

ENROLLED

H. B. 2784

(By Delegates Pethtel, Jones, Craig, Canterbury,
Kump, Lynch and Stowers)

[Passed March 28, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §7-14D-2, §7-14D-7, §7-14D-9, §7-14D-16
and §7-14D-19 of the Code of West Virginia, 1931, as amended,
and to amend said code by adding thereto a new section,
designated §7-14D-7a, all relating to the Deputy Sheriff
Retirement System Act; defining member, retire and retirement;
providing for the correction of errors; providing that an
estimation of benefits is provided prior to the submission of
a retirement application from a member; and providing for
recertification of disability.

Be it enacted by the Legislature of West Virginia:

That §7-14D-2, §7-14D-7, §7-14D-9, §7-14D-16 and §7-14D-19 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 §7-14D-7a, all to read as follows:

1 **ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.**

2 **§7-14D-2. Definitions.**

3 As used in this article, unless a federal law or regulation or
4 the context clearly requires a different meaning:

5 (a) "Accrued benefit" means on behalf of any member two and
6 one-quarter percent of the member's final average salary multiplied
7 by the member's years of credited service. A member's accrued
8 benefit may not exceed the limits of Section 415 of the Internal
9 Revenue Code and is subject to the provisions of section nine-a of
10 this article.

11 (b) "Accumulated contributions" means the sum of all amounts
12 deducted from the compensation of a member, or paid on his or her
13 behalf pursuant to article ten-c, chapter five of this code, either
14 pursuant to section seven of this article or section twenty-nine,
15 article ten, chapter five of this code as a result of covered
16 employment together with regular interest on the deducted amounts.

17 (c) "Active member" means a member who is active and
18 contributing to the plan.

19 (d) "Active military duty" means full-time active duty with
20 any branch of the armed forces of the United States, including
21 service with the National Guard or reserve military forces when the
22 member has been called to active full-time duty and has received no
23 compensation during the period of that duty from any board or

1 employer other than the armed forces.

2 (e) "Actuarial equivalent" means a benefit of equal value
3 computed upon the basis of the mortality table and interest rates
4 as set and adopted by the retirement board in accordance with the
5 provisions of this article: Provided, That when used in the context
6 of compliance with the federal maximum benefit requirements of
7 Section 415 of the Internal Revenue Code, "actuarial equivalent"
8 shall be computed using the mortality tables and interest rates
9 required to comply with those requirements.

10 (f) "Annual compensation" means the wages paid to the member
11 during covered employment within the meaning of Section 3401(a) of
12 the Internal Revenue Code, but determined without regard to any
13 rules that limit the remuneration included in wages based upon the
14 nature or location of employment or services performed during the
15 plan year plus amounts excluded under Section 414(h)(2) of the
16 Internal Revenue Code and less reimbursements or other expense
17 allowances, cash or noncash fringe benefits or both, deferred
18 compensation and welfare benefits. Annual compensation for
19 determining benefits during any determination period may not exceed
20 the maximum compensation allowed as adjusted for cost of living in
21 accordance with section seven, article ten-d, chapter five of this
22 code and Section 401(a)(17) of the Internal Revenue Code.

23 (g) "Annual leave service" means accrued annual leave.

1 (h) "Annuity starting date" means the first day of the first
2 calendar month following receipt of the retirement application by
3 the board or the required beginning date, if earlier: *Provided,*
4 That the member has ceased covered employment and reached early or
5 normal retirement age.

6 (i) "Base salary" means a member's cash compensation exclusive
7 of overtime from covered employment during the last twelve months
8 of employment. Until a member has worked twelve months, annualized
9 base salary is used as base salary.

10 (j) "Board" means the Consolidated Public Retirement Board
11 created pursuant to article ten-d, chapter five of this code.

12 (k) "County commission" has the meaning ascribed to it in
13 section one, article one, chapter seven of this code.

14 (l) "Covered employment" means either: (1) Employment as a
15 deputy sheriff and the active performance of the duties required of
16 a deputy sheriff; or (2) the period of time which active duties are
17 not performed but disability benefits are received under section
18 fourteen or fifteen of this article; or (3) concurrent employment
19 by a deputy sheriff in a job or jobs in addition to his or her
20 employment as a deputy sheriff where the secondary employment
21 requires the deputy sheriff to be a member of another retirement
22 system which is administered by the Consolidated Public Retirement
23 Board pursuant to article ten-d, chapter five of this code:

1 Provided, That the deputy sheriff contributes to the fund created
2 in section six of this article the amount specified as the deputy
3 sheriff's contribution in section seven of this article.

4 (m) "Credited service" means the sum of a member's years of
5 service, active military duty, disability service and annual leave
6 service.

7 (n) "Deputy sheriff" means an individual employed as a county
8 law-enforcement deputy sheriff in this state and as defined by
9 section two, article fourteen of this chapter.

10 (o) "Dependent child" means either:

11 (1) An unmarried person under age eighteen who is:

12 (A) A natural child of the member;

13 (B) A legally adopted child of the member;

14 (C) A child who at the time of the member's death was living
15 with the member while the member was an adopting parent during any
16 period of probation; or

17 (D) A stepchild of the member residing in the member's
18 household at the time of the member's death; or

19 (2) Any unmarried child under age twenty-three:

20 (A) Who is enrolled as a full-time student in an accredited
21 college or university;

22 (B) Who was claimed as a dependent by the member for federal
23 income tax purposes at the time of the member's death; and

1 (C) Whose relationship with the member is described in
2 subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

3 (p) "Dependent parent" means the father or mother of the
4 member who was claimed as a dependent by the member for federal
5 income tax purposes at the time of the member's death.

6 (q) "Disability service" means service credit received by a
7 member, expressed in whole years, fractions thereof or both, equal
8 to one half of the whole years, fractions thereof or both, during
9 which time a member receives disability benefits under section
10 fourteen or fifteen of this article.

11 (r) "Early retirement age" means age forty or over and
12 completion of twenty years of service.

13 (s) "Employer error" means an omission, misrepresentation, or
14 violation of relevant provisions of the West Virginia Code or of
15 the West Virginia Code of State Regulations or the relevant
16 provisions of both the West Virginia Code and of the West Virginia
17 Code of State Regulations by the participating public employer that
18 has resulted in an underpayment or overpayment of contributions
19 required. A deliberate act contrary to the provisions of this
20 section by a participating public employer does not constitute
21 employer error.

22 (t) "Effective date" means July 1, 1998.

23 (u) "Final average salary" means the average of the highest

1 annual compensation received for covered employment by the member
2 during any five consecutive plan years within the member's last ten
3 years of service. If the member did not have annual compensation
4 for the five full plan years preceding the member's attainment of
5 normal retirement age and during that period the member received
6 disability benefits under section fourteen or fifteen of this
7 article then "final average salary" means the average of the
8 monthly salary determined paid to the member during that period as
9 determined under section seventeen of this article multiplied by
10 twelve.

11 (v) "Fund" means the West Virginia Deputy Sheriff Retirement
12 Fund created pursuant to section six of this article.

13 (w) "Hour of service" means:

14 (1) Each hour for which a member is paid or entitled to
15 payment for covered employment during which time active duties are
16 performed. These hours shall be credited to the member for the plan
17 year in which the duties are performed; and

18 (2) Each hour for which a member is paid or entitled to
19 payment for covered employment during a plan year but where no
20 duties are performed due to vacation, holiday, illness, incapacity
21 including disability, layoff, jury duty, military duty, leave of
22 absence or any combination thereof and without regard to whether
23 the employment relationship has terminated. Hours under this

1 paragraph shall be calculated and credited pursuant to West
2 Virginia Division of Labor rules. A member will not be credited
3 with any hours of service for any period of time he or she is
4 receiving benefits under section fourteen or fifteen of this
5 article; and

6 (3) Each hour for which back pay is either awarded or agreed
7 to be paid by the employing county commission, irrespective of
8 mitigation of damages. The same hours of service shall not be
9 credited both under this paragraph and paragraph (1) or (2) of this
10 subdivision. Hours under this paragraph shall be credited to the
11 member for the plan year or years to which the award or agreement
12 pertains rather than the plan year in which the award, agreement or
13 payment is made.

14 (x) "Member" means a person first hired as a deputy sheriff
15 after the effective date of this article, as defined in subsection
16 (t) of this section, or a deputy sheriff first hired prior to the
17 effective date and who elects to become a member pursuant to
18 section five or seventeen of this article. A member shall remain a
19 member until the benefits to which he or she is entitled under this
20 article are paid or forfeited or until cessation of membership
21 pursuant to section five of this article.

22 (y) "Monthly salary" means the portion of a member's annual
23 compensation which is paid to him or her per month.

1 (z) "Normal form" means a monthly annuity which is one twelfth
2 of the amount of the member's accrued benefit which is payable for
3 the member's life. If the member dies before the sum of the
4 payments he or she receives equals his or her accumulated
5 contributions on the annuity starting date, the named beneficiary
6 shall receive in one lump sum the difference between the
7 accumulated contributions at the annuity starting date and the
8 total of the retirement income payments made to the member.

9 (aa) "Normal retirement age" means the first to occur of the
10 following: (1) Attainment of age fifty years and the completion of
11 twenty or more years of service; (2) while still in covered
12 employment, attainment of at least age fifty years and when the sum
13 of current age plus years of service equals or exceeds seventy
14 years; (3) while still in covered employment, attainment of at
15 least age sixty years and completion of five years of service; or
16 (4) attainment of age sixty-two years and completion of five or
17 more years of service.

18 (bb) "Partially disabled" means a member's inability to engage
19 in the duties of deputy sheriff by reason of any medically
20 determinable physical or mental impairment that can be expected to
21 result in death or that has lasted or can be expected to last for
22 a continuous period of not less than twelve months. A member may be
23 determined partially disabled for the purposes of this article and

1 maintain the ability to engage in other gainful employment which
2 exists within the state but which ability would not enable him or
3 her to earn an amount at least equal to two thirds of the average
4 annual compensation earned by all active members of this plan
5 during the plan year ending as of the most recent June 30, as of
6 which plan data has been assembled and used for the actuarial
7 valuation of the plan.

8 (cc) "Public Employees Retirement System" means the West
9 Virginia Public Employees Retirement System created by article ten,
10 chapter five of this code.

11 (dd) "Plan" means the West Virginia Deputy Sheriff Death,
12 Disability and Retirement Plan established by this article.

13 (ee) "Plan year" means the twelve-month period commencing on
14 July 1 of any designated year and ending the following June 30.

15 (ff) "Qualified public safety employee" means any employee of
16 a participating state or political subdivision who provides police
17 protection, fire-fighting services or emergency medical services
18 for any area within the jurisdiction of the state or political
19 subdivision, or such other meaning given to the term by Section
20 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation
21 §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

22 (gg) "Regular interest" means the rate or rates of interest
23 per annum, compounded annually, as the board adopts in accordance

1 with the provisions of this article.

2 (hh) "Required beginning date" means April 1 of the calendar
3 year following the later of: (i) The calendar year in which the
4 member attains age seventy and one-half; or (ii) the calendar year
5 in which he or she retires or otherwise separates from covered
6 employment.

7 (ii) "Retire" or "retirement" means a member's withdrawal from
8 the employ of a participating public employer and the commencement
9 of an annuity by the plan.

10 (jj) "Retirement income payments" means the annual retirement
11 income payments payable under the plan.

12 (kk) "Spouse" means the person to whom the member is legally
13 married on the annuity starting date.

14 (ll) "Surviving spouse" means the person to whom the member
15 was legally married at the time of the member's death and who
16 survived the member.

17 (mm) "Totally disabled" means a member's inability to engage
18 in substantial gainful activity by reason of any medically
19 determined physical or mental impairment that can be expected to
20 result in death or that has lasted or can be expected to last for
21 a continuous period of not less than twelve months. For purposes of
22 this subdivision:

23 (1) A member is totally disabled only if his or her physical

1 or mental impairment or impairments are so severe that he or she is
 2 not only unable to perform his or her previous work as a deputy
 3 sheriff but also cannot, considering his or her age, education and
 4 work experience, engage in any other kind of substantial gainful
 5 employment which exists in the state regardless of whether: (A) The
 6 work exists in the immediate area in which the member lives; (B) a
 7 specific job vacancy exists; or (C) the member would be hired if he
 8 or she applied for work.

9 (2) "Physical or mental impairment" is an impairment that
 10 results from an anatomical, physiological or psychological
 11 abnormality that is demonstrated by medically accepted clinical and
 12 laboratory diagnostic techniques. A member's receipt of Social
 13 Security disability benefits creates a rebuttable presumption that
 14 the member is totally disabled for purposes of this plan.
 15 Substantial gainful employment rebuts the presumption of total
 16 disability.

17 (nn) "Year of service". -- A member shall, except in his or
 18 her first and last years of covered employment, be credited with
 19 year of service credit based upon the hours of service performed as
 20 covered employment and credited to the member during the plan year
 21 based upon the following schedule:

22 Hours of Service Years of Service Credited

23 Less than 500

0

1 500 to 999	1/3
2 1,000 to 1,499	2/3
3 1,500 or more	1

4 During a member's first and last years of covered employment,
5 the member shall be credited with one twelfth of a year of service
6 for each month during the plan year in which the member is credited
7 with an hour of service. A member is not entitled to credit for
8 years of service for any time period during which he or she
9 received disability payments under section fourteen or fifteen of
10 this article. Except as specifically excluded, years of service
11 include covered employment prior to the effective date. Years of
12 service which are credited to a member prior to his or her receipt
13 of accumulated contributions upon termination of employment
14 pursuant to section thirteen of this article or section thirty,
15 article ten, chapter five of this code, shall be disregarded for
16 all purposes under this plan unless the member repays the
17 accumulated contributions with interest pursuant to section
18 thirteen of this article or had prior to the effective date made
19 the repayment pursuant to section eighteen, article ten, chapter
20 five of this code.

21 **§7-14D-7. Members' contributions; employer contributions.**

22 (a) There shall be deducted from the monthly salary of each
23 member and paid into the fund an amount equal to eight and one-half

1 percent of his or her monthly salary. An additional amount shall be
2 paid to the fund by the county commission of the county in which
3 the member is employed in covered employment in an amount
4 determined by the board: Provided, That in any year preceding July
5 1, 2011, the total of the contributions provided in this section,
6 to be paid by the county commission, may not exceed ten and one-
7 half percent of the total payroll for the members in the employ of
8 the county commission; Provided, however, That on or after July 1,
9 2011, the total of the contributions provided in this section, to
10 be paid by the county commission, may not exceed thirteen percent
11 of the total payroll for the members in the employ of the county
12 commission. If the board finds that the benefits provided by this
13 article can be actually funded with a lesser contribution, then the
14 board shall reduce the required member or employer contributions or
15 both. The sums withheld each calendar month shall be paid to the
16 fund no later than fifteen days following the end of the calendar
17 month.

18 (b) Any active member who has concurrent employment in an
19 additional job or jobs and the additional employment requires the
20 deputy sheriff to be a member of another retirement system which is
21 administered by the Consolidated Public Retirement Board pursuant
22 to article ten-d, chapter five of this code shall make an
23 additional contribution to the fund of eight and one-half percent

1 of his or her monthly salary earned from any additional employment
2 which requires the deputy sheriff to be a member of another
3 retirement which is administered by the Consolidated Public
4 Retirement Board pursuant to article ten-d, chapter five of this
5 code. An additional amount shall be paid to the fund by the
6 concurrent employer for which the member is employed in an amount
7 determined by the board: *Provided*, That in any year preceding July
8 1, 2011, the total of the contributions provided in this section,
9 to be paid by the concurrent employer, may not exceed ten and one-
10 half percent of the monthly salary of the employee: *Provided*,
11 however, That on or after July 1, 2011, the total of the
12 contributions provided in this section, to be paid by the
13 concurrent employer, may not exceed thirteen percent of the monthly
14 salary of the employee. If the board finds that the benefits
15 provided by this article can be funded with a lesser contribution,
16 then the board shall reduce the required member or employer
17 contributions or both. The sums withheld each calendar month shall
18 be paid to the fund no later than fifteen days following the end of
19 the calendar month.

20

21 **§7-14D-7a. Correction of errors; underpayments; overpayments.**

22 (a) General rule: If any change or employer error in the
23 records of any participating public employer or the plan results in

1 any member, retirant or beneficiary receiving from the plan more or
2 less than he or she would have been entitled to receive had the
3 records been correct, the board shall correct the error. If
4 correction of the error occurs after the effective retirement date
5 of a retirant, and as far as is practicable, the board shall adjust
6 the payment of the benefit in a manner that the actuarial
7 equivalent of the benefit to which the retirant was correctly
8 entitled shall be paid.

9 (b) Underpayments: Any error resulting in an underpayment to
10 the retirement system of required contributions may be corrected by
11 the member or retirant remitting the required employee contribution
12 and the participating public employer remitting the required
13 employer contribution. Interest shall accumulate in accordance with
14 the Legislative Rule 162 CSR 7 concerning retirement board refund,
15 reinstatement, retroactive service, loan and employer error
16 interest factors and any accumulating interest owed on the employee
17 and employer contributions resulting from an employer error shall
18 be the responsibility of the participating public employer. The
19 participating public employer may remit total payment and the
20 employee reimburse the participating public employer through
21 payroll deduction over a period equivalent to the time period
22 during which the employer error occurred. If the correction of an
23 error involving an underpayment of required contributions to the

1 retirement system will result in increased payments to a retirant,
2 including increases to payments already made, any adjustments shall
3 be made only after the board receives full payment of all required
4 employee and employer contributions, including interest.

5 (c) Overpayments: (1) When mistaken or excess employer
6 contributions, including any overpayments, have been made to the
7 retirement system by a participating public employer, due to error
8 or other reason, the board shall credit the participating public
9 employer with an amount equal to the erroneous contributions, to be
10 offset against the participating public employer's future liability
11 for employer contributions to the system. Earnings or interest
12 shall not be credited to the employer.

13 (2) When mistaken or excess employee contributions, including
14 any overpayments, have been made to the retirement system, due to
15 error or other reason, the board shall have sole authority for
16 determining the means of return, offset or credit to or for the
17 benefit of the employee of the amounts, and may use any means
18 authorized or permitted under the provisions of Section 401(a), et
19 seq. of the Internal Revenue Code and guidance issued thereunder
20 applicable to governmental plans. Alternatively, in its full and
21 complete discretion, the board may require the participating public
22 employer to pay the employee the amounts as wages, with the board
23 crediting the participating public employer with a corresponding

1 amount to offset against its future contributions to the plan:
2 *Provided*, That the wages paid to the employee shall not be
3 considered compensation for any purposes under this article.
4 Earnings or interest shall not be returned, offset, or credited
5 under any of the means utilized by the board for returning mistaken
6 or excess employee contributions, including any overpayments, to an
7 employee.

8 **§7-14D-9. Retirement; commencement of benefits.**

9 A member may retire and commence to receive retirement income
10 payments on the first day of the calendar month following the
11 board's receipt of the member's voluntary written application for
12 retirement or the required beginning date, if earlier. Before
13 receiving retirement income payments, the member shall have ceased
14 covered employment and reached early or normal retirement age. The
15 retirement income payments shall be in an amount as provided under
16 section eleven of this article: *Provided*, That retirement income
17 payments under this plan shall be subject to the provisions of this
18 article. Upon receipt of a request for estimation of benefits, the
19 board shall promptly provide the member with an explanation of his
20 or her optional forms of retirement benefits and the estimated
21 gross monthly annuity. Upon receipt of properly executed
22 retirement application forms from the member, the board shall
23 process the member's request and commence payments as soon as

1 administratively feasible.

2 **§7-14D-16. Awards and benefits for disability -- Physical**
3 **examinations; termination of disability.**

4 (a) The board may require any member who has applied for or is
5 receiving disability benefits under this article to submit to a
6 physical examination, mental examination or both, by a physician or
7 physicians selected or approved by the board and may cause all
8 costs incident to the examination and approved by the board to be
9 paid from the fund. The costs may include hospital, laboratory, X
10 ray, medical and physicians' fees. A report of the findings of any
11 physician shall be submitted in writing to the board for its
12 consideration. If, from the report, independent information, or
13 from the report and any hearing on the report, the board is of the
14 opinion and finds that: (1) The member has become reemployed as a
15 law-enforcement officer; (2) two physicians who have examined the
16 member have found that considering the opportunities for law
17 enforcement in West Virginia, the member could be so employed as a
18 deputy sheriff; or (3) other facts exist to demonstrate that the
19 member is no longer totally disabled or partially disabled as the
20 case may be, then the disability benefits shall cease. If the
21 member was totally disabled and is found to have recovered, the
22 board shall determine whether the member continues to be partially
23 disabled. If the board finds that the member is no longer totally

1 disabled but is partially disabled, then the member shall continue
2 to receive partial disability benefits in accordance with this
3 article. Benefits shall cease once the member has been found to be
4 no longer either totally or partially disabled: *Provided*, That the
5 board shall require recertification for each partial or total
6 disability at regular intervals as specified by the guidelines
7 adopted by the Deputy Sheriff Retirement System.

8 (b) If a retirant refuses to submit to a medical examination
9 or submit a statement by his or her physician certifying continued
10 disability in any period, his or her disability annuity may be
11 discontinued by the board until the retirant complies. If the
12 refusal continues for one year, all the retirants rights in and to
13 the annuity may be revoked by the board.

14 **§7-14D-19. Awards and benefits to surviving spouse -- When member**
15 **dies from nonservice-connected causes.**

16 (a) In any case where a member who has been a member for at
17 least ten years, while in covered employment after the effective
18 date of this article, has died or dies from any cause other than
19 those specified in section eighteen of this article and not due to
20 vicious habits, intemperance or willful misconduct on his or her
21 part, the fund shall pay annually in equal monthly installments to
22 the surviving spouse during his or her lifetime, a sum equal to the
23 greater of: (i) One half of the annual compensation received in the

1 preceding twelve-month employment period by the deceased member; or
2 (ii) if the member dies after his or her early or normal retirement
3 age, the monthly amount which the spouse would have received had
4 the member retired the day before his or her death, elected a one
5 hundred percent joint and survivor annuity with the spouse as the
6 joint annuitant, and then died. Where the member is receiving
7 disability benefits under section fifteen of this article at the
8 time of his or her death, the most recent monthly compensation
9 determined under section seventeen of this article shall be
10 substituted for the annual compensation in (i) of this section.

11 (b) Benefits for a surviving spouse received under this
12 section, section twenty and section twenty-one of this article are
13 in lieu of receipt of any other benefits under this article for the
14 spouse or any other person or under the provisions of any other
15 state retirement system based upon the member's covered employment.