

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.]

E N R O L L E D

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(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.]

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**

**ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

§5-10-27. Preretirement death annuities.

1 (a) (1) Except as otherwise provided in this section, in the
2 event any member who has ten or more years of credited
3 service or any former member with ten or more years of
4 credited service and who is entitled to a deferred annuity,
5 pursuant to section twenty-one of this article, may at any time
6 prior to the effective date of his or her retirement, by written
7 declaration duly executed and filed with the board of trustees,
8 in the same manner as if he or she were then retiring from the
9 employ of a participating public employer, elect option A
10 provided in section twenty-four of this article and nominate
11 a beneficiary whom the board finds to have had an insurable
12 interest in the life of the member. Prior to the effective date
13 of his or her retirement, a member may revoke his or her
14 election of option A and nomination of beneficiary and he or
15 she may again prior to his or her retirement elect option A
16 and nominate a beneficiary as provided in this subsection.
17 Upon the death of a member who has an option A election in
18 force, his or her beneficiary, if living, shall immediately
19 receive an annuity computed in the same manner in all
20 respects as if the same member had retired the day preceding
21 the date of his or her death, notwithstanding that he or she
22 might not have attained age sixty years, and elected the said
23 option A. If at the time of his or her retirement a member has
24 an option A election in force, his or her election of option A
25 and nomination of beneficiary shall thereafter continue in
26 force. As an alternative to annuity option A, a member or
27 former member may elect to have the preretirement death
28 benefit paid as a return of accumulated contributions in a

29 lump sum amount to any beneficiary or beneficiaries he or
30 she chooses.

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

55 (b)(1) In the event any member who has ten or more
56 years of credited service, or any former member with ten or
57 more years of credited service and who is entitled to a
58 deferred annuity, pursuant to section twenty-one of this
59 article: Dies; and leaves a surviving spouse, the surviving
60 spouse shall immediately receive an annuity computed in the
61 same manner in all respects as if the member had: (A) Retired
62 the day preceding the date of his or her death,
63 notwithstanding that he or she might not have attained age

64 sixty or sixty-two years, as the case may be; (B) elected
65 option A provided in section twenty-four of this article; and
66 (C) nominated his or her surviving spouse as beneficiary.
67 However, the surviving spouse shall have the right to waive
68 the annuity provided in this section: *Provided*, That he or she
69 executes a valid and notarized waiver on a form provided by
70 the board and that the member or former member attests to
71 the waiver. If the waiver is presented to and accepted by the
72 board, the member or former member, may nominate a
73 beneficiary who has an insurable interest in the member's or
74 former member's life. As an alternative to annuity option A,
75 the member or former member may elect to have the
76 preretirement death benefit paid as a return of accumulated
77 contributions in a lump sum amount to any beneficiary or
78 beneficiaries he or she chooses in the event a waiver, as
79 provided in this section, has been presented to and accepted
80 by the board.

81 (2) Whenever any member or former member who first
82 became a member of the retirement system after the effective
83 date of the amendments to this section made during the 2006
84 regular legislative session and who has ten or more years of
85 credited service and who is entitled to a deferred annuity,
86 pursuant to section twenty-one of this article, dies and leaves
87 a surviving spouse, the surviving spouse shall immediately
88 receive an annuity computed in the same manner in all
89 respects as if the member had: (A) Retired the day preceding
90 the date of his or her death, notwithstanding that he or she
91 might not have attained age sixty or sixty-two years, as the
92 case may be; (B) elected option A provided in section
93 twenty-four of this article; and (C) nominated his or her
94 surviving spouse as beneficiary. However, the surviving
95 spouse shall have the right to waive the annuity provided in
96 this section: *Provided*, That he or she executes a valid and
97 notarized waiver on a form provided by the board and that the
98 member or former member attests to the waiver. If the
99 waiver is presented to and accepted by the board, the member

100 or former member may: (1) Elect to have the preretirement
101 death benefit paid in a lump sum amount, rather than annuity
102 option A provided in section twenty-four of this article, as a
103 return of accumulated contributions to any beneficiary or
104 beneficiaries he or she chooses; or (2) may name his or her
105 surviving child, who is financially dependent on the member
106 by virtue of a permanent mental or physical disability, as his
107 or her sole beneficiary to receive an annuity computed in the
108 same manner in all respects as if the member had: (A) Retired
109 the day preceding the date of his or her death,
110 notwithstanding that he or she might not have attained the
111 age of sixty or sixty-two as the case may be; (B) elected
112 option A provided in section twenty-four of this article; and
113 (C) nominated his or her disabled child as beneficiary.

114 (c) In the event any member who has ten or more years of
115 credited service or any former member with ten or more years
116 of credited service and who is entitled to a deferred annuity,
117 pursuant to section twenty-one of this article: (1) Dies
118 without leaving surviving him or her a spouse; but (2) leaves
119 surviving him or her an infant child or children; and (3) does
120 not have a beneficiary nominated as provided in subsection
121 (a) of this section, the infant child or children are entitled to
122 an annuity to be calculated as follows: The annuity reserve
123 shall be calculated as though the member had retired as of the
124 date of his or her decease and elected a straight life annuity
125 and the amount of the annuity reserve shall be paid in equal
126 monthly installments to the member's infant child or children
127 until the child or children attain age twenty-one or sooner
128 marry or become emancipated; however, in no event shall
129 any child or children receive more than \$250 per month each.
130 The annuity payments shall be computed as of the date of the
131 death of the member and the amount of the annuity shall
132 remain constant during the period of payment. The annual
133 amount of the annuities payable by this section shall not
134 exceed sixty percent of the deceased member's final average
135 salary.

136 (d) In the event any member or former member does not
137 have ten or more years of credited service, no preretirement
138 death annuity may be authorized, owed or awarded under this
139 section, except as provided in subdivision (4), subsection (a),
140 section fifteen of this article as amended during the 2005
141 regular session of the Legislature.

142 (e) Any person qualified as a surviving dependent child
143 under this section, who is the surviving dependent child of a
144 law-enforcement officer who loses his or her life in the
145 performance of duty, in addition to any other benefits due
146 under this or other sections of this article is entitled to receive
147 a scholarship to be applied to the career development
148 education of that person. This sum, up to but not exceeding
149 \$7,500 per year, shall be paid from the fund to any higher
150 education institution in this state, career-technical education
151 provider in this state or other entity in this state approved by
152 the board, to offset the expenses of tuition, room and board,
153 books, fees or other costs incurred in a course of study at any
154 of those institutions so long as the recipient makes
155 application to the board on an approved form and under rules
156 as provided by the board and maintains scholastic eligibility
157 as defined by the institution or the board. The board may by
158 appropriate rules define age requirements, physical and
159 mental requirements, scholastic eligibility, disbursement
160 methods, institutional qualifications and other requirements
161 as necessary and not inconsistent with this section.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-20. Additional death benefits and scholarships – Dependent children.

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

5 (b) If the surviving spouse dies or if there is no surviving
6 spouse, the fund shall pay monthly to each dependent child
7 a sum equal to one fourth of the surviving spouse's
8 entitlement under either section nineteen or twenty of this
9 article. If there is neither a surviving spouse nor a dependent
10 child, the fund shall pay in equal monthly installments to the
11 dependent parents of the deceased member during their joint
12 lifetimes a sum equal to the amount which a surviving
13 spouse, without children, would have received: *Provided*,
14 That when there is only one dependent parent surviving, that
15 parent is entitled to receive during his or her lifetime one-half
16 the amount which both parents, if living, would have been
17 entitled to receive: *Provided, however*, That if there is no
18 surviving spouse, dependent child nor dependent parent of
19 the deceased member the accumulated contributions shall be
20 paid to a named beneficiary or beneficiaries: *Provided*
21 *further*, That if there is no surviving spouse, dependent child,
22 nor dependent parent of the deceased member, nor any named
23 beneficiary or beneficiaries then the accumulated
24 contributions shall be paid to the estate of the deceased
25 member.

26 (c) Any person qualifying as a dependent child under this
27 section, in addition to any other benefits due under this or
28 other sections of this article, is entitled to receive a
29 scholarship to be applied to the career development education
30 of that person. This sum, up to but not exceeding \$7,500 per
31 year, shall be paid from the fund to any higher education
32 institution in this state, career-technical education provider in
33 this state or other entity in this state approved by the board,
34 to offset the expenses of tuition, room and board, books, fees
35 or other costs incurred in a course of study at any of these

36 institutions so long as the recipient makes application to the
37 board on an approved form and under such rules as the board
38 may provide, and maintains scholastic eligibility as defined
39 by the institution or the board. The board may propose
40 legislative rules for promulgation in accordance with article
41 three, chapter twenty-nine-a of this code which define age
42 requirements, physical and mental requirements, scholastic
43 eligibility, disbursement methods, institutional qualifications
44 and other requirements as necessary and not inconsistent with
45 this section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

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

6 (b) If the surviving spouse dies or if there is no surviving
7 spouse, the fund shall pay monthly to each dependent child
8 a sum equal to one hundred percent of the spouse's
9 entitlement under this article divided by the number of
10 dependent children. If there is neither a surviving spouse nor
11 a dependent child, the fund shall pay in equal monthly
12 installments to the dependent parents of the deceased member
13 during their joint lifetimes a sum equal to the amount which
14 a surviving spouse, without children, would have received:
15 *Provided*, That when there is only one dependent parent
16 surviving, that parent is entitled to receive during his or her
17 lifetime one-half the amount which both parents, if living,
18 would have been entitled to receive: *Provided, however*, That
19 if there is no surviving spouse, dependent child or dependent
20 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 retiree;
dependent child scholarship and amount.**

1 (a) The surviving spouse or the dependent child or
2 children or dependent parent or parents of any member who
3 has lost or loses his or her life by reason of injury, illness or
4 disease resulting from an occupational risk or hazard inherent
5 in or peculiar to the service required of employees while the
6 member was or is engaged in the performance of his or her
7 duties as an employee of the agency, or if a retirant dies from
8 any cause after having been retired pursuant to the provisions
9 of section twenty-nine of this article, the surviving spouse or
10 other dependent is entitled to receive and shall be paid from
11 the fund benefits as follows: To the surviving spouse
12 annually, in equal monthly installments during his or her
13 lifetime the greater of one or the other of two amounts:

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

20 (2) The sum of \$6,000.

21 (b) In addition, the surviving spouse is entitled to receive
22 and shall be paid \$100 monthly for each dependent child or
23 children. If the surviving spouse dies or if there is no
24 surviving spouse, there shall be paid monthly to each
25 dependent child or children from the fund a sum equal to
26 twenty-five percent of the surviving spouse's entitlement. If
27 there is no surviving spouse and no dependent child or
28 children, there shall be paid annually in equal monthly
29 installments from the fund to the dependent parents of the
30 deceased member or retirant during their joint lifetimes a sum
31 equal to the amount which a surviving spouse, without
32 children, would have received: *Provided*, That when there is
33 one dependent parent surviving, that parent is entitled to

34 receive during his or her lifetime one half the amount which
35 both parents, if living, would have been entitled to receive.

36 (c) Any person qualified as a surviving dependent child
37 under this section, in addition to any other benefits due under
38 this or other sections of this article, is entitled to receive a
39 scholarship to be applied to the career development education
40 of that person. This sum, up to but not exceeding \$7,500 per
41 year, shall be paid from the fund to any higher education
42 institution in this state, career-technical education provider in
43 this state or other entity in this state approved by the board,
44 to offset the expenses of tuition, room and board, books, fees
45 or other costs incurred in a course of study at any of those
46 institutions so long as the recipient makes application to the
47 board on an approved form and under rules as provided by
48 the board and maintains scholastic eligibility as defined by
49 the institution or the board. The board may by appropriate
50 rules define age requirements, physical and mental
51 requirements, scholastic eligibility, disbursement methods,
52 institutional qualifications and other requirements as
53 necessary and not inconsistent with this section.

54 (d) A surviving spouse or dependent of an employee
55 meeting the requirements of this section is entitled to receive
56 beneficiary payments on the first day following the date the
57 deceased employee is removed from payroll by the agency.
58 A surviving spouse or dependent of a member who is not
59 currently an employee meeting the requirements of this
60 section is entitled to receive beneficiary payments on the first
61 day following the date of the deceased member's death. A
62 surviving spouse or dependent of a retirant meeting the
63 requirements of this section is entitled to receive beneficiary
64 payments on the first day of the month following the date of
65 the deceased retirant's death. Upon receipt of properly
66 executed forms from the agency and the surviving spouse or
67 dependent, the board shall process the surviving spouse or
68 dependent benefit as soon as administratively feasible.

69 (e) For the purposes of this section, the term “salary”
70 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.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any employee who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of employees while the
6 employee was engaged in the performance of his or her duties
7 as an employee of the agency, or the survivor of a retirant
8 who dies from any cause after having been retired pursuant
9 to the provisions of section nine of this article, is entitled to
10 receive and shall be paid from the fund benefits as follows:
11 To the surviving spouse annually, in equal monthly
12 installments during his or her lifetime, one or the other of two
13 amounts, which shall become payable the first day of the
14 month following the employee’s or retirant’s death and which
15 shall be the greater of:

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

23 (2) The sum of \$10,000.

24 In addition, the surviving spouse is entitled to receive and
25 shall be paid \$150 monthly for each dependent child. If the
26 surviving spouse dies or if there is no surviving spouse, there
27 shall be paid monthly to each dependent child or children
28 from the fund a sum equal to one third of the surviving
29 spouse's entitlement. If there is no surviving spouse and no
30 dependent child or children, there shall be paid annually in
31 equal monthly installments from the fund to the dependent
32 parents of the deceased member during their joint lifetimes a
33 sum equal to the amount which a surviving spouse, without
34 children, would have received: *Provided*, That when there is
35 one dependent parent surviving, that parent is entitled to
36 receive during his or her lifetime one half the amount which
37 both parents, if living, would have been entitled to receive:
38 *Provided, however*, That if there is no surviving spouse,
39 dependent child or dependent parent of the deceased member,
40 the accumulated contributions shall be paid to a named
41 beneficiary or beneficiaries: *Provided further*, That if there is
42 no surviving spouse, dependent child, dependent parent of the
43 deceased member or any named beneficiary or beneficiaries,
44 then the accumulated contributions shall be paid to the estate
45 of the deceased member.

46 Any person qualifying as a surviving dependent child
47 under this section, in addition to any other benefits due under
48 this or other sections of this article, is entitled to receive a
49 scholarship to be applied to the career development education
50 of that person. This sum, up to but not exceeding \$7,500 per
51 year, shall be paid from the fund to any higher education
52 institution in this state, career-technical education provider in
53 this state or other entity in this state approved by the board to
54 offset the expenses of tuition, room and board, books, fees or
55 other costs incurred in a course of study at any of these
56 institutions as long as the recipient makes application to the
57 board on an approved form and under rules provided by the
58 board and maintains scholastic eligibility as defined by the
59 institution or the board. The board may by appropriate rules

60 define age requirements, physical and mental requirements,
61 scholastic eligibility, disbursement methods, institutional
62 qualifications and other requirements as necessary and not
63 inconsistent with this section.

64 A surviving spouse or dependent of an employee meeting
65 the requirements of this section is entitled to receive
66 beneficiary payments on the first day of the month following
67 the date the deceased member is removed from payroll by the
68 agency. A surviving spouse or dependent of a member who
69 is not currently an employee meeting the requirements of this
70 section is entitled to receive beneficiary payments on the first
71 day of the month following the date of the deceased
72 member's death. A surviving spouse or dependent of a
73 retirant meeting the requirements of this section is entitled to
74 receive beneficiary payments on the first day of the month
75 following the date of the deceased retirant's death. Upon
76 receipt of properly executed forms from the agency and
77 surviving spouse or dependent, the board shall process the
78 surviving spouse or dependent benefit as soon as
79 administratively feasible.

80 It is the intent of the Legislature that the levels of benefits
81 provided by operation of this section from the effective date
82 of the enactment of this section during the regular session of
83 the Legislature, 2005, be the same levels of benefits as
84 provided by this section as amended and reenacted during the
85 fourth extraordinary session of the Legislature, 2005.
86 Accordingly, the effective date of the operation of this
87 section as amended and reenacted during the fourth
88 extraordinary session of the Legislature, 2005, is expressly
89 made retrospective to April 9, 2005.

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.

To take effect July 1, 2013.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the
Day of, 2013.

.....
Governor