WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED

Senate Bill No. 394

(BY SENATORS KESSLER (MR. PRESIDENT), BARNES, BEACH, BLAIR, BOLEY, CANN, CARMICHAEL, CHAFIN, COLE, COOKMAN, EDGELL, FACEMIRE, FITZSIMMONS, GREEN, D. HALL, M. HALL, JENKINS, KIRKENDOLL, LAIRD, McCABE, MILLER, NOHE, PALUMBO, PLYMALE, PREZIOSO, SNYDER, STOLLINGS, SYPOLT, TUCKER, UNGER, WALTERS, WELLS, WILLIAMS AND YOST)

[PASSED APRIL 13, 2013; TO TAKE EFFECT JULY 1, 2013.]
ENROLLED

Senate Bill No. 394

(By Senators Kessler (Mr. President), Barnes, Beach, Blair, Boley, Cann, Carmichael, Chafin, Cole, Cookman, Edgell, Facemire, Fitzsimmons, Green, D. Hall, M. Hall, Jenkins, Kirkendoll, Laird, McCabe, Miller, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sybolt, Tucker, Unger, Walters, Wells, Williams and Yost)

[Passed April 13, 2013; to take effect July 1, 2013.]

AN ACT to amend and reenact §5-10-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-20 of said code; to amend and reenact §8-22A-22 of said code; to amend and reenact §15-2-33 of said code; and to amend and reenact §15-2A-12 of said code, all relating to providing scholarships for dependent children of law-enforcement officers who die in performance of duty; modifying scholarship benefits for certain dependents; and establishing scholarship benefits for certain dependents.

Be it enacted by the Legislature of West Virginia:

That §5-10-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7-14D-20 of said code be amended and reenacted; that §8-22A-22 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; and that §15-2A-12 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND
§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a
lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age
sixty or sixty-two years, as the case may be; (B) elected
option A provided in section twenty-four of this article; and
(C) nominated his or her surviving spouse as beneficiary.
However, the surviving spouse shall have the right to waive
the annuity provided in this section: Provided, That he or she
executes a valid and notarized waiver on a form provided by
the board and that the member or former member attests to
the waiver. If the waiver is presented to and accepted by the
board, the member or former member, may nominate a
beneficiary who has an insurable interest in the member’s or
former member’s life. As an alternative to annuity option A,
the member or former member may elect to have the
preretirement death benefit paid as a return of accumulated
contributions in a lump sum amount to any beneficiary or
beneficiaries he or she chooses in the event a waiver, as
provided in this section, has been presented to and accepted
by the board.

(2) Whenever any member or former member who first
became a member of the retirement system after the effective
date of the amendments to this section made during the 2006
regular legislative session and who has ten or more years of
credited service and who is entitled to a deferred annuity,
pursuant to section twenty-one of this article, dies and leaves
a surviving spouse, the surviving spouse shall immediately
receive an annuity computed in the same manner in all
respects as if the member had: (A) Retired the day preceding
the date of his or her death, notwithstanding that he or she
might not have attained age sixty or sixty-two years, as the
case may be; (B) elected option A provided in section
twenty-four of this article; and (C) nominated his or her
surviving spouse as beneficiary. However, the surviving
spouse shall have the right to waive the annuity provided in
this section: Provided, That he or she executes a valid and
notarized waiver on a form provided by the board and that the
member or former member attests to the waiver. If the
waiver is presented to and accepted by the board, the member
or former member may: (1) Elect to have the preretirement
death benefit paid in a lump sum amount, rather than annuity
option A provided in section twenty-four of this article, as a
return of accumulated contributions to any beneficiary or
beneficiaries he or she chooses; or (2) may name his or her
surviving child, who is financially dependent on the member
by virtue of a permanent mental or physical disability, as his
or her sole beneficiary to receive an annuity computed in the
same manner in all respects as if the member had: (A) Retired
the day preceding the date of his or her death,
notwithstanding that he or she might not have attained the
age of sixty or sixty-two as the case may be; (B) elected
option A provided in section twenty-four of this article; and
(C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of
credited service or any former member with ten or more years
of credited service and who is entitled to a deferred annuity,
pursuant to section twenty-one of this article: (1) Dies
without leaving surviving him or her a spouse; but (2) leaves
surviving him or her an infant child or children; and (3) does
not have a beneficiary nominated as provided in subsection
(a) of this section, the infant child or children are entitled to
an annuity to be calculated as follows: The annuity reserve
shall be calculated as though the member had retired as of the
date of his or her decease and elected a straight life annuity
and the amount of the annuity reserve shall be paid in equal
monthly installments to the member’s infant child or children
until the child or children attain age twenty-one or sooner
marry or become emancipated; however, in no event shall
any child or children receive more than $250 per month each.
The annuity payments shall be computed as of the date of the
death of the member and the amount of the annuity shall
remain constant during the period of payment. The annual
amount of the annuities payable by this section shall not
exceed sixty percent of the deceased member’s final average
salary.
(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the 2005 regular session of the Legislature.

(e) Any person qualified as a surviving dependent child under this section, who is the surviving dependent child of a law-enforcement officer who loses his or her life in the performance of duty, in addition to any other benefits due under this or other sections of this article is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state 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 rules as provided by the board 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.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse’s entitlement under either section nineteen or twenty of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments 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 only 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: Provided, however, That if there is no surviving spouse, dependent child nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further. That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state 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 propose
legislative rules for promulgation in accordance with article
three, chapter twenty-nine-a of this code which define age
requirements, physical and mental requirements, scholastic
eligibility, disbursement methods, institutional qualifications
and other requirements as necessary and not inconsistent with
this section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

§8-22A-22. Additional death benefits and scholarships –
Dependent children.

(a) Except as provided in subsection (a), section nine of
this article, in addition to the spouse death benefits in this
article, the surviving spouse is entitled to receive and there
shall be paid to the spouse $100 monthly for each dependent
child.

(b) If the surviving spouse dies or if there is no surviving
spouse, the fund shall pay monthly to each dependent child
a sum equal to one hundred percent of the spouse’s
entitlement under this article divided by the number of
dependent children. If there is neither a surviving spouse nor
a dependent child, the fund shall pay in equal monthly
installments 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 only 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: Provided, however, That
if there is no surviving spouse, dependent child or dependent
parent of the deceased member, the accumulated
21 contributions shall be paid to a named beneficiary or
22 beneficiaries: Provided further, That if there is no surviving
23 spouse, dependent child or dependent parent of the deceased
24 member, or any named beneficiary or beneficiaries, then the
25 accumulated contributions shall be paid to the estate of the
26 deceased member.

27 (c) Any person qualifying as a dependent child under this
28 section, in addition to any other benefits due under this or
29 other sections of this article, is entitled to receive a
30 scholarship to be applied to the career development education
31 of that person. This sum, up to but not exceeding $7,500 per
32 year, shall be paid from the fund to any higher education
33 institution in this state, career-technical education provider in
34 this state or other entity in this state approved by the board,
35 to offset the expenses of tuition, room and board, books, fees
36 or other costs incurred in a course of study at any of these
37 institutions so long as the recipient makes application to the
38 board on an approved form and under rules provided by the
39 board and maintains scholastic eligibility as defined by the
40 institution or the board. The board may propose legislative
41 rules for promulgation in accordance with article three,
42 chapter twenty-nine-a of this code which define age
43 requirements, physical and mental requirements, scholastic
44 eligibility, disbursement methods, institutional qualifications
45 and other requirements as necessary and not inconsistent with
46 this section.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-33. Awards and benefits to dependents of member when
the member dies in performance of duty; to dependents of a duty disability retirant;
dependent child scholarship and amount.
(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses 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 employees while the member was or is engaged in the performance of his or her duties as an employee of the agency, or if a retiree dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent is 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 the greater of one or the other of two amounts:

(1) An amount equal to five and one-half percent of the total salary which was or would have been earned by the deceased member or duty disability retiree during twenty-five years of service based on the average earnings of the member or duty disability retiree while employed by the agency; or

(2) The sum of $6,000.

(b) In addition, the surviving spouse is entitled to receive and shall be paid $100 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 twenty-five percent of the surviving spouse’s entitlement. If there is 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 or retiree during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is 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.

(c) Any person qualified as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state 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 rules as provided by the board 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.

(d) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date of the deceased member's death. A surviving spouse or dependent of a retiree meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retiree's death. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.
(e) For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee 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 employee 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 employees while the employee was engaged in the performance of his or her duties as an employee of the agency, or the survivor of a retirant who dies from any cause after having been retired pursuant to the provisions of section nine of this article, is 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, one or the other of two amounts, which shall become payable the first day of the month following the employee's or retirant's death and which shall be the greater of:

(1) An amount equal to nine-tenths of the base salary received in the preceding full twelve-month employment period by the deceased employee: Provided, That if the employee had not been employed with the agency for twelve full months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of $10,000.
In addition, the surviving spouse is entitled to receive and shall be paid $150 monthly for each dependent child. 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 third of the surviving spouse's entitlement. If there is 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 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: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child, dependent parent of the deceased member or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

Any person qualifying as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state 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 as long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules
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define age requirements, physical and mental requirements,

scholastic eligibility, disbursement methods, institutional
quailifications and other requirements as necessary and not

inconsistent with this section.

A surviving spouse or dependent of an employee meeting
the requirements of this section is entitled to receive
beneficiary payments on the first day of the month following
the date the deceased member is removed from payroll by the
agency. A surviving spouse or dependent of a member who
is not currently an employee meeting the requirements of this
section is entitled to receive beneficiary payments on the first
day of the month following the date of the deceased
member’s death. A surviving spouse or dependent of a
retirant meeting the requirements of this section is entitled to
receive beneficiary payments on the first day of the month
following the date of the deceased retirant’s death. Upon
receipt of properly executed forms from the agency and
surviving spouse or dependent, the board shall process the
surviving spouse or dependent benefit as soon as
administratively feasible.

It is the intent of the Legislature that the levels of benefits
provided by operation of this section from the effective date
of the enactment of this section during the regular session of
the Legislature, 2005, be the same levels of benefits as
provided by this section as amended and reenacted during the
fourth extraordinary session of the Legislature, 2005.
Accordingly, the effective date of the operation of this
section as amended and reenacted during the fourth
extraordinary session of the Legislature, 2005, is expressly
made retrospective to April 9, 2005.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2013.

Clerk of the House of Delegates

Speaker of the House of Delegates

The within... approved... this the 29th Day of April, 2013.