

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Introduced**

## **House Bill 2862**

BY DELEGATES STORCH, GEARHEART, PETHTEL, EVANS,

ANDERSON, GRAVES AND J.PACK

[BY REQUEST OF THE CONSOLIDATED PUBLIC

RETIREMENT BOARD]

[Introduced March 02, 2021; Referred to the

Committee on Pensions and Retirement then

Finance]

1 A BILL to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, and §7-14D-20 of  
2 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto  
3 a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System  
4 Act; defining terms; amending and removing conflicting statutory provisions; removing  
5 obsolete restriction on type of annuity for married members; clarifying preretirement death  
6 benefits; clarifying survivor death benefit; and providing for severability.

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

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

### **§7-14D-2. Definitions.**

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

3 (a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the  
4 member's final average salary multiplied by the member's years of credited service: *Provided,*  
5 That members who are retired on or retire after July 1, 2018, shall have an accrued benefit of two  
6 and one-half percent of the member's final average salary multiplied by the member's years of  
7 credited service. A member's accrued benefit may not exceed the limits of Section 415 of the  
8 Internal Revenue Code and is subject to the provisions of §7-14D-9a of this code.

9 (b) "Accumulated contributions" means the sum of all amounts deducted from the  
10 compensation of a member, or paid on his or her behalf pursuant to §5-10C-1 et seq. of this code,  
11 either pursuant to §7-14D-7 of this code or §5-10-29 of this code, as a result of covered  
12 employment together with regular interest on the deducted amounts.

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

14 (d) "Active military duty" means full-time active duty with any branch of the armed forces  
15 of the United States, including service with the National Guard or reserve military forces when the  
16 member has been called to active full-time duty and has received no compensation during the  
17 period of that duty from any board or employer other than the armed forces.

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

(f) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash, or noncash fringe benefits or both, deferred compensation, and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

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

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

(i) "Base salary" means a member's cash compensation exclusive of overtime from covered employment during the last 12 months of employment. Until a member has worked 12 months, annualized base salary is used as base salary.

(j) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

~~(j)~~ (k) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

~~(k)~~ (l) "County commission" has the meaning ascribed to it in §7-1-1 of this code.

~~(j)~~ (m) "Covered employment" means either: (1) Employment as a deputy sheriff and the active performance of the duties required of a deputy sheriff; (2) the period of time which active duties are not performed but disability benefits are received under §7-14D-14 or §7-14D-15 of this code; or (3) concurrent employment by a deputy sheriff in a job or jobs in addition to his or her employment as a deputy sheriff where the secondary employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code: *Provided*, That the deputy sheriff contributes to the fund created in §7-14D-6 of this code the amount specified as the deputy sheriff's contribution in §7-14D-7 of this code.

~~(m)~~ (n) "Credited service" means the sum of a member's years of service, active military duty, disability service, ~~and~~ unused annual leave service, and unused sick leave service.

~~(n)~~ (o) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by §7-14-2 of this code.

~~(o)~~ (p) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

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

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

(2) Any unmarried child under age 23:

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

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

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

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

~~(q)~~ (r) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under §7-14D-14 or §7-14D-15 of this code.

~~(r)~~ (s) "Early retirement age" means age 40 or over and completion of 20 years of service.

~~(s)~~ (t) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

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

~~(u)~~ (v) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under §7-14D-14 or §7-14D-15 of this code then "final average salary" means the average of the full monthly salary determined paid to the member during that period ~~as determined under §7-14D-17 of this code~~ multiplied by 12.

~~(v)~~ (w) "Fund" means the West Virginia Deputy Sheriff Retirement Fund created pursuant to §7-14D-6 of this code.

~~(w)~~ (x) "Hour of service" means:

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

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §7-14D-14 or §7-14D-15 of this code; and

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

~~(x)~~ (y) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subdivision ~~(t)~~ (u) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to §7-14D-5 or §7-14D-17 of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited or until cessation of membership pursuant to §7-14D-5 of this code.

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

~~(z)~~ (aa) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the

annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

~~(aa)~~ (bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of service; (2) while still in covered employment, attainment of at least age 50 years, and when the sum of current age plus years of service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years, and completion of five years of service; or (4) attainment of age 62 years and completion of five or more years of service.

~~(bb)~~ (cc) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the average annual compensation earned by all active members of this plan during the plan year ending as of the most recent June 30, as of which plan data has been assembled and used for the actuarial valuation of the plan.

~~(cc)~~ (dd) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by §5-10-1 et seq. of this code.

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

~~(ee)~~ (ff) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

~~(ff)~~ (gg) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services, or emergency medical

148 services for any area within the jurisdiction of the state or political subdivision, or such other  
149 meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury  
150 Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

151 ~~(gg)~~ (hh) "Regular interest" means the rate or rates of interest per annum, compounded  
152 annually, as the board adopts in accordance with the provisions of this article.

153 ~~(hh)~~ (ii) "Required beginning date" means April 1 of the calendar year following the later  
154 of: (i) The calendar year in which the member attains age 70 and one half; or (ii) the calendar year  
155 in which he or she retires or otherwise separates from covered employment.

156 ~~(ii)~~ (jj) "Retire" or "retirement" means a member's withdrawal from the employ of a  
157 participating public employer and the commencement of an annuity by the plan.

158 ~~(jj)~~ (kk) "Retirement income payments" means the annual retirement income payments  
159 payable under the plan.

160 ~~(kk)~~ (ll) "Spouse" means the person to whom the member is legally married on the annuity  
161 starting date.

162 ~~(ll)~~ (mm) "Surviving spouse" means the person to whom the member was legally married  
163 at the time of the member's death and who survived the member.

164 ~~(mm)~~ (nn) "Totally disabled" means a member's inability to engage in substantial gainful  
165 activity by reason of any medically determined physical or mental impairment that can be  
166 expected to result in death or that has lasted or can be expected to last for a continuous period  
167 of not less than 12 months. For purposes of this subdivision:

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



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

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

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §7-14D-14 or §7-14D-15 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date. Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §7-14D-13 or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to §7-14D-13 of this code or had prior to the effective date made the repayment pursuant to §5-10-18 of this code.

#### **§7-14D-11. Retirement benefits.**

This section provides for a member's accrued benefit payable starting at the member's

annuity starting date which follows the completion of a written application for the commencement of benefits. The member shall receive the accrued retirement benefit in the normal form or in an actuarial equivalent amount in an optional form as provided under §7-14D-12 of this code, subject to reduction if necessary to comply with the maximum benefit provisions of Section 415 of the Internal Revenue Code and §7-14D-9a of this code. The first day of the calendar month following the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. -- A member whose annuity starting date is the date the member attains normal retirement age or later is entitled to his or her accrued retirement benefit based on years of service and final average salary at termination of employment.

(b) Early retirement. -- A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age.

(c) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. ~~Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.~~

**§7-14D-13. Refunds to certain members upon discharge or resignation; deferred**

**retirement; preretirement death; forfeitures.**

1 (a) Any member who terminates covered employment and is not eligible to receive  
2 disability or retirement income benefits under this article is, by written request filed with the board,  
3 entitled to receive from the fund the member's accumulated contributions after offset of any  
4 outstanding loan balance, plus accrued interest, pursuant to §7-14D-23 of this code. Except as  
5 provided in subsection (b) of this section, upon withdrawal the member shall forfeit his or her  
6 accrued benefit and cease to be a member.

7 (b) Any member of this plan who ceases employment in covered employment and active  
8 participation in this plan, and who thereafter becomes reemployed in covered employment may  
9 not receive any credited service for any prior withdrawn or offset accumulated contributions from  
10 either this plan or the Public Employees Retirement System relating to the prior covered  
11 employment unless following his or her return to covered employment and active participation in  
12 this plan, the member redeposits in this plan the amount of the withdrawn accumulated  
13 contributions submitted on salary earned while a deputy sheriff, together with interest on the  
14 accumulated contributions at the rate determined by the board from the date of withdrawal to the  
15 date of redeposit. Upon repayment he or she shall receive the same credit on account of his or  
16 her former service in covered employment as if no refund had been made. The repayment  
17 authorized by this subsection shall be made in a lump sum within sixty months of the deputy  
18 sheriff's reemployment in covered employment or if later, within sixty months of the effective date  
19 of this article.

20 (c) A member of this plan who has elected to transfer from the Public Employees  
21 Retirement System into this plan pursuant to §7-14D-5(b) of this code may not, after having  
22 transferred into and become an active member of this plan, reinstate to his or her credit in this  
23 plan any service credit relating to periods of nondeputy sheriff service which were withdrawn from  
24 the Public Employees Retirement System plan prior to his or her elective transfer into this plan.

25 (d) Every member who completes sixty months of covered employment is eligible, upon

cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with subsection (a) of this section, or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining normal retirement age.

(e) In the event a member dies from any cause other than those specified in §7-14D-18 of this code and does not have ten or more years of credited service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries. If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member,

~~(e)~~ (f) Notwithstanding any other provision of this article, forfeitures under the plan shall not be applied to increase the benefits any member would otherwise receive under the plan.

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

(a) In any case where a member who has been a member for at least ten years, while in covered employment after the effective date of this article, has died or dies from any cause other than those specified in §7-14D-18 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (i) One half of the annual compensation received in the preceding twelve-month employment period by the deceased member; or (ii) if the member dies after his or her early or normal retirement age, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died. ~~Where the member is receiving disability benefits under section fifteen of this article at the time of his or her death, the most recent monthly compensation determined under section seventeen of this article shall be substituted for the annual compensation in (i) of this section.~~

(b) Benefits for a surviving spouse received under this section, §7-14D-20 and §7-14D-21 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other

16 person or under the provisions of any other state retirement system based upon the member's  
17 covered employment.

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

1 (a) In addition to the spouse death benefits in §7-14D-18 and §7-14D-19 of this code, the  
2 surviving spouse is entitled to receive and there shall be paid to the spouse \$100 monthly for  
3 each dependent child.

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

18 (c) Any person qualifying as a dependent child under this section, in addition to any other  
19 benefits due under this or other sections of this article, is entitled to receive a scholarship to be  
20 applied to the career development education of that person. This sum, up to but not exceeding  
21 \$7,500 per year, shall be paid from the fund to any higher education institution in this state, career-  
22 technical education provider in this state or other entity in this state approved by the board, to  
23 offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of

24 study at any of these institutions so long as the recipient makes application to the board on an  
25 approved form and under such rules as the board may provide, and maintains scholastic eligibility  
26 as defined by the institution or the board. The board may propose legislative rules for promulgation  
27 in accordance with §29A-3-1 et seq. of this code which define age requirements, physical and  
28 mental requirements, scholastic eligibility, disbursement methods, institutional qualifications, and  
29 other requirements as necessary and not inconsistent with this section. Scholarship benefits  
30 awarded pursuant to this subsection are not subject to division or payable to an alternate payee  
31 by any Qualified Domestic Relations Order.

**§7-14D-32. Severability.**

1 If any part of this article is declared unconstitutional by a court of competent jurisdiction,  
2 such decision shall not affect the validity of the remaining provisions of this article, or the article  
3 in its entirety.

NOTE: The purpose of this bill is to add a definition for “beneficiary” to the Deputy Sheriff Retirement System; clarify preretirement death benefits; amend and remove conflicting statutory provisions; and add a severability clause.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.