 armed forces when the member has been called to active
7 full-time duty and has received no compensation during the
8 period of such duty from any person other than the armed
9 forces.

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

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

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

21 (3) That he is receiving no benefits from any other
22 retirement system for his active military duty; and

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

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

57 induction or call, have served with said armed forces subject to
58 the following:

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

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

65 (3) That he has made no voluntary act, whether by reenlist-
66 ment, waiver of discharge, acceptance of commission or other-
67 wise, to extend or participate in extension of the period of ser-
68 vice with the armed forces beyond the period of service for
69 which he was originally commissioned, enlisted, inducted or
70 called.

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

**§15-2-29. Awards and benefits for disability incurred in perform-
ance of duty.**

1 Any member of said department who has been or shall
2 become 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 performance
 7 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
 11 service by the retirement board and thereafter such member
 12 shall be entitled to receive annually and there shall be
 13 paid to such member from the death, disability and retire-
 14 ment fund in equal monthly installments during the natural
 15 lifetime of such member or until such disability shall sooner
 16 terminate, an amount equal to five percent of the total salary
 17 which would have been earned during twenty-five years of
 18 service in said department based on the average earnings
 19 of such member while employed as a member of said depart-
 20 ment. If such disability shall be ^{permanent} ~~permanent~~ and total to the
 21 extent that such member is or shall be incapacitated ever
 22 to engage in any gainful employment, such member shall be
 23 entitled to receive annually and there shall be paid to such
 24 member from the death, disability and retirement fund in
 25 equal monthly installments during the natural lifetime of
 26 such member or until such disability shall sooner terminate,
 27 an amount equal to eight percent of the total salary which
 28 would have been earned by such member during twenty-five
 29 years of service in said department based on the average
 30 earnings of such member while employed as a member of
 31 said department.

32 The superintendent is authorized to expend moneys from
 33 funds appropriated for the department in payment of medical,
 34 surgical, laboratory, X-ray, hospital, ambulance and dental
 35 expenses and fees, and reasonable costs and expenses in-
 36 curred in purchase of artificial limbs and other approved
 37 appliances which may be reasonably necessary for any member
 38 of said department who has or shall become temporarily,
 39 permanently or totally disabled by injury, illness or disease
 40 resulting from any occupational risk or hazard inherent in
 41 or peculiar to the service required of members of said
 42 department and incurred pursuant to or while such member
 43 was or shall be engaged in the performance of duties as a
 44 member of said department. Whenever the superintendent
 45 shall determine that any disabled member is ineligible to

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46 receive any of the aforesaid benefits at public expense the
47 superintendent shall, at the request of such disabled member,
48 refer such matter to the retirement board for hearing and
49 final decision.

§15-2-30. 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, intem-
7 perance or willful misconduct on his part, such member shall
8 be retired by the retirement board and, if such member at the
9 time of such retirement under this section, shall have served less
10 than twenty years as a member of said department, such
11 member shall be entitled to receive annually and there shall be
12 paid to such member while in status of retirement, from the
13 death, disability and retirement fund in equal monthly install-
14 ments during a period equal to one half the time such member
15 has served as a member of said department, a sum equal to
16 four and one-half percent of the total salary which would have
17 been earned during twenty-five years of service in said depart-
18 ment based on the average earnings of such member while
19 employed as a member of said department, but if such member,
20 at the time of such retirement under the terms of this section,
21 shall have served twenty years or longer as a member of said
22 department, such member shall be entitled to receive annually
23 and there shall be paid to such member from the death, dis-
24 ability and retirement fund in equal monthly installments,
25 commencing on the date such member shall be retired and
26 continuing during the natural lifetime of such member while in
27 status of retirement, one or the other of the two amounts, based
28 upon either the aggregate of salary paid to such member dur-
29 ing the whole period of service of such member or the period
30 of twenty years or longer during which such member at the
31 time of such retirement has, or shall have served as a member
32 of said department, whichever shall be the greater, to be deter-
33 mined in the manner provided by subdivisions (1) and (2) of
34 subsection (c), section twenty-seven of this article.

§15-2-31. Awards and benefits for disability—Physical examinations; recall to active duty; termination.

1 The superintendent may require any member who has been
2 or who shall be retired with compensation on account of dis-
3 ability to submit to a physical and/or mental examination by
4 a physician or physicians selected or approved by the retire-
5 ment board and cause all costs incident to such examination
6 including hospital, laboratory, X-ray, medical and physicians'
7 fees to be paid out of funds appropriated to defray the cur-
8 rent expense of said department, and a report of the findings
9 of such physician or physicians shall be submitted in writing
10 to the retirement board for its consideration. If from such
11 report or from such report and hearing thereon the retirement
12 board shall be of opinion and find that such disabled member
13 shall have recovered from such disability to the extent that he
14 is able to perform adequately the duties of a member of said
15 department, the superintendent shall order such member to
16 reassume active duty as a member of said department and
17 thereupon all payments from the death, disability and retire-
18 ment fund shall be terminated.

§15-2-32. Retired member not to exercise police authority; retention of group insurance.

1 A member who has been or shall be retired shall not
2 while in retirement status exercise any of the powers con-
3 ferred upon active members by section twelve of this article;
4 but shall be entitled to receive free of cost to such member
5 and retain as his separate property one complete standard
6 uniform prescribed by section nine of this article: *Provided,*
7 That such uniform may be worn by a member in retirement
8 status only on such occasions as shall be prescribed by the
9 superintendent. The superintendent is authorized to maintain
10 at public expense for the benefit of all members in retirement
11 status that group life insurance mentioned in section
12 ten of this article. The superintendent when he shall
13 be of opinion that the public safety shall require, may recall
14 to active duty during such period as the superintendent shall
15 determine any member who shall be retired under the pro-
16 visions of section twenty-seven of this article, provided the
17 consent of such member to reassume duties of active member-

18 ship shall first be had and obtained. When any member in
19 retirement shall reassume status of active membership such
20 member, during the period such member shall remain in
21 active status, shall not be entitled to receive retirement pay
22 or benefits but in lieu thereof shall be entitled to receive that
23 rate of salary and allowance pertinent to the rank or grade
24 held by such member when retired. When such member
25 shall be released from active duty he shall reassume the
26 status of retirement and shall thereupon be entitled to receive
27 appropriate benefits as provided by this article: *Provided*, That
28 the amount of such benefits shall in no event be less than
29 the amount determined by the order of the retirement board
30 previously made in his behalf.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

1 The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost
3 or shall lose his life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while such mem-
6 ber was or shall be engaged in the performance of his
7 duties as a member of said department or if said member
8 shall die from any cause after having been retired pursuant
9 to the provisions of this article, shall be entitled to receive
10 and shall be paid from the death, disability and retirement
11 fund benefits as follows: To the surviving spouse annually,
12 in equal monthly installments during his or her lifetime or
13 until his or her remarriage one or the other of two amounts,
14 whichever shall be the greater, 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 the average earnings of such member while employed as
19 a member of said department.

20 (2) The sum of three thousand dollars.

21 In addition thereto such surviving spouse shall be entitled
22 to receive and there shall be paid to such person one hundred
23 dollars monthly for each dependent child or children. If such

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24 surviving spouse shall die or remarry or if there be no
 25 surviving spouse there shall be paid monthly to such de-
 26 pendent child or children from the death, disability and
 27 retirement fund the sum of one hundred dollars each. If
 28 there be no surviving spouse and no dependent child or
 29 children, there shall be paid annually in equal monthly in-
 30 stallments from said death, disability and retirement fund
 31 to the dependent parents of said deceased member during
 32 their joint lifetimes a sum equal to the amount which a
 33 surviving spouse, without children, would have received:
 34 *Provided*, That when there shall be but one dependent parent
 35 surviving, such parent shall be entitled to receive during his
 36 or her lifetime one half the amount which both parents, if
 37 living, would have been entitled to receive.

§15-2-34. 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
 3 as a member of said department, has died or shall die from
 4 any cause other than those specified in this article and not due
 5 to vicious habits, intemperance or willful misconduct on his
 6 part, there shall be paid annually in equal monthly install-
 7 ments from said death, disability and retirement fund to the
 8 surviving spouse of such member during his or her natural
 9 lifetime or until such time said surviving spouse remarries, a
 10 sum equal to two and one-quarter percent of the total salary
 11 which would have been earned by said member during twenty-
 12 five years of service in said department based on his or her
 13 average earnings while employed as a member of said depart-
 14 ment. If there be no surviving spouse there shall be paid from
 15 said fund to each dependent child or children of said deceased
 16 member the sum of one hundred dollars monthly. If there be
 17 no surviving spouse and no dependent child or children there
 18 shall be paid annually in equal monthly installments from said
 19 fund to the dependent parents of said deceased member during
 20 their joint lifetimes a sum equal to the amount which a surviv-
 21 ing spouse would have been entitled to receive: *Provided*, That
 22 when there shall be but one dependent parent surviving then
 23 such dependent parent shall be entitled to receive during his

24 or her lifetime one half the amount which both parents, if
25 living, would have been entitled to receive.

§15-2-34. Same—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 this article before having been retired by the retirement
6 board, and when a member in retirement status has died or
7 shall die after having been retired by the retirement board
8 under the provisions of this article, there shall be paid an-
9 nually in equal monthly installments from said fund to the
10 surviving spouse of said member, commencing on the date of
11 the death of said member and continuing during the lifetime or
12 until remarriage of said surviving spouse 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 this article immediately
17 prior to the time of his death; and in addition thereto said
18 surviving spouse shall be entitled to receive and there shall be
19 paid to such surviving spouse from said fund the sum of one
20 hundred dollars monthly for each dependent child or children.
21 If such surviving spouse die or remarry, or if there be no
22 surviving spouse there shall be paid monthly from said fund
23 to each dependent child or children of said deceased member
24 the sum of one hundred dollars. If there be no surviving
25 spouse or no surviving spouse eligible to receive benefits and
26 no dependent child or children there shall be paid annually in
27 equal monthly installments from said fund to the dependent
28 parents of said deceased member during their joint lifetimes a
29 sum equal to the amount which a surviving spouse without
30 children would have been entitled to receive: *Provided*, That
31 when there shall be but one dependent parent surviving, such
32 parent shall be entitled to receive during his or her lifetime one
33 half the amount which both parents, if living, would have
34 been entitled to receive.

§15-2-36. Awards and benefits to dependents of member—Termination.

1 When any surviving spouse of a member shall die or remarry
2 while receiving or being entitled to receive any benefits under
3 this article, such surviving spouse shall not from the date of
4 such remarriage, nor shall the estate from the date of the
5 death of such surviving spouse, be entitled to receive any bene-
6 fits hereunder whatsoever: *Provided*, That in any case where
7 under the terms of this article benefits are provided for a
8 child or children surviving the death or remarriage of such
9 surviving spouse, payment of such benefits to such child or
10 children shall be calculated for payment from the date such
11 surviving spouse shall die or remarry.

§15-2-37. Refunds to certain members upon discharge or resignation.

1 Any member who shall be discharged by order of the
2 superintendent after such member has or shall have served
3 two full years or more as a member of said department shall,
4 at the request of such member, be entitled to receive from
5 said fund a sum equal to the aggregate of the principal
6 amount of moneys deducted from the salary of such member
7 and paid into said death, disability and retirement funds as
8 provided and required by this article: *Provided*, That the
9 superintendent shall forthwith refund to any member who has
10 or shall have served more than two but less than twenty
11 years as a member of said department and has resigned or
12 or shall resign or who has been or shall be discharged from
13 the service for cause, a sum equal to the aggregate of the
14 principal amount of all moneys deducted from the salary
15 of such member and paid into said fund as aforesaid: *Pro-*
16 *vided further*, That if any such refund shall be made to any
17 member, ^{such member} shall not be entitled to any benefits provided by this
18 article, and should any such member thereafter be again en-
19 listed as a member of said department no credit or any period
20 of service required of a member as a condition of retirement
21 shall be allowed to such member on account of such former
22 service, unless following such reenlistment such member shall
23 redeposit in said fund the amount of the refund, together with
24 interest thereon at the rate of four percent per annum from

*with
such member
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25 the date of withdrawal to the date of redeposit, in which
26 case he shall receive the same credit on account of his former
27 service as if no refund had been made. When any member
28 has or shall have served as a member of said department
29 during twenty years or longer and shall, in the opinion of the
30 superintendent, become unfit for any reason for further active
31 service such member shall, in lieu of being discharged, be
32 retired by the retirement board under the provision or provi-
33 sions of this article most favorable to such member.

§15-2-38. Refund to dependents upon death of member not eligible for benefits.

1 If any member while in active status shall die after having
2 served two full years or longer as a member of said depart-
3 ment and the retirement board shall be of opinion after
4 hearing thereon that the dependent or dependents of said
5 member are ineligible under the provisions of this article to
6 receive any of the benefits provided herein, the superintendent
7 shall refund to the spouse, if surviving, but if not surviving,
8 to the children of such member, and if there be no surviving
9 spouse or children, to the dependent parents, a sum equal to
10 the aggregate of the principal amount of all moneys deducted
11 from the salary of such member and paid into such fund as
12 aforesaid, and if there be no surviving spouse or children or
13 dependent parent or parents, then the same shall remain in
14 the fund. Whenever any such refund shall be made the
15 surviving spouse or other dependents of such deceased member
16 shall not be entitled to any other rights or benefits on account
17 of said fund under the provisions of this article.

§15-2-39. 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 under the age of eighteen or where
5 such child or children after reaching eighteen years of age
6 continues as a full-time student in an accredited high school,
7 college, university, business or trade school, until such child
8 reaches the age of twenty-three years or where such child
9 or children is an invalid as long as such child or children

10 remains an invalid, such benefits provided for shall be paid.
11 Benefits provided under the terms of this article for "depen-
12 dent child or children" shall be paid for so long as they meet
13 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

Clarence L. Thurston Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1977.

J. Dillon, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Butterfield Jr.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is approved this the 26
day of April, 1977.

John R. Rhyne
Governor



APPROVED AND SIGNED BY THE GOVERNOR

Date April 26, 1977

Time 3:50 p.m.

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OFFICE OF THE GOVERNOR

RECEIVED

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SECY. OF STATE