

1 **ENROLLED**

2 **Senate Bill No. 302**

3 (By Senators Gaunch and Trump)

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5 [Passed February 20, 2015; in effect ninety days from passage.]
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9 AN ACT to amend and reenact §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as
10 amended, all relating to disqualification for public retirement plan benefits when a participant is
11 determined to have rendered less than honorable service; adding the West Virginia Municipal Police
12 Officers and Firefighters Retirement System to definition of “retirement plan”; and specifying that
13 former participants of the West Virginia Teachers Defined Contribution Retirement System who
14 elected to transfer to the West Virginia Teachers Retirement System and whose benefits have been
15 terminated for less than honorable service shall not be refunded any transferred vested employer
16 contributions.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §5-10A-2 and §5-10A-6 of the Code of West Virginia, 1931, as amended, be amended
19 and reenacted, all to read as follows:

20 **ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**

21 **§5-10A-2. Definitions.**

22 As used in this article:

1 (a) “Retirement plan” or “plan” means the Public Employees Retirement Act pursuant to
2 article ten of this chapter; each municipal employees retirement plan pursuant to article twenty-two,
3 chapter eight of this code; each policemen’s and firemen’s pension and relief fund pursuant to article
4 twenty-two, chapter eight of this code; the West Virginia Municipal Police Officers and Firefighters
5 Retirement System pursuant to article twenty-two-a, chapter eight of this code; the West Virginia
6 State Police Death, Disability and Retirement Fund pursuant to article two, chapter fifteen of this
7 code; the West Virginia State Police Retirement System pursuant to article two-a, chapter fifteen of
8 this code; the State Teachers Retirement System pursuant to article seven-a, chapter eighteen of this
9 code; the Teachers’ Defined Contribution Retirement System pursuant to article seven-b, chapter
10 eighteen of this code; the Deputy Sheriff Retirement System pursuant to article fourteen-d, chapter
11 seven of this code; the higher education retirement plan and supplemental retirement plans pursuant
12 to section four-a, article twenty-three, chapter eighteen of this code; the Judges’ Retirement System
13 pursuant to article nine, chapter fifty-one of this code; the West Virginia Emergency Medical
14 Services Retirement System pursuant to article five-v, chapter sixteen of this code; and any other
15 plan established pursuant to this code for the payment of pension, annuity, disability or other benefits
16 to any person by reason of his or her service as an officer or employee of this state or of any political
17 subdivision, agency or instrumentality thereof, whenever the plan is supported, in whole or in part,
18 by public funds.

19 (b) “Beneficiary” means any person eligible for or receiving benefits on account of the
20 service for a public employer by a participant or former participant in a retirement plan.

21 (c) “Benefits” means pension, annuity, disability or any other benefits granted pursuant to
22 a retirement plan.

1 (d) “Conviction” means a conviction on or after the effective date of this article in any federal
2 or state court of record whether following a plea of guilty, not guilty or nolo contendere and whether
3 or not the person convicted was serving as an officer or employee of a public employer at the time
4 of the conviction.

5 (e) “Former participant” means any person who is no longer eligible to receive any benefit
6 under a retirement plan because full distribution has occurred.

7 (f) “Less than honorable service” means:

8 (1) Impeachment and conviction of a participant or former participant under the provisions
9 of section nine, article four of the Constitution of West Virginia, except for a misdemeanor;

10 (2) Conviction of a participant or former participant of a felony for conduct related to his or
11 her office or employment which he or she committed while holding the office or during the
12 employment; or

13 (3) Conduct of a participant or former participant which constitutes all of the elements of a
14 crime described in either subdivision (1) or (2) of this subsection but for which the participant or
15 former participant was not convicted because: (i) Having been indicted or having been charged in
16 an information for the crime, he or she made a plea bargaining agreement pursuant to which he or
17 she pleaded guilty to or nolo contendere to a lesser crime: *Provided*, That the lesser crime is a felony
18 containing all the elements described in subdivision (1) or (2) of this subsection; or (ii) having been
19 indicted or having been charged in an information for the crime, he or she was granted immunity
20 from prosecution for the crime.

21 (g) “Participant” means any person eligible for or receiving any benefit under a retirement
22 plan on account of his or her service as an officer or employee for a public employer.

1 (h) "Public employer" means the State of West Virginia and any political subdivision, agency
2 or instrumentality thereof for which there is established a retirement plan.

3 (i) "Supervisory board" or "board" means the Consolidated Public Retirement Board; the
4 board of trustees of any municipal retirement fund; the board of trustees of any policemen's or
5 firemen's retirement plan; the governing board of any supplemental retirement plan instituted
6 pursuant to authority granted by the previous provisions of section four-a, article twenty-three,
7 chapter eighteen of this code; and any other board, commission or public body having the duty to
8 supervise and operate any retirement plan.

9 **§5-10A-6. Refund of contributions.**

10 The supervisory board shall refund to a participant or beneficiary terminated from benefits
11 by section five of this article the contributions of the participant in the same manner and with the
12 same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the
13 participant's contributions under the retirement plan, less the amount of any benefits which the
14 participant or his or her beneficiaries have previously received: *Provided*, That a member of the
15 Teachers' Defined Contribution Retirement System whose benefits have been terminated pursuant
16 to section five of this article shall be refunded only his or her employee contributions and the
17 earnings on those contributions; and any vested employer contributions shall remain in the Teachers'
18 Defined Contribution Retirement System and be used to offset future employer contributions for
19 each contributing employer: *Provided, however*, That any former member of the Teachers' Defined
20 Contribution Retirement System who affirmatively elected to transfer to the State Teachers'
21 Retirement System pursuant to article seven-d, chapter eighteen of this code and whose benefits have
22 been terminated pursuant to section five of this article shall be refunded only his or her employee

- 1 contributions and the earnings on those contributions; and any vested employer contributions from
- 2 the Teachers' Defined Contribution Retirement System shall remain in the State Teachers Retirement
- 3 System to be used to offset future employer contributions for each contributing employer.