WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

--- • ---

ENROLLED

Com. Sub. For

HOUSE BILL No. 1680

(By Delegate Browning)

--- • ---

Passed March 12, 1994

In Effect From Passage
AN ACT to amend and reenact sections twenty-six, twenty-seven, twenty-seven-a, twenty-nine, thirty, thirty-one, thirty-three, thirty-four and thirty-seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the division of public safety death, disability and retirement fund; contributions to fund; retirement awards and benefits; benefits upon disability retirement; retirement annual annuity adjustments; benefits to dependents of a member; refunds of contributions to members upon discharge or resignation; deferred retirements; creating a new state police retirement system; providing for administration of the system; creating retirement fund; providing for payment of retirement benefits and annual adjustments thereto; providing for payments upon disability or death; providing for payments with interest upon withdrawal from system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the division of public safety and any dependent of a retired or deceased member thereof.

There shall be deducted from the monthly payroll of each member of the division of public safety and paid into such fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the division shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for the division: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the state shall pay thirteen percent of the monthly salary of each member into the fund: And provided further, That beginning on the first day of July, one thousand nine hundred ninety-six, the state shall pay fourteen percent of the monthly salary of each member into the fund: And provided further, That on and after the first day of July, one thousand nine hundred ninety-seven, the state shall pay fifteen percent of the monthly salary of each member into the retirement fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the division of public safety on
account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the state treasury, and the treasurer and auditor shall keep a separate account thereof on their respective books.

The moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever; and shall be unassignable except as is provided in this article.

The death, disability and retirement fund shall be administered by the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

All moneys paid into and accumulated in the death, disability and retirement fund, except such amounts as shall be designated or set aside by the retirement board for payments of death, disability and retirement benefits and awards, shall be invested by the state board of investments as provided by law.

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

(a) The retirement board shall retire any member of the division 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 division, 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 division of public safety who has lodged with the secretary of the consolidated public retirement board his or her voluntary petition in writing for retirement, and:

(1) Has or shall have completed twenty-five years of
service as a member of the division (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 division (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
division (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 lifetime of the member while in
status of retirement one or the other of two amounts,
whichever is the greater:

(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 division 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 division and shall be retired under any of the
provisions of this section before he or she 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 or she attains
the age of fifty years.

Beginning on the fifteenth day of July one thousand
nine hundred ninety-four, in no event may the provisions
of section thirteen, article sixteen, chapter five of this
code be applied in determining eligibility to retire with
either immediate or deferred commencement of benefit.

Every member of the division of public safety who is fifty-five years of age or older and who is retired by the retirement board under the provisions of section twenty-seven of this article; every member of the division of public safety who is retired by the retirement board under the provisions of section twenty-nine or thirty of this article; and every surviving spouse or other beneficiary receiving a benefit pursuant to sections thirty-three or thirty-four of this article, is eligible to receive an annual retirement annuity adjustment equal to three and seventy-five hundredths percent of his or her retirement award or surviving spouse award: Provided, That for any person retiring on and after the fifteenth day of September, one thousand nine hundred ninety-four, the annual retirement annuity adjustment shall be equal to two percent of his or her retirement award or award paid to a surviving spouse or other beneficiary. Such adjustments may not be retroactive. Yearly adjustments shall begin upon the first day of July of each year. 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.

Any member or beneficiary who receives a benefit pursuant to the provisions of sections twenty-nine, thirty, thirty-three or thirty-four of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year's annuity adjustment.


Any member of the division 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 the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division shall, if, in the opinion of the retirement board, he or she is by reason of such cause unable to perform adequately the duties required of him or her as a member of the division, but is able to engage in any other gainful employment, be retired from active service by the retirement board. The member thereafter 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 lifetime of such member; or until the member attains the age of fifty; or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to two thirds of the salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be deemed to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

If any member shall become permanently physically or mentally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent
in or peculiar to the services required of members of the
division and incurred pursuant to or while such member
was or shall be engaged in the performance of his or
her duties as a member of the division, 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 lifetime
of such member or until such disability shall sooner
terminate, an amount equal to the amount of the salary
received by the member in the preceding twelve-month
employment period: Provided, That in no event may
such amount be less than fifteen thousand dollars per
annum: Provided, however, That if the member had not
been employed with the division for twelve months prior
to the disability, the amount of monthly salary shall be
annualized for the purpose of determining the benefit.

The superintendent is authorized to expend moneys
from funds appropriated for the division in payment of
medical, surgical, laboratory, X-ray, hospital, ambu-
lance and dental expenses and fees, and reasonable costs
and expenses incurred in the purchase of artificial limbs
and other approved appliances which may be reasonably
necessary for any member of the division 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 the division and
incurred pursuant to or while such member was or shall
be engaged in the performance of duties as a member
of the division. 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 consolidated public
retirement board for hearing and final decision.

For the purposes of this section, the term “salary” does
not include any compensation paid for overtime service.

§15-2-30. Same—Due to other causes.
If any member while in active service of the division has or shall, in the opinion of the retirement board, become permanently disabled to the extent that such member cannot adequately perform the duties required of a member of the division from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, such member shall be retired by the retirement board. Such member shall be entitled to receive annually and there shall be paid to such member while in status of retirement, from the death, disability and retirement fund in equal monthly installments during the lifetime of such member or until such disability shall sooner terminate, a sum equal to one half the salary received in the preceding twelve-month period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

If such member, at the time of such retirement under the terms of this section, shall have served twenty years or longer as a member of the division, 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, commencing on the date such member shall be retired and continuing during the lifetime of such member, until the member attains the age of fifty, while in status of retirement an amount equal to one-half the salary received by the member in the preceding twelve-month period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

For the purposes of this section, the term “salary” does not include any compensation paid for overtime service.

Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The
recalculation of benefit upon a member attaining age
fifty shall be deemed to be a retirement under the
provisions of section twenty-seven of this article, for
purposes of determining the amount of annual annuity
adjustment and for all other purposes of this article.

§15-2-31. Same—Physical examinations; recall to active
duty; termination.

The consolidated public retirement board may require
any member who has been or who shall be retired with
compensation on account of disability to submit to a
physical and/or mental examination by a physician or
physicians selected or approved by the board and cause
all costs incident to such examination including hospital,
laboratory, X-ray, medical and physicians' fees to be
paid out of funds appropriated to defray the current
expense of the division, and a report of the findings of
such physician or physicians shall be submitted in
writing to the consolidated public retirement board for
its consideration. If from such report or from such
report and hearing thereon the retirement board shall
be of opinion and find that such disabled member shall
have recovered from such disability to the extent that
he or she is able to perform adequately the duties of a
member of the division, the board shall order such
member to reassume active duty as a member of the
division and thereupon all payments from the death,
disability and retirement fund shall be terminated. If
from the report or the report and hearing thereon, the
board shall be of the opinion and find that the disabled
member shall have recovered from the disability to the extent that he or she is able to engage in any gainful
employment but unable to adequately perform the
duties required as a member of the division, the board
shall order the payment, in monthly installments of an
amount equal to two thirds of the salary, in the case of
a member retired under the provisions of section
twenty-nine of this article, or equal to one-half of the
salary, in the case of a member retired under the
provisions of section thirty of this article, excluding any
compensation paid for overtime service, for the twelve-
month employment period preceding the disability:

Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

§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 or her life by reason of injury, illness 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 or her duties as a member of the division, or if said member shall die from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent 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, which shall become immediately available and which shall be the greater of:

(1) An amount equal to seven-tenths of the salary received in the preceding twelve-month employment period by the deceased member. Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; 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 dies or if there is 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 are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the death, disability and retirement fund to the dependent parents of the 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 is but one dependent parent surviving, that parent is 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 that 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 those institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules 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 member's surviving spouse or dependents 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. Receipt of benefits under any other state retirement system shall be in lieu of any right to receive any benefits under this retirement system, so that only a single receipt of
retirement benefits shall occur.

For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-33a. Awards and benefits to dependents of member — 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, the surviving spouse may not from the date of his or her remarryment, nor may the deceased member's estate from the date of death of the 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 the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

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

In any case where a member while in active service of the division, before having completed twenty years of service as a member of the division, 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 or her 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 lifetime, or until such time as said surviving spouse remarries, a sum equal to one-half of the salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit. Such benefit shall become immediately available upon the death of the member. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each 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 are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the 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 is but one dependent parent surviving, that 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.

For the purposes of this section, the term “salary” does not include compensation paid for overtime service.

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

(a) Any member who shall be discharged by order of the superintendent or shall otherwise terminate employment with the division shall, at the written request of the member to the retirement board, be entitled to receive from the retirement fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the death, disability and retirement fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member who has ten or more years of service with the division and who withdraws his or her contributions, may thereafter be reenlisted as a member of the division, but may not receive any prior service credit on account of former service, unless following reenlistment the member shall redeposit in the fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made. He or she shall become a member of the retirement system established in article two-a of this chapter.
(c) Every member who completes ten years of service with the division of public safety is eligible, upon separation of employment with the division, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions will be eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section twenty-seven-a of this article. 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 is 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 lifetime of the member while in status of retirement one or the other of two amounts, whichever is greater:

(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 division of public safety; or

(2) The sum of six thousand dollars.

The annuity shall be payable during the lifetime of the member. The retiring member may choose, in lieu of such a life annuity, an annuity in reduced amount payable during the member's lifetime, with one-half of such reduced monthly amount paid to his or her surviving spouse if any, for the spouse's remaining lifetime after the death of the member. Reduction of this monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


This article shall be known and may be cited as the
“West Virginia State Police Retirement System Act”.


As used in this article, unless the context clearly requires a different meaning:

1. “Active military duty” means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

2. “Base salary” means compensation paid to a member without regard to any overtime pay.

3. “Board” means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

4. “Division” means the division of public safety.

5. “Final average salary” means the average of the highest annual compensation received for employment with the division, including compensation paid for overtime service, received by the member during any five years within the member’s last ten years of service.

6. “Fund” means the West Virginia state police retirement fund created pursuant to section four of this article.

7. “Member” or “employee” means a person regularly employed in the service of the division of public safety after the effective date of this article.

8. “Salary” means the compensation of a member, excluding any overtime payments.

§15-2A-3. Creation and administration of West Virginia state police retirement system.

There is hereby created the West Virginia state police retirement system. Any West Virginia state trooper employed by the division of public safety on or after the
enr. com. sub. for h. b. 4680] 16

4 effective date of this article shall be a member of this
5 retirement system and may not qualify for membership
6 in any other retirement system administered by the
7 consolidated public retirement board, so long as he or
8 she remains employed by the division.

9 The consolidated public retirement board created
10 pursuant to article ten-d, chapter five of this code shall
11 administer the West Virginia state police retirement
12 system. The board may sue and be sued, contract and
13 be contracted with and conduct all the business of the
14 system in the name of the West Virginia state police
15 retirement system.

§15-2A-4. Participation in system; creation of fund.

1 There is hereby created the “West Virginia state
2 police retirement fund” for the benefit of the members
3 of the retirement system created pursuant to this article
4 and the dependents of any deceased or retired member
5 of the system.

6 All moneys paid into and accumulated in the fund,
7 except such amounts as shall be designated or set aside
8 by the board for payments of benefits as provided in this
9 article, shall be invested by the state board of invest-
10 ments as provided by law.

§15-2A-5. Members’ contributions; employer contribu-

1 There shall be deducted from the monthly payroll of
2 each member and paid into the fund created pursuant
3 to section four of this article, twelve percent of the
4 amount of his or her salary. An additional twelve
5 percent of the monthly salary of each member of the
6 division shall be paid by the state of West Virginia
7 monthly into such fund out of the annual appropriation
8 for the division.


1 A member may retire with full benefits upon attain-
2 ing the age of fifty-five and completing twenty or more
3 years of service, by lodging with the consolidated public
4 retirement board his or her voluntary petition in writing
for retirement. A member who is less than age fifty-five
may retire upon completing twenty years or more of
service: Provided, That he or she will receive a reduced
benefit that is of equal actuarial value to the benefit the
member would have received if the member deferred
commencement of his or her accrued retirement benefit
to the age of fifty-five.

When the retirement board retires a member with full
benefits under the provisions of this section, the board,
by order in writing, shall make a determination that the
member is entitled to receive on annuity equal to two
and three-fourths percent of his or her final average
salary multiplied by the number of years, and fraction
of a year, of his or her service in the division at the time
of retirement.

In no event may the provisions of section thirteen,
article sixteen, chapter five be applied in determining
eligibility to retire with either a deferred or immediate
commencement of benefit.


Every member of the division of public safety who is
sixty-three years of age or older and who is retired by
the retirement board under the provisions of section six
of this article; every member who is retired under the
provisions of sections nine or ten of this article; and
every surviving spouse receiving a benefit pursuant to
sections twelve, thirteen or fourteen of this article is
eligible to receive an annual retirement annuity
adjustment equal to one percent of his or her retirement
award or surviving spouse award. Such adjustments
may not be retroactive. Yearly adjustments shall begin
upon the first day of July of each year. The annuity
adjustments shall be awarded and paid to a member
from the fund in equal monthly installments while the
member is in status of retirement. The annuity adjust-
ments shall supplement the retirement awards and
benefits provided in this article.

Any member or beneficiary who receives a benefit
pursuant to the provisions of sections nine, ten, twelve,
thirteen or fourteen of this article shall begin to receive
the annual annuity adjustment one year after the commencement of the benefit on the next July first:
Provided, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year's annuity adjustment.

§15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who shall be discharged by order of the superintendent or shall otherwise terminate employment with the division shall, at the written request of the member to the retirement board, be entitled to receive from the retirement fund a sum equal to the aggregate of the principal amount of moneys deducted from the salary of the member and paid into the retirement fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reenlisted as a member of the division, shall not receive any prior service credit on account of the former service, unless following his or her reenlistment the member shall redeposit in the fund the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made.

(c) Every member who completes ten years of service with the division of public safety is eligible, upon separation of employment with the division, to either withdraw his or her contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions will be eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the member, and shall be in the amount of his or her accrued retirement benefit as determined under section
The retiring member may choose, in lieu of such a life annuity, an annuity in reduced amount payable during the member's lifetime, with one-half of the reduced monthly amount paid to his or her surviving spouse if any, for the spouse's remaining lifetime after the death of the member. Reduction of such monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section seven of this article.


Any member of the division 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 the division and incurred pursuant to or while the member was or shall be engaged in the performance of his or her duties as a member of the division shall, if, in the opinion of the retirement board, he or she is by reason of such cause unable to perform adequately the duties required of him or her as a member of the division, but is able to engage in other gainful employment be retired from active service by the board. The member shall thereafter be entitled to receive annually and there shall be paid to the member from the fund in equal monthly installments during the lifetime of the member; or until the member attains the age of fifty-five or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to six-tenths of the base salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or
(2) The sum of six thousand dollars.

Upon attaining age fifty-five, the member shall receive the benefit provided for in section six of this article as it would apply to his or her final average salary based on earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty-five shall be deemed to be a retirement under the provisions of section six of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

If any member shall become permanently physically or mentally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division to the extent that the member is or shall be incapacitated ever to engage in any gainful employment, the member shall be entitled to receive annually and there shall be paid to such member from the fund in equal monthly installments during the lifetime of the member or until such disability shall sooner terminate, an amount equal to the amount of the base salary received by the member in the preceding twelve-month employment period.

The superintendent of the division is authorized to expend moneys from funds appropriated for the division in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the division 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 the division and incurred pursuant to or while the member was or shall be engaged in the performance of duties as a member of the division. 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 the disabled member, refer such matter to the board for hearing and final decision.

§15-2A-10. Same — Due to other causes.

If any member while in active service of the division has or shall, in the opinion of the board, become permanently disabled to the extent that he or she cannot adequately perform the duties required of a member of the division from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the member shall be retired by the board. There shall be paid to the member from the fund in equal monthly installments, commencing on the date the member shall be retired and continuing during the lifetime of the member; or until the member attains the age of fifty-five; while in status of retirement an amount equal to one-half the base salary received by the member in the preceding twelve-month period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

Upon attaining age fifty-five, the member shall receive the benefit provided for in section six of this article as it would apply to his or her final average salary based on earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty-five shall be deemed to be a retirement under the provisions of section six of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

§15-2A-11. Same — Physical examinations; recall to active duty; termination.

The board may require any member who has been or who shall be retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or
approved by the retirement board and cause all costs incident to such examination including hospital, laboratory, X-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expenses of the division, and a report of the findings of such physician or physicians shall be submitted in writing to the board for its consideration. If from the report or from the report and hearing thereon the board shall be of opinion and find that the disabled member shall have recovered from such disability to the extent that he or she is able to perform adequately the duties of a member of the division, the board shall order the member to reassume active duty as a member of the division and thereupon all payments from the fund shall be terminated. If from the report or the report and hearing thereon, the board shall be of the opinion and find that the disabled member has recovered from the disability to the extent that he or she is able to engage in any gainful employment but unable to adequately perform the duties required as a member of the division, the board shall order in the case of a member retired under the provisions of section nine of this article that the disabled member be paid from the fund an amount equal to six-tenths of the base salary paid to the member in the last twelve-month employment period. The board shall order in the case of a member retired under the provisions of section ten of this article that the disabled member be paid from the fund an amount equal to one-fourth of the base salary paid to the member in the last twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

§15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

The surviving spouse, the dependent child or children or dependent parent or parents of any member who has lost or shall lose his or her life by reason of injury, illness
or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members while the member was or shall be engaged in the performance of his or her duties as a member of the division, or the survivor of a member who dies from any cause after having been retired pursuant to the provisions of section nine of this article, shall be entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to two thirds of the base salary received in the preceding twelve-month period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

In addition thereto, the 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 the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to one-fourth of the surviving spouse's entitlement. If there are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the 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 is but one dependent parent surviving, that parent is 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 qualifying 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 that person. This sum, up to but not exceeding seven thousand five hundred dollars, shall be paid from the 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 these institutions so long as the recipient makes
application to the board on an approved form and under
such rules as the board may provide, and maintains
scholastic eligibility as defined by the institution or the
board. The board may by appropriate rules define age
requirements, physical and mental requirements,
scholastic eligibility, disbursement methods, institu-
tional qualifications and other requirements as neces-
sary 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 benefits for these persons under
the provisions of any other state retirement system.
Receipt of benefits under any other state retirement
system shall be in lieu of any right to receive any
benefits under this retirement system, so that only a
single receipt of state retirement benefits shall occur.

§15-2-13. Same — When member dies from nonservice-
connected causes.

In any case where a member while in active service
of the division, before having completed twenty years of
service as a member of the division, 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 or her part, there shall be paid
annually in equal monthly installments from the fund
to the surviving spouse of the member during his or her
lifetime, or until such time as the surviving spouse
remarries, a sum equal to one-half of the base salary
received in the preceding twelve-month employment
period by the deceased member: Provided, That if the
member had not been employed with the division for
twelve months prior to the disability, the amount of
monthly salary shall be annualized for the purpose of
determining the benefit. If there is no surviving spouse
or the surviving spouse dies or remarries, there shall be
paid monthly to each dependent child or children from
the fund a sum equal to one-fourth of the surviving spouse's entitlement. If there are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount that a surviving spouse would have been entitled to receive: Provided, however, That when there is but one dependent parent surviving, then that 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.

§15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.

When any member of the division has completed twenty years of service or longer as a member of the division and has died or shall die from any cause or causes other than those specified in this article before having been retired by the board, and when a member in retirement status has died or shall die after having been retired by the board under the provisions of this article, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the member, commencing on the date of the death of the member and continuing during the lifetime or until remarriage of the surviving spouse, an amount equal to two thirds of the retirement benefit which the deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if the member had been retired under the provisions of this article immediately prior to the time of his or her death. In no event shall the annual benefit payable be less than five thousand dollars. In addition thereto, the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the fund the sum of one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or remarries, or if there is no surviving spouse, there shall be paid monthly from the fund to each dependent child or children of the deceased member a sum equal to one-
enr. com. sub. for h. b. 4680] 26

27 fourth of the surviving spouse's entitlement. If there is
28 no surviving spouse or no surviving spouse eligible to
29 receive benefits and no dependent child or children,
30 there shall be paid annually in equal monthly instal-
31 lments from the fund to the dependent parents of the
32 deceased member during their joint lifetimes a sum
33 equal to the amount which a surviving spouse without
34 children would have been entitled to receive: provided,
35 that when there is but one dependent parent surviving,
36 that parent shall be entitled to receive during his or her
37 lifetime one-half the amount which both parents, if
38 living, would have been entitled to receive.
39
40 The member may choose a higher percentage of
41 surviving spouse benefits by taking an actuarially
42 determined reduced initial benefit so that the chosen
43 spouse benefit and initial benefit would be actuarially
44 equivalent to the normal spouse benefit and initial
45 benefit. The retirement board shall design these benefit
46 options and provide them as choices for the member to
47 select. For the purposes of this subsection, "initial
48 benefit" means the benefit received by the member upon
49 retirement.

§15-2A-15. Exemption from taxation, garnishment and
other process.

1 The moneys in the fund and the right of a member
2 to a retirement allowance, to the return of contributions,
3 or to any benefit under the provisions of this article, are
4 hereby exempt from any state or municipal tax; shall
5 not be subject to execution, garnishment, attachment or
6 any other process whatsoever; and shall be unassignable
7 except as is provided in this article.

§15-2A-16. Fraud; penalties.

1 Any person who knowingly makes any false statement
2 or who falsifies or permits to be falsified any record or
3 records of the retirement system in any attempt to
4 defraud that system is guilty of a misdemeanor, and,
5 upon conviction, shall be punished by a fine not to
6 exceed one thousand dollars, or confinement in the
7 county jail not to exceed one year or both.
§15-2A-17. Awards and benefits to dependents of member — 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 twelve of this article, the surviving spouse may not from the date of his or her remarriage, nor may the estate from the date of death of the deceased member's 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 the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarry.

§15-2A-18. Authority to continue payments to certain dependents.

The board may continue payments of a surviving spouse's entitlement in full to any dependent child who continues 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.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;
(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with the division for twenty years exclusive of his or her active military duty.

(b) In addition, any person who while a member of the division was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the president, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the division of public safety, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the armed forces subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from the armed forces, he or she presented himself or herself to the superintendent and offered to resume service as an active member of the division; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces.
beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(c) The total amount of military service credit allowable under this section may not exceed five years for any member of the division.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

Governor
PRESENTED TO THE GOVERNOR
Date 3/29/94
Time 11:49 AM