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WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2008

SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 207

(SENATORS FOSTER AND PLYMALE,
original sponsors)

[Passed March 8, 2008; in effect ninety days from passage.]

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CLARENCE W. BROWN
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

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Senate Bill No. 207

(SENATORS FOSTER AND PLYMALE, *original sponsors*)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §7-14D-7, §7-14D-9c, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23, §7-14D-24 and §7-14D-30 of the Code of West Virginia, 1931, as amended, all relating to the Deputy Sheriff Retirement System Act; correcting errors; permitting rollovers of any dollar amount; providing for an onset date for disability retirement benefits; providing for termination of disability retirement benefits of a retirant who refuses to submit to a medical examination or provide a certification statement

by his or her physician of continued disability; removing option for term insurance to repay loan; providing for subsequent loan on repayment of prior loan; clarifying eligibility requirements of certain sheriffs; and permitting collection of fees for late payment from employers.

Be it enacted by the Legislature of West Virginia:

That §7-14D-7, §7-14D-9c, §7-14D-14, §7-14D-15, §7-14D-16, §7-14D-23, §7-14D-24 and §7-14D-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7. Members' contributions; employer contributions; correction of errors.

1 (a) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to
3 eight and one-half percent of his or her monthly salary.
4 An additional amount shall be paid to the fund by the
5 county commission of the county in which the member
6 is employed in covered employment in an amount
7 determined by the board: *Provided*, That in no year may
8 the total of the contributions provided in this section, to
9 be paid by the county commission, exceed ten and one-
10 half percent of the total payroll for the members in the
11 employ of the county commission for the preceding
12 fiscal year. If the board finds that the benefits provided
13 by this article can be actually funded with a lesser
14 contribution, then the board shall reduce the required
15 member or employer contributions or both. The sums
16 withheld each calendar month shall be paid to the fund
17 no later than fifteen days following the end of the
18 calendar month.

19 (b) Any active member who has concurrent
20 employment in an additional job or jobs and the
21 additional employment requires the deputy sheriff to be
22 a member of another retirement system which is
23 administered by the Consolidated Public Retirement
24 Board pursuant to article ten-d, chapter five of this code
25 shall make an additional contribution to the fund of
26 eight and one-half percent of his or her monthly salary
27 earned from any additional employment which requires
28 the deputy sheriff to be a member of another retirement
29 which is administered by the Consolidated Public
30 Retirement Board pursuant to said article. An
31 additional amount shall be paid to the fund by the
32 concurrent employer for which the member is employed
33 in an amount determined by the board: *Provided*, That
34 in no year may the total of the contributions provided in
35 this section, to be paid by the concurrent employer,
36 exceed ten and one-half percent of the monthly salary
37 of the employee. If the board finds that the benefits
38 provided by this article can be funded with a lesser
39 contribution, then the board shall reduce the required
40 member or employer contributions or both. The sums
41 withheld each calendar month shall be paid to the fund
42 no later than fifteen days following the end of the
43 calendar month.

44 (c) If any change or employer error in the records of
45 any participating public employer or the retirement
46 system results in any person receiving from the system
47 more or less than he or she is entitled to receive had the
48 records been correct, the board shall correct the error
49 and, as far as is practicable, shall adjust the payment of
50 the benefit in a manner that the actuarial equivalent of
51 the benefit to which the person was correctly entitled
52 shall be paid. Any employer error resulting in an

53 underpayment to the retirement system may be
54 corrected by the employee remitting the required
55 employee contribution and the participating public
56 employer remitting the required employer contribution.
57 Any accumulating interest owed on the employee and
58 employer contributions resulting from the employer
59 error shall be the responsibility of the participating
60 public employer. Reinstatement interest shall
61 accumulate in accordance with legislative rule 162 CSR
62 7. The participating public employer may remit total
63 payment and the employee reimburse the participating
64 public employer through payroll deduction over a
65 period equivalent to the time period during which the
66 employer error occurred.

§7-14D-9c. Direct rollovers.

1 (a) This section applies to distributions made on or
2 after the first day of January, one thousand nine
3 hundred ninety-three. Notwithstanding any provision
4 of this article to the contrary that would otherwise limit
5 a distributee's election under this plan, a distributee
6 may elect, at the time and in the manner prescribed by
7 the board, to have any portion of an eligible rollover
8 distribution paid directly to an eligible retirement plan
9 specified by the distributee in a direct rollover. For
10 purposes of this section, the following definitions apply:

11 (1) "Eligible rollover distribution" means any
12 distribution of all or any portion of the balance to the
13 credit of the distributee, except that an eligible rollover
14 distribution does not include any of the following: (i)
15 Any distribution that is one of a series of substantially
16 equal periodic payments not less frequently than
17 annually made for the life or life expectancy of the
18 distributee or the joint lives or the joint life

19 expectancies of the distributee and the distributee's
20 designated beneficiary or for a specified period of ten
21 years or more; (ii) any distribution to the extent the
22 distribution is required under Section 401(a)(9) of the
23 Internal Revenue Code; (iii) the portion of any
24 distribution that is not includable in gross income
25 determined without regard to the exclusion for net
26 unrealized appreciation with respect to employer
27 securities; and (iv) any hardship distribution described
28 in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue
29 Code. For distributions after the thirty-first day of
30 December, two thousand one, a portion of a distribution
31 shall not fail to be an eligible rollover distribution
32 merely because the portion consists of after-tax
33 employee contributions which are not includable in
34 gross income. However, this portion may be paid only
35 to an individual retirement account or annuity
36 described in Section 408(a) or (b) of the Internal
37 Revenue Code or to a qualified defined contribution
38 plan described in Section 401(a) or 403(a) of the Internal
39 Revenue Code that agrees to separately account for
40 amounts transferred, including separately accounting
41 for the portion of the distribution which is includable in
42 gross income and the portion of the distribution which
43 is not includable.

44 (2) "Eligible retirement plan" means an individual
45 retirement account described in Section 408(a) of the
46 Internal Revenue Code, an individual retirement
47 annuity described in Section 408(b) of the Internal
48 Revenue Code, an annuity plan described in Section
49 403(a) of the Internal Revenue Code or a qualified plan
50 described in Section 401(a) of the Internal Revenue
51 Code that accepts the distributee's eligible rollover
52 distribution: *Provided*, That in the case of an eligible

53 rollover distribution to the surviving spouse, an eligible
54 retirement plan is an individual retirement account or
55 individual retirement annuity. For distributions after
56 the thirty-first day of December, two thousand one, an
57 eligible retirement plan also means an annuity contract
58 described in Section 403(b) of the Internal Revenue
59 Code and an eligible plan under Section 457(b) of the
60 Internal Revenue Code which is maintained by a state,
61 political subdivision of a state or any agency or
62 instrumentality of a state or political subdivision of a
63 state and which agrees to separately account for
64 amounts transferred into the plan from this system.

65 (3) "Distributee" means an employee or former
66 employee. In addition, the employee's or former
67 employee's surviving spouse and the employee's or
68 former employee's spouse or former spouse who is the
69 alternate payee under a qualified domestic relations
70 order, as defined in Section 414(p) of the Internal
71 Revenue Code with respect to governmental plans, are
72 distributees with regard to the interest of the spouse or
73 former spouse.

74 (4) "Direct rollover" means a payment by the plan to
75 the eligible retirement plan.

76 (b) Nothing in this section shall be construed as
77 permitting rollovers to this plan or any other retirement
78 system administered by the board.

§7-14D-14. Awards and benefits for disability — Duty related.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes either totally or partially disabled by injury,

4 illness or disease; and (2) the disability is a result of an
5 occupational risk or hazard inherent in or peculiar to
6 the services required of members; or (3) the disability
7 was incurred while performing law-enforcement
8 functions during either scheduled work hours or at any
9 other time; and (4) in the opinion of the board, the
10 member is by reason of the disability unable to perform
11 adequately the duties required of a deputy sheriff, is
12 entitled to receive and shall be paid from the fund in
13 monthly installments the compensation under either
14 subsection (b) or (c) of this section.

15 (b) If the member is totally disabled, the member shall
16 receive ninety percent of his or her average full monthly
17 compensation for the twelve-month contributory period
18 preceding the member's disability award or the shorter
19 period if the member has not worked twelve months.

20 (c) If the member is partially disabled, the member
21 shall receive forty-five percent of his or her average full
22 monthly compensation for the twelve-month
23 contributory period preceding the member's disability
24 award or the shorter period if the member has not
25 worked twelve months.

26 (d) If the member remains totally disabled until
27 attaining sixty-five years of age, the member shall then
28 receive the retirement benefit provided for in sections
29 eleven and twelve of this article.

30 (e) If the member remains partially disabled until
31 attaining sixty years of age, the member shall then
32 receive the retirement benefit provided for in sections
33 eleven and twelve of this article.

34 (f) The disability benefit payments will begin the first
35 day of the month following termination of employment
36 and receipt of the disability retirement application by
37 the Consolidated Public Retirement Board.

§7-14D-15. Same — Due to other causes.

1 (a) Any member who after the effective date of this
2 article and during covered employment: (1) Has been or
3 becomes totally or partially disabled from any cause
4 other than those set forth in section fourteen of this
5 article and not due to vicious habits, intemperance or
6 willful misconduct on his or her part; and (2) in the
7 opinion of the board, he or she is by reason of the
8 disability unable to perform adequately the duties
9 required of a deputy sheriff, is entitled to receive and
10 shall be paid from the fund in monthly installments the
11 compensation set forth in either subsection (b) or (c) of
12 this section.

13 (b) If the member is totally disabled, he or she shall
14 receive sixty-six and two-thirds percent of his or her
15 average full monthly compensation for the twelve-
16 month contributory period preceding the disability
17 award or the shorter period, if the member has not
18 worked twelve months.

19 (c) If the member is partially disabled, he or she shall
20 receive thirty-three and one-third percent of his or her
21 average full monthly compensation for the twelve-
22 month contributory period preceding the disability
23 award or the shorter period, if the member has not
24 worked twelve months.

25 (d) If the member remains disabled until attaining

26 sixty years of age, then the member shall receive the
27 retirement benefit provided in sections eleven and
28 twelve of this article.

29 (e) The board shall propose legislative rules for
30 promulgation in accordance with the provisions of
31 article three, chapter twenty-nine-a of this code
32 concerning member disability payments to ensure that
33 the payments do not exceed one hundred percent of the
34 average current salary in any given county for the
35 position last held by the member.

36 (f) The disability benefit payments will begin the first
37 day of the month following termination of employment
38 and receipt of the disability retirement application by
39 the Consolidated Public Retirement Board.

**§7-14D-16. Same — Physical examinations; termination of
disability.**

1 (a) The board may require any member who has
2 applied for or is receiving disability benefits under this
3 article to submit to a physical examination, mental
4 examination or both by a physician or physicians
5 selected or approved by the board and may cause all
6 costs incident to the examination and approved by the
7 board to be paid from the fund. The costs may include
8 hospital, laboratory, X-ray, medical and physicians'
9 fees. A report of the findings of any physician shall be
10 submitted in writing to the board for its consideration.
11 If, from the report, independent information or from the
12 report and any hearing on the report, the board is of the
13 opinion and finds that: (1) The member has become
14 reemployed as a law-enforcement officer; (2) two
15 physicians who have examined the member have found

16 that considering the opportunities for law enforcement
17 in West Virginia, the member could be employed as a
18 deputy sheriff; or (3) other facts exist to demonstrate
19 that the member is no longer totally disabled or
20 partially disabled as the case may be, then the disability
21 benefits shall cease. If the member was totally disabled
22 and is found to have recovered, the board shall
23 determine whether the member continues to be partially
24 disabled. If the board finds that the member is no
25 longer totally disabled but is partially disabled, then the
26 member shall continue to receive partial disability
27 benefits in accordance with this article. Benefits shall
28 cease once the member has been found to be no longer
29 either totally or partially disabled: *Provided*, That the
30 board shall require recertification for each partial or
31 total disability at regular intervals as specified by the
32 guidelines adopted by the Public Employees Retirement
33 System.

34 (b) If a retirant refuses to submit to a medical
35 examination or submit a statement by his or her
36 physician certifying continued disability in any period,
37 the board may discontinue his or her disability annuity
38 until the retirant complies. If the refusal continues for
39 one year, the board may revoke all the retirant's rights
40 in and to the annuity.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow
3 from the plan no more than one time in any year an
4 amount up to one half of his or her accumulated
5 contributions, but not less than five hundred dollars nor
6 more than eight thousand dollars: *Provided*, That the

7 maximum amount of any loan shall not exceed the lesser
8 of the following: (1) Eight thousand dollars; or (2) fifty
9 percent of his or her accumulated contributions. A
10 member is not eligible for more than one outstanding
11 loan at any time. The board may not make a loan from
12 the plan if it determines that the loans constitute more
13 than fifteen percent of the amortized cost value of the
14 assets of the plan as of the last day of the preceding plan
15 year. The board may discontinue the loans any time it
16 determines that cash flow problems might develop as a
17 result of the loans. Each loan shall be repaid through
18 monthly installments over periods of six through sixty
19 months and carry interest on the unpaid balance and an
20 annual effective interest rate that is two hundred basis
21 points higher than the most recent rate of interest used
22 by the board for determining actuarial contributions
23 levels: *Provided, however,* That interest charged shall be
24 commercially reasonable in accordance with the
25 provisions of Section 72(p)(2) of the Internal Revenue
26 Code and federal regulations issued thereunder.
27 Monthly loan payments shall be calculated to be as
28 nearly equal as possible with all but the final payment
29 being an equal amount. An eligible member may make
30 additional loan payments or pay off the entire loan
31 balance at any time without incurring any interest
32 penalty. Upon full payment of the loan, a member may
33 apply for a subsequent loan after sixty (60) days,
34 beginning the first day of the month following receipt of
35 final payment.

36 (b) A member with an unpaid loan balance who wishes
37 to retire may have the loan repaid in full by accepting
38 retirement income payments reduced by deducting from
39 the actuarial reserve for the accrued benefit the amount
40 of the unpaid balance and then converting the

41 remaining of the reserve to a monthly pension payable
42 in the form of the annuity desired by the member.

43 (c) The entire unpaid balance of any loan, and interest
44 due thereon, shall at the option of the board become due
45 and payable without further notice or demand upon the
46 occurrence with respect to the borrowing member of any
47 of the following events of default: (1) Any payment of
48 principal and accrued interest on a loan remains unpaid
49 after they become due and payable under the terms of
50 the loan or after the grace period established in the
51 discretion of the retirement board; (2) the borrowing
52 member attempts to make an assignment for the benefit
53 of creditors of his or her benefit under the retirement
54 system; or (3) any other event of default set forth in
55 rules promulgated by the board pursuant to the
56 authority granted in section one, article ten-d, chapter
57 five of this code: *Provided*, That any offset of an unpaid
58 loan balance shall be made only at the time the member
59 is entitled to receive a distribution under the plan.

60 (d) Loans shall be evidenced by such form of
61 obligations and shall be made upon such additional
62 terms as to default, prepayment, security and otherwise
63 as determined by the board.

64 (e) Notwithstanding anything in this section to the
65 contrary, the loan program authorized by this section
66 shall comply with the provisions of Section 72(p)(2) and
67 Section 401 of the Internal Revenue Code and the
68 federal regulations issued thereunder. The board may:
69 (1) Apply and construe the provisions of this section and
70 administer the plan loan program in a manner that
71 complies with the provisions of Sections 72(p)(2) and
72 Section 401 of the Internal Revenue Code; (2) adopt plan

73 loan policies or procedures consistent with these federal
74 law provisions; and (3) take any actions it considers
75 necessary or appropriate to administer the plan loan
76 program created under this section in accordance with
77 these federal law provisions. The board may also, in
78 connection with the plan loan program, take any actions
79 that may at any time be required by the Internal
80 Revenue Service regarding compliance with the
81 requirements of Section 72(p)(2) or Section 401 of the
82 Internal Revenue Code, notwithstanding any provision
83 in this article to the contrary.

84 (f) Notwithstanding anything in this article to the
85 contrary, the loan program authorized by this section is
86 not available to any deputy sheriff who becomes a
87 member of the Deputy Sheriff Retirement System on or
88 after the first day of July, two thousand five.

§7-14D-24. Service as sheriff.

1 (a) Any actively contributing member who after the
2 effective date of this article is elected sheriff of a county
3 in West Virginia may elect to continue as a member in
4 this plan by paying the amounts required by section
5 seven of this article. Upon the election, service as a
6 sheriff shall be treated as covered employment and the
7 sheriff is not entitled to any credit for that service under
8 any other retirement system of the state.

9 (b) Any member retired as a deputy sheriff under this
10 plan who, after the effective date of this article, is
11 elected or appointed sheriff of a county in West Virginia
12 may elect to suspend the payment of his or her annuity
13 from this system and again become a contributing
14 member of this plan by paying the amounts required by

15 section seven of this article. Upon election to suspend
16 payment of the annuity, service as a sheriff shall be
17 treated as covered employment and the sheriff is not
18 entitled to any credit for that period of elected service
19 under any other retirement system of the state. At the
20 end of his or her term as sheriff, the member making the
21 election shall have his or her annuity recalculated and
22 shall be granted an adjustment to his or her previous
23 annuity to include the period of elected service.

24 (c) Any person who before the effective date of this
25 article was elected sheriff of a county in West Virginia
26 and who, immediately prior to being elected sheriff, was
27 a deputy sheriff with at least twenty years of credited
28 service under the Public Employees Retirement System,
29 with at least sixteen of those twenty years having been
30 earned as a deputy sheriff, may elect to become a
31 member of this plan by paying the amounts required by
32 section seven of this article. Upon the election to
33 become a member, service shall be transferred from the
34 Public Employees Retirement System pursuant to
35 section eight of this article: *Provided*, That any service
36 as a sheriff shall be treated as covered employment
37 under this article and the sheriff is not entitled to any
38 credit for that service as a sheriff or the prior service as
39 a deputy sheriff under any other retirement system of
40 the state. Persons making the election provided for in
41 this subsection shall do so within ten days of taking
42 office as sheriff or within ten days of the effective date
43 of this provision.

44 (d) Any person who before the effective date of this
45 article was elected sheriff of a county of West Virginia
46 and who, prior to being elected sheriff, was a deputy
47 sheriff and also a previously elected sheriff, with

48 credited service under the Public Employees Retirement
49 System, with at least sixteen of those years having been
50 earned as combined service as a deputy sheriff and a
51 previously elected sheriff, may elect to become a
52 member of this plan by paying the amounts required by
53 section seven of the article. Upon election to become a
54 member, service shall be transferred from the Public
55 Employees Retirement System pursuant to section eight
56 of this article: *Provided*, That a person's service as a
57 sheriff shall be treated as covered employment under
58 this article and that person is not entitled to any credit
59 for that service as a sheriff or deputy sheriff under any
60 other retirement system of this state. A person making
61 the election provided in this subsection shall do so
62 within thirty days of taking office as a sheriff or within
63 thirty days of the effective date of this provision.

§7-14D-30. Limitation of county liability.

1 No county which has timely met all of its obligations
2 under this article is liable for any payments or
3 contributions to the Deputy Sheriff Retirement Plan
4 which are owed to the plan by another county or
5 counties. A county commission may not deposit funds
6 into the Deputy Sheriff Retirement Fund in excess of
7 the amount specified in section seven of this article, the
8 fees set forth in article fourteen-e of this chapter, the
9 fees set forth in subdivision (2), subsection (f), section
10 one, article ten-d, chapter five of this code and the fees
11 set forth in section seventeen, article three, chapter
12 seventeen-a of this code.

Enr. Com. Sub for S. B. No. 207] 16

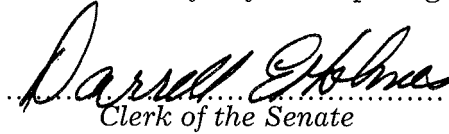
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

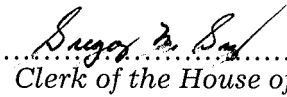

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Chairman Senate Committee

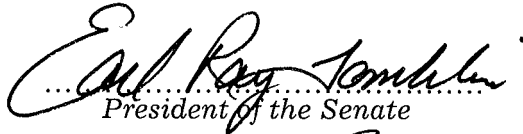

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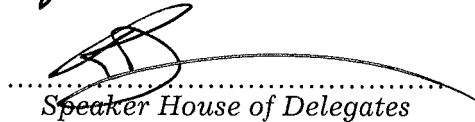
Originated in the Senate.

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 disapproved* this
the *28th* Day of *May*, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 21 2008

Time 9:40 am