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HB 1910

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

Committee Substitute for
SENATE BILL NO. 174

(By Senator Foster, et al)

PASSED March 10, 2006

In Effect 90 days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 174

(SENATORS FOSTER, BARNES, LANHAM,
MCCABE AND PLYMALE, *original sponsors*)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §15-2-31a and §15-2-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-2-52, all relating to the State Police Death, Disability and Retirement Fund; clarifying earnings information required; requiring examination of certain records; clarifying substantial gainful activity, establishing earnings limits and providing for annual adjustment; authorizing benefit termination for and reapplication by disability retirants terminated for failure to maintain eligibility due to income or type of employment; requiring medical exam at applicant's expense on reapplication; clarifying reinstatement for reenlisting members; and providing for termination and recovery of benefits for misrepresentation.

Be it enacted by the Legislature of West Virginia:

That §15-2-31a and §15-2-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-2-52, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-31a. Application for disability benefit; determinations.

1 (a) Application for a disability benefit may be made by
2 a member or, if the member is under an incapacity, by a
3 person acting with legal authority on the member's behalf.
4 After receiving an application for a disability benefit from
5 a member or a person acting with legal authority on behalf
6 of the member, the board shall notify the superintendent
7 of the department that an application has been filed:
8 *Provided*, That when, in the judgment of the superinten-
9 dent, a member is no longer physically or mentally fit for
10 continued duty as a member of the West Virginia State
11 Police and the member has failed or refused to make
12 application for disability benefits under this article, the
13 superintendent may petition the board to retire the
14 member on the basis of disability pursuant to rules which
15 may be established by the board. Within thirty days of the
16 superintendent's receipt of the notice from the board or
17 the filing of the superintendent's petition with the board,
18 the superintendent shall forward to the board a statement
19 certifying the duties of the member's employment, infor-
20 mation relating to the superintendent's position on the
21 work relatedness of the member's alleged disability,
22 complete copies of the member's medical file and any other
23 information requested by the board in its processing of the
24 application, if this information is requested timely.

25 (b) The board shall propose legislative rules in accor-
26 dance with the provisions of article three, chapter twenty-
27 nine-a of this code relating to the processing of applica-
28 tions and petitions for disability retirement under this
29 article.

30 (c) The board shall notify the member and the superin-
31 tendent of its final action on the disability application or
32 petition within ten days of the board's final action. The
33 notice shall be sent by certified mail, return receipt
34 requested. If either the member or the superintendent is
35 aggrieved by the decision of the board and intends to
36 pursue judicial review of the board's decision as provided
37 in section four, article five, chapter twenty-nine-a of this
38 code, the party so aggrieved shall notify the board within
39 twenty days of the member's or superintendent's receipt of
40 the board's notice that they intend to pursue judicial
41 review of the board's decision.

42 (d) (1) The board shall require each disability benefit
43 recipient to file an annual certified statement of earnings,
44 to include the amount and source of earnings, and any
45 other information required in legislative rules which may
46 be proposed by the board. The board may waive or modify
47 the requirement that a recipient of total disability benefits
48 file the annual statement of earnings if the board's physi-
49 cian certifies that the recipient's disability is ongoing. The
50 board shall annually examine the information submitted
51 by each recipient. If a disability retirant refuses to file a
52 statement and other information required by the board,
53 the disability benefit shall be suspended, after notice and
54 opportunity to be heard, until the statement and informa-
55 tion are filed.

56 (2) The board shall annually examine any information
57 available from the State Tax Commissioner on all recipi-
58 ents of disability benefits pursuant to article ten, chapter
59 eleven of this code.

60 (e) (1) A nonblind recipient earning annual income
61 exceeding the equivalent of eight hundred sixty dollars per
62 month in the year two thousand six, after impairment-
63 related work expenses are subtracted from earnings, has
64 engaged in substantial gainful activity. A statutorily blind
65 recipient has engaged in substantial gainful activity in the
66 year two thousand six if the recipient has earned annual

67 income exceeding the equivalent of one thousand four
68 hundred fifty dollars per month after impairment-related
69 work expenses are subtracted from earnings.

70 (2) The substantial gainful activity dollar limit shall be
71 automatically adjusted annually to correspond to the
72 dollar limit as established and published by the United
73 States Social Security Administration for each year in
74 accordance with methods published in the Federal Regis-
75 ter (FR6582905 December 29, 2000) and similar methods
76 used by the Social Security Administration applying the
77 average annual wage index.

78 (3) If after review of a disability retiree's annual
79 statement of earnings, tax records or other financial
80 information, as required or otherwise obtained by the
81 board, the board determines that earnings of the recipient
82 of total disability benefits in the preceding year are
83 sufficient to show that the recipient engaged in substantial
84 gainful activity, the disability retiree's disability annuity
85 shall be terminated by the board, upon recommendation of
86 the board's disability review committee and after notice
87 and opportunity to be heard, on the first day of the month
88 following the board's action.

89 (4) If the board obtains information that a recipient of
90 partial disability benefits is employed as a law-enforce-
91 ment officer, upon recommendation of the board's disabili-
92 ty review committee and after notice and an opportunity
93 to be heard, the board shall terminate the recipient's
94 disability benefits on the first day of the month following
95 the board's action.

96 (f) Any person who wishes to reapply for disability
97 retirement and whose disability retirement has been
98 terminated by the board pursuant to this section may do so
99 within ninety days of the effective date of termination:
100 *Provided*, That any person reapplying for disability
101 benefits shall undergo an examination at the applicant's

102 expense by an appropriate medical professional selected
103 by the board as part of the reapplication process.

104 (g) Notwithstanding other provisions in this section, any
105 person whose disability retirement has been terminated by
106 the board pursuant to this section may apply for regular
107 retirement benefits upon meeting the eligibility require-
108 ments of age and years of service.

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

1 (a) Any member who is discharged by order of the
2 superintendent or otherwise terminates employment with
3 the department, at the written request of the member to
4 the retirement board, is entitled to receive from the
5 retirement fund a sum equal to the aggregate of the
6 principal amount of moneys deducted from his or her
7 salary and paid into the State Police Death, Disability and
8 Retirement Fund plus four percent interest compounded
9 thereon calculated annually as provided and required by
10 this article.

11 (b) Any member withdrawing contributions who may
12 thereafter be reenlisted as a member of the department
13 shall not receive any prior service credit on account of
14 former service, unless following reenlistment the member
15 redeposits in the fund established in article two-a of this
16 chapter the amount of the refund, together with interest
17 thereon at the rate of seven and one-half percent per
18 annum from the date of withdrawal to the date of rede-
19 posit, in which case he or she shall receive the same credit
20 on account of his or her former service as if no refund had
21 been made. He or she shall become a member of the
22 retirement system established in article two-a of this
23 chapter.

24 (c) Every member who completes ten years of service
25 with the department is eligible, upon separation of em-
26 ployment with the department, either to withdraw his or

27 her contributions in accordance with subsection (a) of this
28 section or to choose not to withdraw his or her accumu-
29 lated contributions with interest. Upon attainment of age
30 sixty-two, a member who chooses not to withdraw his or
31 her contributions is eligible to receive a retirement annu-
32 ity. Any member choosing to receive the deferred annuity
33 under this subsection is not eligible to receive the annual
34 annuity adjustment provided in section twenty-seven-a of
35 this article. When the retirement board retires any
36 member under any of the provisions of this section, the
37 board shall, by order in writing, make an award directing
38 that the member is entitled to receive annually and that
39 there shall be paid to the member from the State Police
40 Death, Disability and Retirement Fund in equal monthly
41 installments during the lifetime of the member while in
42 status of retirement one or the other of two amounts,
43 whichever is greater:

44 (1) An amount equal to five and one-half percent of the
45 aggregate of salary paid to the member during the whole
46 period of service as a member of the department; or

47 (2) The sum of six thousand dollars.

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

§15-2-52. Termination of benefits; procedures.

1 (a) Whenever the board determines that a person seeking
2 benefits under the provisions of this article has made false
3 representation of a material fact in support of applying for
4 or retaining benefits or has falsified or permitted to be

5 falsified any record or records of the retirement system in
6 support of benefits, the board shall terminate any present
7 benefit approved as a result of the false statement or
8 record. In addition, the board shall initiate appropriate
9 action to recover any benefits paid by virtue of the false
10 representation.

11 (b) Any termination of benefits pursuant to this section
12 may be appealed pursuant to the state administrative
13 procedures act in chapter twenty-nine-a of this code. The
14 board may promulgate rules in accordance with the
15 provisions of article three of said chapter regarding the
16 procedure for termination of benefits and any repayment
17 of benefits.

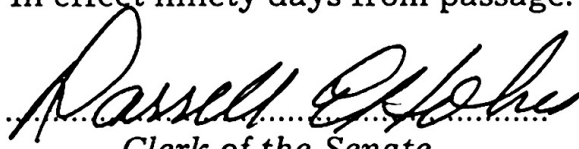
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee


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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 31st
Day of March, 2006.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 30 2006

Time 12:15 pm