AN ACT to amend article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend and reenact sections three, four, five, six, six-b, seven and eight of said article nine, all relating to the judges retirement system; providing a statement of legislative intent and policy, declaration of legislative determination of invalidity of expansions and revisions to judges retirement system by the supreme court of appeals, necessitating certain legislative amendments having retrospective application in such retirement system, statement of compelling state interest in legislative determination of benefits and amounts thereof for maintenance of fiscal responsibility, correct administration and lawful payments made in respect of judges retirement system, and in protection of trust fund moneys; authorizing receipt of pension benefit from other state retirement system, additionally; providing for specification by reference of eligible investments for fund moneys; clarifying the powers and duties of the state auditor as fiscal officer and trust fund fiduciary and requiring him to make independent review and final determination of qualifications and eligibility for payment or receipt of fund moneys prior to issuance of any state warrant therefor; directing the state auditor to refund certain sums with interest for payments made by certain judges; permitting judges to transfer pension credits from any or all other state retirement systems into the public employees retirement system and limiting to the single use of all retirement
credits so transferred; clarifying judge members requirement to continue to make six percent contribution from his salary for payment into judges retirement fund until eligible for full retirement benefits; deleting obsolete provisions with respect to certain payments into the fund from county commissions and as to certain other matters; specifying that military service credit to be awarded as credited service in the retirement system, with limitations thereon for such acquisitions of credit; authorizing state auditor to determine reasonable rate of interest in respect of members later joining the system and making contributions; permitting transfer to and from judges retirement system to any other retirement system at judge's choice and option; amending eligibility qualification factors; providing that after specified period of service as a judge, such judge may qualify for and be awarded as years of service time served as prosecuting attorney, upon payment therefor; terminating such service credits with respect to time served as prosecuting attorney after the year one thousand nine hundred eighty-eight; establishing criteria for eligibility of judges to receive annual retirement benefits from the fund; providing for actuarially reduced annual retirement benefits in certain cases; establishing certain criteria for retirement benefits for certain judges holding office as of the first day of September, one thousand nine hundred eighty-six; providing for payment of spouses' and dependent children's annuities and providing for the distribution thereof; right of retired judge to hold public office or trust for which salary or other compensation is receivable from the state of West Virginia with required suspension of pension to occur or disability retired judge suspension of pension upon entry into practice of law; revised qualifications and shorter period allowed in respect of certain disability retirement of judges; and revised disability retirement basis for benefit after specified date and applicable to new members of the retirement system retiring upon disability subsequent to such date.
Be it enacted by the Legislature of West Virginia:

That article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a; and that sections three, four, five, six, six-b, seven and eight of said article nine, be amended and reenacted, all to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Statement of legislative intent and policy, declaration of legislative determination of invalidity, necessity and purpose thereof; compelling state interest in fiscal requirements and responsibility relative to system trust fund; correct administration and payment of benefit.

The decision of the Supreme Court of Appeals in the case of In Re Judge Dostert, decision rendered November 7, 1984, hereinafter sometimes referred to in this article as the “primary decision”, relating to this optional retirement system for justices and judges only, and the subsequent decisions founded thereon, including the recent case of DePond v. Gainer, Auditor of West Virginia (1986), also relating to this retirement system and qualifications for retirement benefits thereunder, including the surviving spouse derivative rights and benefits, have been so expanded, increased, and changed, as to their fundamental nature, as to now require this statement of legislative intent, policy and finding, coupled with legislative amendments, so as to provide for a clear appreciation of the original, continuing and present true legislative intent in respect of this judicial retirement system and to provide for the same to be administered correctly, toward maintenance of fiscal soundness and toward the making of only lawful payments, ultimately, from the trust fund of such system, by the state auditor as administrator of such system and as fiduciary of the trust fund. The Dostert decision and the subsequent decisions founded thereon, including the DePond decision, most recently, were founded and turned upon the interpretation and deter-
ministration of the supreme court of appeals of true "legislative intent", as understood by the court.

The Legislature hereby states that the Dostert decision, the primary decision of the supreme court of appeals addressing its revision of this judicial retirement system, and the subsequent related decisions founded thereon, including the most recent DePond decision, incorrectly interpreted true legislative intent. Further, the subsequent actions of the court of revision, expansion, and changes in this judicial retirement system, together with the removal of the check and balance powers and duties given the state auditor and the chief executive in respect of determination and certification of eligibility for benefits, must be declined and rejected as invalid, from the very inception of the rendition of such primary Dostert decision and the related decisions, including DePond and that therefore no valid rights, new service credits, new qualifications or new elements of eligibility, nor the timing in respect of which the same might earlier vest, in any way truly vested in respect of judicial retirement benefits or derivative spousal benefits under this retirement system.

The Legislature hereby states and finds that its intent and policy recognizes a compelling state interest is present in carrying out its constitutional responsibilities of establishing, determining and setting reasonable compensation guidelines and amounts for judicial officers, by law, and of protecting the fiscal responsibility and soundness of the moneys required for payment into the trust fund, as a part of the judicial branch budget request, which is determined by benefits payable from the judicial retirement system, and which judicial budget request may not be reduced by the Legislature, constitutionally.

The amendments now made to the provisions of this retirement system by the Legislature are made within the original and continuing framework of such system and with the benefits hereunder being directed toward those meeting the strict and fundamental requirements of career judicial service on the bench, of military
service as specifically allowed, and of prosecutorial service, deemed quasi-judicial service, in nature, as the latter may be granted. Qualified service credits of a judge or justice, not usable or qualified as service credits under this retirement system, are made usable in the public employees retirement system or in other state retirement system where the same may be qualified.


The state treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The governor shall fix the amount of said bond which shall be approved as to sufficiency and form by the attorney general and shall be filed in the office of the secretary of state. The premium on said bond shall be paid from the fund.

In a manner and to an extent consonant with sound administrative principles, the West Virginia state board of investments shall have authority to invest said fund in interest-bearing securities of the United States of America, of the state of West Virginia and of any political subdivision thereof or such other investments as may be authorized or permitted by the provision of article six, chapter twelve of this code.

The state auditor shall be the fiscal officer responsible for the records and administration of the fund, including budgetary matters incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section 51 of the constitution of West Virginia. The state auditor shall also, as trust fund fiduciary, independently determine anew, as a check and balance, any information concerning eligible service years, required money contributions, computation of judges retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the state auditor by any other public officer including the supreme court administrator or the chief executive toward proper final review before issuance of a state warrant in payment of any benefit.
under the judges retirement system.

In respect of credited service heretofore acquired under the primary decision and subsequent related decisions specifically invalidated by the Legislature pursuant to the provisions of section one-a of this article, the state auditor shall make refund to any person heretofore making payment to acquire such service credit, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment, by the auditor, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.

§51-9-4. Percentage contributions from salaries.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury: Provided, That when a judge becomes eligible by reason of age and years of service to receive benefits from said fund without actuarial reduction no further payment by him shall be required.

In drawing warrants for the salary checks of said judges, the state auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the state treasurer to said fund.

(b) Any judge seeking to qualify military service to be claimed as credited service, in aggregate maximum amount not to exceed five years, shall not be required to pay into the judges' retirement fund for such military time to be credited. However, any judge seeking to qualify prosecutorial service as authorized by this article to be claimed as credited service, shall be required to pay into the judges' retirement fund six percent of the annual salary which was received by such person as prosecuting attorney during the time such service was rendered and for which credit is being sought.
§51-9-5. Election not to participate; transfers of service credit to public employees retirement system, by a judge, authorized, with required transfer of funds; duplicate use of service credit prohibited; retirement under more than one system, if qualifications met, authorized.

(a) Notwithstanding any provisions of this article, any judge may in writing notify the auditor within thirty days after he takes office, or if he is in office, on the date this article becomes effective, then within thirty days from such latter date, that he elects not to make payments or contributions to the fund, in which event every judge, so electing, shall not thereafter at anytime be entitled to receive any retirement pay or benefits under provisions of this article: Provided, That any judge who has so elected not to contribute shall thereafter be permitted to become eligible for retirement benefits by paying into the judges' retirement fund all contributions he would have been required to pay into the fund, together with interest thereon at a rate to be determined by the state auditor as reasonable for such prior periods, as if he had not previously elected not to contribute. If such notice in writing be given, any deduction theretofore made from the salary of such judge and paid into the fund shall be refunded without interest, to him by the auditor by warrant drawn on the fund.

(b) Notwithstanding any other provisions of the code, periods of service qualifying as service credit under the statutes of any state retirement system shall be eligible for transfer by a judge to the public employees retirement system, together with any applicable moneys relating thereto, for use in such public employees retirement system to meet retirement qualifications therein and for receipt of retirement benefit therefrom. All such transferred service credit of a judge shall be usable only once for any retirement benefit purpose. Further, notwithstanding any other provisions of the code, there may be retirement under such public employees retirement system and receipt of pension
benefits therefrom, by a judge, in addition to his or her retirement from any other retirement system and without any suspension, discontinuance, or interruption of receipt of such other pension benefit payment.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, twelve and thirteen of this article, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-two years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-two years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, or who shall have actually served as a sitting judge for a period of not less than twenty full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement, and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after said judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such
Provided, however, That such retirement benefits shall not be paid if barred under the provisions of article ten-a, chapter five of this code.

(b) Notwithstanding any other provisions of this article, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, and who has attained the age of sixty years, may, if such person has actually served at least ten years as a sitting judge of a court of record, elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive under the provisions of this article at age sixty-two, as such benefits are actuarially reduced to reflect the additional one or two years during which annuity benefits will be received, as a reduced annuity commencing on the first day of the month following his or her election.

(c) Notwithstanding any other provision of this article, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated twenty years or more of credited service, but less than twenty-four years of such service, may, irrespective of that person's age, elect to retire from his or her office and to receive the pension he would otherwise be entitled to receive under the provisions of this article with twenty-four years credited service, regardless of age, as such benefits are actuarially reduced to reflect the one to four additional years during which annuity benefits will be received, as a reduced annuity commencing on the first day of the month following his or her election.

(d) In determining eligibility for the benefits provided by this section, active full time duty (including leaves and furloughs) in the armed forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with ten or more years actual service as a sitting judge of a court of record. The credited military service claimed for purposes of this article for time served in active full time duty in the armed forces of the United States shall
be limited in the aggregate to no more than five years.

(e) If a judge of a court of record has served for a period of not less than ten full years and has made payments into the judges' retirement fund as provided in this article for each month during which he served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of subsection (b), section four of this article: Provided, That any term of office as prosecuting attorney, or part thereof, commencing after the thirty-first day of December, one thousand nine hundred eighty-eight, shall not qualify as years of service under this retirement system thereafter.

(f) Notwithstanding any other provision of this article, any person actually serving as a full time judge of a court of record of this state as of the first day of September, one thousand nine hundred eighty-six, and only any such person, who shall have or shall thereafter accumulate not less than eight full years as such judge and who shall have accumulated not less than twenty-four full years of total credited service shall be eligible at his or her election to retire, regardless of age, and to receive an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

(a) There shall be paid, from the fund created or continued by section two of this article, or from such funds as may be appropriated by the Legislature for such purpose, an annuity to the surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement benefits provided by any of
the provisions of this article, or who has, at death, 
actually served five years or more as a sitting judge of 
any court of record of this state, exclusive of any service 
credit to which such judge may otherwise be entitled, 
and who dies either while in office or after resignation 
or retirement from office pursuant to the provisions of 
this article. Said annuity shall amount to forty percent 
of the annual salary of the office which said judge held 
at his or her death or from which he or she resigned 
or retired. In the event said salary is increased or 
decreased while an annuitant is receiving the benefits 
hereunder, his or her annuity shall amount to forty 
percent of the new salary. The annuity granted here- 
under shall accrue monthly and shall be due and 
payable in monthly installments on the first business 
day of the month following the month for which the 
annuity shall have accrued. Such annuity shall com- 
mence on the first day of the month in which said judge 
dies and shall terminate upon the death or remarriage 
of the annuitant.

(b) If there be no surviving spouse of a judge and such 
judge at the time of his or her death leaves surviving 
him or her any dependent child or children, then such 
child or children shall succeed to the annuity to which 
a surviving spouse would otherwise be entitled pursuant 
to the provisions of subsection (a) of this section. Such 
annuity shall continue until such child or the youngest 
of such surviving children, if there be more than one 
such child, shall attain the age of eighteen years. If there 
be more than one such child surviving such judge the 
annuity to be received by such surviving children shall 
be in the total aggregate amount provided for surviving 
spouses under the provisions of subsection (a) of this 
section and shall be distributed pro rata among such 
children. As each of such surviving dependent children 
shall attain the age of eighteen years, such annuity shall 
not be diminished but shall continue to be distributed 
among such surviving children pro rata or to the sole 
surviving child until the youngest of such children shall 
attain the age of eighteen years at which time such 
annuity shall terminate. If any judge at the time of his 
or her death shall leave a surviving spouse and one or
more dependent children under the age of eighteen
surviving such deceased judge, then such surviving
spouse shall receive the annuity to which he or she
would otherwise be entitled under the provisions of
subsection (a) of this section and in the event such
surviving spouse shall die survived by any such child or
children who have not attained the age of eighteen, then
such surviving children shall succeed to the annuity to
which the surviving spouse was entitled under the same
conditions and limitations as otherwise provided for in
this subsection.

(c) Notwithstanding the provisions of subsections (a)
and (b) of this section, a judge who has a spouse and who
also has one or more dependent children who shall not
have attained the age of eighteen years, may provide by
designation in writing to the auditor, for the distribution
of the annuity provided for in this section among such
spouse and/or a child or children and in the amounts or
proportions set forth in such writing, which designation
shall control the distribution of the annuity authorized
by this section in the event of the death of such judge.
In the absence of any designated proration of the
annuity as provided in this subsection, then the annuity
provided by this section shall be paid in the manner
provided in subsection (a) or (b) of this section.

§51-9-7. Ineligibility to receive pay or benefits.

Except as may be specifically provided in Article VIII
of the Constitution of this state; a judge who retires
under the provisions of any section of this article and
accepts the pay or benefits payable under this article
shall not while receiving said pay or benefits, be
permitted to hold any public office or trust for which
he or she receives compensation from the state of West
Virginia. If, after retirement under the provisions of
this article, he or she shall be elected or appointed to
any public office or trust for which he or she receives
any salary or other compensation from the state of West
Virginia, his or her pay or benefits under this article
shall be suspended for such time only as he or she shall
occupy such office or trust.
A judge who retires because of disability and accepts the pay or benefits payable under this article because of his or her disability shall not, while receiving said pay or benefits because of his or her disability be permitted to practice law. If, after disability retirement under the provisions of this article and while receiving pay or benefits payable because of his or her disability, he or she shall enter the practice of law, his or her pay or benefits under this article because of his or her disability shall be suspended for such time only as he or she shall be engaged in the practice of law.


Whenever a judge of a court of record of this state, who is not disqualified from participation herein as provided in section five of this article, who shall have served for ten full years, or if over the age of sixty-five years, who shall have served at least six years as a judge of a court of record, shall become physically or mentally incapacitated to perform the duties of his or her office as judge during the remainder of his or her term and shall make a written application to the governor for his or her retirement, setting forth the nature and extent of his or her disability and tendering his or her resignation as such judge upon condition that upon its acceptance he or she be retired with pay under the provisions of this article, the governor shall make such investigation as he or she shall deem advisable and, if he or she shall determine that such disability exists and that the public service is suffering and will continue to suffer by reason of such disability, he or she shall thereupon accept the resignation and, by written order filed in the office of the secretary of state, direct the retirement of the judge for the unexpired portion of the term for which such judge was elected or appointed. The secretary of state shall thereupon file a certified copy of said order with the state auditor. When so accepted, said resignation shall create a vacancy in said office of judge, which shall be filled by appointment or election as provided by law. The retired judge shall thereupon be paid annual retirement pay during the remainder of his or her unexpired term in an amount equal to the
annual salary he or she was receiving at the time of his or her retirement, which annual retirement pay, so long as it shall be paid to him or her, shall be in lieu of any and all retirement benefits such judge may otherwise have received under the provisions of this article: Provided, That when the payment of said retirement pay shall have terminated, such judge, even though he or she shall not have arrived at the age of sixty-five years, shall, so long as the disability determined by the governor continues to exist, be paid the retirement benefits for which provision is made in section six of this article: Provided, however, That in the event any such judge shall die during the continuation of his or her disability, then such judges' surviving spouse shall receive the benefits to which he or she would have been entitled pursuant to the provisions of section seven of this article and subject to the limitations thereof: Provided further, That any judge becoming a new member of this retirement system on or after the first day of August, one thousand nine hundred eighty-six, and retiring upon disability retirement subsequent to such date shall be paid upon the basis of seventy-five percent of highest annual salary as provided in section six of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Weil
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Dan Tomlinson
President of the Senate

Joseph P. Alvey
Speaker of the House of Delegates

The within disapplied this the 25th day of September, 1986.

Arch A. Moore, Jr.
Governor