

4367

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

Com. Sub. for
HOUSE BILL No. *4367*

(By Mr. *Delegates Rollins and*
B York)



Passed *March 12,* 1988

In Effect *July 1, 1988* ~~Passage~~

ENROLLED
COMMITTEE 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.**

1 Every eligible employee, as defined in section one of
2 this article, at the time his or her active employment
3 ends due to resignation, death, retirement or otherwise,
4 may be paid in a lump sum amount, at his or her option,
5 for accrued and unused annual leave at the employee's
6 usual rate of pay at such time. The lump sum payment
7 shall be made by the time of what would have been the
8 employee's next regular pay day had his employment
9 continued. In determining the amount of annual leave
10 entitlement, weekends, holidays or other periods of
11 normal, noncountable time shall be excluded, and no
12 deductions may be made for contributions toward
13 retirement from lump sum payments for unused,
14 accrued annual leave, since no period of service credit
15 is granted in relation thereto; however, such lump sum
16 payment is to be a part of final average salary compu-
17 tation; and where any such deduction of employee
18 contribution may have been heretofore made, a refund
19 of such shall be granted the former employee and made
20 by the head of the respective former employer spending
21 unit: *Provided*, That the superintendent of the depart-
22 ment of public safety shall make deductions for retire-

23 ment contributions of members of the department, since
24 retirement benefits are based on cumulative earnings
25 rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

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

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

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

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

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

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

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

33 amounts, whichever is the greater:

34 (1) An amount equal to five and one half percent of
35 the aggregate of salary paid to the member during the
36 whole period of service as a member of the department
37 of public safety; or

38 (2) The sum of six thousand dollars.

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

§15-2-27a. Retirement annual annuity adjustments.

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

15 Every member retired by the retirement board and
16 receiving from the death, disability and retirement fund
17 an amount equal to more than eight percent of the total
18 salary which would have been earned by such member
19 during twenty-five years of service or actual service if
20 more than twenty-five years of service in said depart-
21 ment based on the average earnings of such member
22 while employed as a member of said department, shall
23 be eligible to receive the retirement annuity adjustment
24 at the time such member attains the age of sixty-five
25 years or older. The annuity adjustments shall be paid

26 to the members beneficiaries during the period that the
27 members beneficiaries have attained fifty-six years of
28 age or older and are receiving a payment or an award
29 from the death, disability and retirement fund. The
30 annuity adjustments shall supplement the retirement
31 awards and benefits as provided in this article.

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

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

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

25 (2) The sum of six thousand dollars.

26 If such disability shall be permanent and total to the
27 extent that such member is or shall be incapacitated
28 ever to engage in any gainful employment, such member
29 shall be entitled to receive annually and there shall be
30 paid to such member from the death, disability and
31 retirement fund in equal monthly installments during
32 the natural lifetime of such member or until such

33 disability shall sooner terminate, an amount equal to
34 eight and one-half percent of the total salary which
35 would have been earned by such member during
36 twenty-five years or actual service if more than twenty-
37 five years of service in said department based on the
38 average earnings of such member while employed as a
39 member of said department.

40 The superintendent is authorized to expend moneys
41 from funds appropriated for the department in payment
42 of medical, surgical, laboratory, X ray, hospital,
43 ambulance and dental expenses and fees, and reasonable
44 costs and expenses incurred in purchase of artificial
45 limbs and other approved appliances which may be
46 reasonably necessary for any member of said depart-
47 ment who has or shall become temporarily, permanently
48 or totally disabled by injury, illness or disease resulting
49 from any occupational risk or hazard inherent in or
50 peculiar to the service required of members of said
51 department and incurred pursuant to or while such
52 member was or shall be engaged in the performance of
53 duties as a member of said department. Whenever the
54 superintendent shall determine that any disabled
55 member is ineligible to receive any of the aforesaid
56 benefits at public expense the superintendent shall, at
57 the request of such disabled member, refer such matter
58 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.**

1 The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member
3 who has lost or shall lose his life by reason of injury,
4 illness or disease resulting from an occupational risk or
5 hazard inherent in or peculiar to the service required
6 of members while such member was or shall be engaged
7 in the performance of his duties as a member of said
8 department or if said member shall die from any cause
9 after having been retired pursuant to the provisions of
10 section twenty-nine of this article, shall be entitled to
11 receive and shall be paid from the death, disability and

12 retirement fund benefits as follows: To the surviving
13 spouse annually, in equal monthly installments during
14 his or her lifetime one or the other of two amounts,
15 whichever shall be the greater, namely:

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

22 (2) The sum of six thousand dollars.

23 In addition thereto such surviving spouse shall be
24 entitled to receive and there shall be paid to such person
25 one hundred dollars monthly for each dependent child
26 or children. If such surviving spouse shall die or if there
27 be no surviving spouse there shall be paid monthly to
28 each such dependent child or children from the death,
29 disability and retirement fund a sum equal to twenty-
30 five percent of the surviving spouse's entitlement. If
31 there be no surviving spouse and no dependent child or
32 children, there shall be paid annually in equal monthly
33 installments from said death, disability and retirement
34 fund to the dependent parents of said deceased member
35 during their joint lifetimes a sum equal to the amount
36 which a surviving spouse, without children, would have
37 received: *Provided*, That when there shall be but one
38 dependent parent surviving, such parent shall be
39 entitled to receive during his or her lifetime one half the
40 amount which both parents, if living, would have been
41 entitled to receive.

42 Any person qualified as a surviving dependent child
43 under this section shall in addition to any other benefits
44 due under this or other sections of this article, be
45 entitled to receive a scholarship to be applied to the
46 career development education of said person. This sum
47 up to but not exceeding seven thousand five hundred
48 dollars shall be paid from the death, disability and
49 retirement fund to any university or college in this state
50 or to any trade or vocational school or other entity in
51 this state approved by the board, to offset the expenses

52 of tuition, room and board, books, fees or other costs
53 incurred in a course of study at any of said institutions
54 so long as the recipient makes application to the board
55 on an approved form and under such rules and regu-
56 lations as the board may provide, and maintains
57 scholastic eligibility as defined by the institution or the
58 board. The board may by appropriate rules and
59 regulations define age requirements, physical and
60 mental requirements, scholastic eligibility, disburse-
61 ment methods, institutional qualifications and other
62 requirements as necessary and not inconsistent with this
63 section.

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

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

1 In any case where a member while in active service
2 of said department, before having completed twenty
3 years of service as a member of said department, has
4 died or shall die from any cause other than those
5 specified in this article and not due to vicious habits,
6 intemperance or willful misconduct on his part, there
7 shall be paid annually in equal monthly installments
8 from said death, disability and retirement fund to the
9 surviving spouse of such member during his or her
10 natural lifetime or until such time as said surviving
11 spouse remarries a sum equal to two and three-quarters
12 percent of the total salary which would have been
13 earned by said member during twenty-five years of
14 service in said department based on his or her average
15 earnings while employed as a member of said depart-
16 ment. If there be no surviving spouse or the surviving
17 spouse dies or remarries there shall be paid monthly to
18 each such dependent child or children from the death,

19 disability and retirement fund a sum equal to twenty-
20 five percent of the surviving spouse's entitlement. If
21 there be no surviving spouse and no dependent child or
22 children there shall be paid annually in equal monthly
23 installments from said fund to the dependent parents of
24 said deceased member during their joint lifetimes a sum
25 equal to the amount which a surviving spouse would
26 have been entitled to receive: *Provided*, That when there
27 shall be but one dependent parent surviving then such
28 dependent parent shall be entitled to receive during his
29 or her lifetime one half the amount which both parents,
30 if living, would have been entitled to receive.

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

1 When any member of said department has heretofore
2 completed or hereafter shall complete twenty years of
3 service or longer as a member of said department and
4 has died or shall die from any cause or causes other than
5 those specified in this article before having been retired
6 by the retirement board, and when a member in
7 retirement status has died or shall die after having been
8 retired by the retirement board under the provisions of
9 this article, there shall be paid annually in equal
10 monthly installments from said fund to the surviving
11 spouse of said member, commencing on the date of the
12 death of said member and continuing during the
13 lifetime or until remarriage of said surviving spouse an
14 amount equal to three-fourths the retirement benefits
15 said deceased member was receiving while in status of
16 retirement, or would have been entitled to receive to the
17 same effect as if such member had been retired under
18 the provisions of this article immediately prior to the
19 time of his death and in no event to be less than five
20 thousand dollars and in addition thereto said surviving
21 spouse shall be entitled to receive and there shall be paid
22 to such surviving spouse from said fund the sum of one
23 hundred dollars monthly for each dependent child or
24 children. If such surviving spouse die, or remarry, or if
25 there be no surviving spouse there shall be paid monthly
26 from said fund to each dependent child or children of
27 said deceased member a sum equal to twenty-five

28 percent of the surviving spouse's entitlement. If there be
29 no surviving spouse or no surviving spouse eligible to
30 receive benefits and no dependent child or children
31 there shall be paid annually in equal monthly install-
32 ments from said fund to the dependent parents of said
33 deceased member during their joint lifetimes a sum
34 equal to the amount which a surviving spouse without
35 children would have been entitled to receive: *Provided,*
36 That when there shall be but one dependent parent
37 surviving, such parent shall be entitled to receive during
38 his or her lifetime one half the amount which both
39 parents, if living, would have been entitled to receive.

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

1 The board may continue payments of a surviving
2 spouse's entitlement in full to any dependent children
3 who continue to be dependent by reason of mental or
4 physical incapacity as determined by the board notwith-
5 standing the age of the dependent child or other
6 provisions of this article.

§15-2-36. Same — Termination.

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

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

Luca P. Liccione

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect July 1, 1988.

John C. Stiller

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Don Tolson

President of the Senate

[Signature]

Speaker of the House of Delegates

The within *approved* this the *31st*
March day of _____, 1988.

Rich A. Shaffer

Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/88

Time 3:48 p.m.

RECEIVED

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OFFICE OF GOVERNMENT
SECRETARY OF STATE