WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

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ENROLLED
Com. Sub. for
HOUSE BILL No. H.367

(By Mr. Delegates Rollins and )

B. Burke

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Passed March 12, 1988

in Effect July 1, 1988
ENROLLED
COMMITEE SUBSTITUTE
FOR
H. B. 4367
(By Delegates Rollins and Burk)
[Passed March 12, 1988; in effect July 1, 1988.]

AN ACT to amend and reenact section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twenty-seven, twenty-nine, thirty-three, thirty-four, thirty-five and thirty-six, article two, chapter fifteen of said code; and to further amend said article two by adding thereto two new sections, designated sections twenty-seven-a and thirty-five-a, all relating to department of public safety death, disability and retirement benefits; treatment of optional lump sum payments for annual leave for purposes of retirement; increasing retirement and disability benefits, creating annuity adjustment for certain members; enabling surviving spouse of member who dies in performance of duty to continue to receive benefits upon remarriage; increasing benefits to dependents and single receipt thereof; providing scholarship for certain dependents, and authorizing death, disability and retirement board to continue benefits to certain dependents regardless of age.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES; LUMP SUM PAYMENTS FOR ANNUAL LEAVE AT RETIREMENT.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his employment continued. In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto; however, such lump sum payment is to be a part of final average salary computation; and where any such deduction of employee contribution may have been heretofore made, a refund of such shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the superintendent of the department of public safety shall make deductions for retire-
ment contributions of members of the department, since
retirement benefits are based on cumulative earnings
rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-27. Retirement; awards and benefits.

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

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

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

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

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

(c) When the retirement board retires any member
under any of the provisions of this section, the board
shall, by order in writing, make an award directing that
the member shall be entitled to receive annually and
that there shall be paid to the member from the death,
disability and retirement fund in equal monthly
installments during the natural lifetime of the member
while in status of retirement one or the other of two
(1) An amount equal to five and one half percent of the aggregate of salary paid to the member during the whole period of service as a member of the department of public safety; or

(2) The sum of six thousand dollars.

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


Every member of the department of public safety who is fifty-six years of age or older and who is retired by the retirement board shall be eligible to receive an annual retirement annuity adjustment equal to three and seventy-five hundredths percent of their retirement award. Such adjustments shall not be retroactive. Yearly adjustments shall begin upon the first day of July, one thousand nine hundred eighty-eight. The annuity adjustments shall be awarded and paid to the members from the death, disability and retirement fund in equal monthly installments while the member is in status of retirement. The annuity adjustments shall supplement the retirement awards and benefits as provided in this article.

Every member retired by the retirement board and receiving from the death, disability and retirement fund an amount equal to more than eight percent of the total salary which would have been earned by such member during twenty-five years of service or actual service if more than twenty-five years of service in said department based on the average earnings of such member while employed as a member of said department, shall be eligible to receive the retirement annuity adjustment at the time such member attains the age of sixty-five years or older. The annuity adjustments shall be paid
to the members beneficiaries during the period that the
members beneficiaries have attained fifty-six years of
age or older and are receiving a payment or an award
from the death, disability and retirement fund. The
annuity adjustments shall supplement the retirement
awards and benefits as provided in this article.

§15-2-29. Awards and benefits for disability — Incurred
in performance of duty.

Any member of said department who has been or shall
become physically or mentally permanently disabled by
injury, illness or disease resulting from any occupational
risk or hazard inherent in or peculiar to the services
required of members of said department and incurred
pursuant to or while such member was or shall be
engaged in the performance of his duties as a member
of said department shall, if, in the opinion of the
retirement board, he is by reason of such cause unable
to perform adequately the duties required of him as a
member of said department, be retired from active
service by the retirement board and thereafter such
member shall be entitled to receive annually and there
shall be paid to such member from the death, disability
and retirement fund in equal monthly installments
during the natural lifetime of such member or until
such disability shall sooner terminate, one or the other
of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of
the total salary which would have been earned during
twenty-five years or actual service if more than twenty-
five years in said department based on the average
earnings of such member while employed as a member
of said department; or

(2) The sum of six thousand dollars.

If such disability shall be permanent and total to the
extent that such member is or shall be incapacitated
ever to engage in any gainful employment, such member
shall be entitled to receive annually and there shall be
paid to such member from the death, disability and
retirement fund in equal monthly installments during
the natural lifetime of such member or until such
disability shall sooner terminate, an amount equal to
eight and one-half percent of the total salary which
would have been earned by such member during
twenty-five years or actual service if more than twenty-
five years of service in said department based on the
average earnings of such member while employed as a
member of said department.

The superintendent is authorized to expend moneys
from funds appropriated for the department in payment
of medical, surgical, laboratory, X ray, hospital,
ambulance and dental expenses and fees, and reasonable
costs and expenses incurred in purchase of artificial
limbs and other approved appliances which may be
reasonably necessary for any member of said depart-
ment who has or shall become temporarily, permanently
or totally disabled by injury, illness or disease resulting
from any occupational risk or hazard inherent in or
peculiar to the service required of members of said
department and incurred pursuant to or while such
member was or shall be engaged in the performance of
duties as a member of said department. Whenever the
superintendent shall determine that any disabled
member is ineligible to receive any of the aforesaid
benefits at public expense the superintendent shall, at
the request of such disabled member, refer such matter
to the retirement board for hearing and final decision.

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

The surviving spouse or the dependent child or
children or dependent parent or parents of any member
who has lost or shall lose his life by reason of injury,
ilness or disease resulting from an occupational risk or
hazard inherent in or peculiar to the service required
of members while such member was or shall be engaged
in the performance of his duties as a member of said
department or if said member shall die from any cause
after having been retired pursuant to the provisions of
section twenty-nine of this article, shall be entitled to
receive and shall be paid from the death, disability and
retirement fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime one or the other of two amounts, whichever shall be the greater, namely:

(1) An amount equal to five and one-half percent of the total salary which would have been earned by said deceased member during twenty-five years of service in said department based on the average earnings of such member while employed as a member of said department; or

(2) The sum of six thousand dollars.

In addition thereto such surviving spouse shall be entitled to receive and there shall be paid to such person one hundred dollars monthly for each dependent child or children. If such surviving spouse shall die or if there be no surviving spouse there shall be paid monthly to each such dependent child or children from the death, disability and retirement fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there be no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there shall be but one dependent parent surviving, such parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualified as a surviving dependent child under this section shall in addition to any other benefits due under this or other sections of this article, be entitled to receive a scholarship to be applied to the career development education of said person. This sum up to but not exceeding seven thousand five hundred dollars shall be paid from the death, disability and retirement fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board, to offset the expenses
of tuition, room and board, books, fees or other costs incurred in a course of study at any of said institutions so long as the recipient makes application to the board on an approved form and under such rules and regulations as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules and regulations define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

Awards and benefits for a surviving spouse or dependents of a member received under any section or any of the provisions of this retirement system shall be in lieu of receipt of any such benefits for such persons under the provisions of any other state retirement system, and receipt of such benefits under any other state retirement system shall be in lieu of any right to receive any such benefits under this retirement system, so that only a single receipt of such benefits shall occur.

§15-2-34. Same — When member dies from nonservice-connected causes.

In any case where a member while in active service of said department, before having completed twenty years of service as a member of said department, has died or shall die from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his part, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the surviving spouse of such member during his or her natural lifetime or until such time as said surviving spouse remarries a sum equal to two and three-quarters percent of the total salary which would have been earned by said member during twenty-five years of service in said department based on his or her average earnings while employed as a member of said department. If there be no surviving spouse or the surviving spouse dies or remarries there shall be paid monthly to each such dependent child or children from the death,
disability and retirement fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there be no surviving spouse and no dependent child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, That when there shall be but one dependent parent surviving then such dependent parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

§15-2-35. Same — When member dies after retirement or after serving twenty years.

When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of this article, there shall be paid annually in equal monthly installments from said fund to the surviving spouse of said member, commencing on the date of the death of said member and continuing during the lifetime or until remarriage of said surviving spouse an amount equal to three-fourths the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if such member had been retired under the provisions of this article immediately prior to the time of his death and in no event to be less than five thousand dollars and in addition thereto said surviving spouse shall be entitled to receive and there shall be paid to such surviving spouse from said fund the sum of one hundred dollars monthly for each dependent child or children. If such surviving spouse die, or remarry, or if there be no surviving spouse there shall be paid monthly from said fund to each dependent child or children of said deceased member a sum equal to twenty-five
percent of the surviving spouse's entitlement. If there be no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: *Provided,* That when there shall be but one dependent parent surviving, such parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

§15-2-35a. Authority to continue payments to certain dependents.

The board may continue payments of a surviving spouse's entitlement in full to any dependent children who continue to be dependent by reason of mental or physical incapacity as determined by the board notwithstanding the age of the dependent child or other provisions of this article.

§15-2-36. Same — Termination.

When any surviving spouse of a member shall die or remarry while receiving or being entitled to receive any benefits under any section except section thirty-three of this article, such surviving spouse shall not from the date of such remarriage, nor shall the estate from the date of death of such surviving spouse be entitled to receive any benefits hereunder whatsoever: *Provided,* That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of such surviving spouse, payment of such benefits to such child or children shall be calculated for payment from the date such surviving spouse shall die or remarry.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.


Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 31st
day of 1988.

Governor