WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute for
SENATE BILL NO. 174

(By Senator Foster, et al.)

PASSED March 10, 2004

In Effect 90 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.

(a) Application for a disability benefit may be made by a member or, if the member is under an incapacity, by a person acting with legal authority on the member's behalf. After receiving an application for a disability benefit from a member or a person acting with legal authority on behalf of the member, the board shall notify the superintendent of the department that an application has been filed: Provided, That when, in the judgment of the superintendent, a member is no longer physically or mentally fit for continued duty as a member of the West Virginia State Police and the member has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the member on the basis of disability pursuant to rules which may be established by the board. Within thirty days of the superintendent's receipt of the notice from the board or the filing of the superintendent's petition with the board, the superintendent shall forward to the board a statement certifying the duties of the member's employment, information relating to the superintendent's position on the work relatedness of the member's alleged disability, complete copies of the member's medical file and any other information requested by the board in its processing of the application, if this information is requested timely.

(b) The board shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the processing of applications and petitions for disability retirement under this article.
(c) The board shall notify the member and the superintendent of its final action on the disability application or petition within ten days of the board's final action. The notice shall be sent by certified mail, return receipt requested. If either the member or the superintendent is aggrieved by the decision of the board and intends to pursue judicial review of the board's decision as provided in section four, article five, chapter twenty-nine-a of this code, the party so aggrieved shall notify the board within twenty days of the member's or superintendent's receipt of the board's notice that they intend to pursue judicial review of the board's decision.

(d) (1) The board shall require each disability benefit recipient to file an annual certified statement of earnings, to include the amount and source of earnings, and any other information required in legislative rules which may be proposed by the board. The board may waive or modify the requirement that a recipient of total disability benefits file the annual statement of earnings if the board's physician certifies that the recipient's disability is ongoing. The board shall annually examine the information submitted by each recipient. If a disability retirant refuses to file a statement and other information required by the board, the disability benefit shall be suspended, after notice and opportunity to be heard, until the statement and information are filed.

(2) The board shall annually examine any information available from the State Tax Commissioner on all recipients of disability benefits pursuant to article ten, chapter eleven of this code.

(e) (1) A nonblind recipient earning annual income exceeding the equivalent of eight hundred sixty dollars per month in the year two thousand six, after impairment-related work expenses are substracted from earnings, has engaged in substantial gainful activity. A statutorily blind recipient has engaged in substantial gainful activity in the year two thousand six if the recipient has earned annual
(2) The substantial gainful activity dollar limit shall be automatically adjusted annually to correspond to the dollar limit as established and published by the United States Social Security Administration for each year in accordance with methods published in the Federal Register (FR6582905 December 29, 2000) and similar methods used by the Social Security Administration applying the average annual wage index.

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

(4) If the board obtains information that a recipient of partial disability benefits is employed as a law-enforcement officer, upon recommendation of the board's disability review committee and after notice and an opportunity to be heard, the board shall terminate the recipient's disability benefits on the first day of the month following the board's action.

(f) Any person who wishes to reapply for disability retirement and whose disability retirement has been terminated by the board pursuant to this section may do so within ninety days of the effective date of termination: Provided, That any person reapplying for disability benefits shall undergo an examination at the applicant's
expense by an appropriate medical professional selected
by the board as part of the reapplication process.

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

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

(a) Any member who is discharged by order of the
superintendent or otherwise terminates employment with
the department, at the written request of the member to
the retirement board, is 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 State Police Death, Disability and
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 department
shall not receive any prior service credit on account of
former service, unless following reenlistment the member
redeposits 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 rede-
posit, 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 department is eligible, upon separation of em-
ployment with the department, 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 is 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 State Police 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 department; 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 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 this monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen.

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

(a) Whenever the board determines that a person seeking benefits under the provisions of this article has made false representation of a material fact in support of applying for or retaining benefits or has falsified or permitted to be
falsified any record or records of the retirement system in support of benefits, the board shall terminate any present benefit approved as a result of the false statement or record. In addition, the board shall initiate appropriate action to recover any benefits paid by virtue of the false representation.

(b) Any termination of benefits pursuant to this section may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board may promulgate rules in accordance with the provisions of article three of said chapter regarding the procedure for termination of benefits and any repayment of benefits.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor