

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 614

BY SENATORS LINDSAY, CAPUTO, HAMILTON, TRUMP,

ROMANO, UNGER, AND GRADY

[Originating in the Committee on the Judiciary;

reported on March 17, 2021]

1 A BILL to amend and reenact §51-2A-4 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §51-2A-6 of said code; and to amend and reenact §51-9-1a of said code, all
3 relating to including family court judges in the Judges' Retirement System.

Be it enacted by the Legislature of West Virginia:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-4. Qualifications of family court judges.

1 (a) A family court judge must be a resident of this state, a member in good standing of the
2 West Virginia State Bar, admitted to practice law in this state for at least five years prior to election,
3 and must, at the time he or she takes office, and thereafter during his or her continuance in office,
4 reside in the family court circuit for which he or she is a judge.

5 (b) A family court judge may not engage in any other business, occupation, or employment
6 inconsistent with the expeditious, proper, and impartial performance of his or her duties as a
7 judicial officer. A family court judge is not permitted to engage in the outside practice of law and
8 shall devote full time to his or her duties as a judicial officer.

9 (c) The Supreme Court of Appeals may establish requirements for family court judges to
10 attend and complete courses of instruction and continuing educational instruction in principles of
11 family law and procedure.

12 ~~(d) A person's acceptance of the office of family court judge pursuant to appointment or~~
13 ~~election constitutes the person's consent, agreement and election during the term of office not to~~
14 ~~become a member of the judges retirement system solely by reason of or based upon service as~~
15 ~~a family court judge and an acknowledgment by the person of the sole authority of the Legislature~~
16 ~~to determine the eligibility of family court judges to participate in a retirement system.~~
17 ~~Notwithstanding any other provision of law to the contrary, upon final judicial determination that a~~
18 ~~person, individually or as a member of a class, is eligible for participation in the judges retirement~~
19 ~~system solely by reason of or based upon service as a family court judge, no additional persons~~

CS for SB 614

20 ~~except as may be provided for in this subsection may be admitted to the judges retirement system~~
21 ~~existing upon the effective date of the final judicial determination. A circuit judge or justice of the~~
22 ~~Supreme Court of Appeals who is a member of the existing judges retirement system whose~~
23 ~~employment continues beyond the final judicial determination shall continue to contribute to and~~
24 ~~participate in the existing judges retirement system without a change in plan provisions or~~
25 ~~benefits. Any person who was previously a member of the judges retirement system and who~~
26 ~~later returns to participating employment as a circuit judge or justice of the Supreme Court of~~
27 ~~Appeals after the final judicial determination has the right to elect to return to the existing judges~~
28 ~~retirement system and participate during the judge's or justice's term or terms of office.~~

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1 (a) A family court judge is entitled to receive as compensation for his or her services an
2 annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled
3 to receive as compensation for his or her services an annual salary of \$82,500: *Provided*,
4 *however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500:
5 *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be
6 \$103,950.

7 (b) The secretary-clerk of the family court judge is appointed by the family court judge and
8 serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to
9 receive an annual salary of \$27,036: *Provided*, That on and after July 1, 2006, the annual salary
10 of the secretary-clerk shall be established by the Administrative Director of the Supreme Court of
11 Appeals, but may not exceed \$39,000. In addition, any person employed as a secretary-clerk to
12 a family court judge on the effective date of the enactment of this section during the sixth
13 extraordinary session of the Legislature in the year 2001 who is receiving an additional \$500 per
14 year up to 10 years of a certain period of prior employment under the provisions of the prior
15 enactment of §51-2A-8 of this code during the second extraordinary session of the Legislature in

16 the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk ~~will~~
17 shall receive ~~such~~ any percentage or proportional salary increases ~~as may be~~ provided by general
18 law for other public employees and is entitled to receive the annual incremental salary increase
19 as provided in §5-5-1 *et seq.* of this code.

20 (c) The family court judge may employ not more than one family case coordinator who
21 serves at his or her will and pleasure. The annual salary of the family case coordinator of the
22 family court judge shall be established by the Administrative Director of the Supreme Court of
23 Appeals but may not exceed \$36,000: *Provided*, That on and after July 1, 2006, the annual salary
24 of the family case coordinator of the family court judge may not exceed \$51,000. The family case
25 coordinator will receive ~~such~~ any percentage or proportional salary increases ~~as may be~~ provided
26 by general law for other public employees and is entitled to receive the annual incremental salary
27 increase as provided in §5-5-1 *et seq.* of this code.

28 (d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court
29 judge. The sheriff of each county shall serve or designate persons to serve ~~so as~~ to assure that
30 a bailiff is available when a family court judge determines ~~the same~~ a baliff is necessary for the
31 orderly and efficient conduct of the business of the family court.

32 (e) Disbursement of salaries for family court judges and members of their staffs are made
33 by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of
34 Appeals.

35 (f) Family court judges and members of their staffs are allowed their actual and necessary
36 expenses incurred in the performance of their duties. The expenses and compensation ~~will~~ shall
37 be determined and paid by the Director of the Administrative Office of the Supreme Court of
38 Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court
39 of Appeals.

40 ~~(g) Notwithstanding any other provision of law, family court judges are not eligible to~~
41 ~~participate in the retirement system for judges under the provisions of §51-9-1 *et seq.* of this code.~~

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

42 (a) As used in this article, the term “judge”, “judge of any court of record,” or “judge of any
43 court of record of this state” means, refers to, and includes judges of the several family courts,
44 circuit courts, and justices of the Supreme Court of Appeals. ~~For purposes of this article, the terms~~
45 ~~do not mean, refer to or include family court judges~~

46 (b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value
47 computed upon the basis of the mortality table and interest rates as set and adopted by the
48 retirement board in accordance with the provisions of this article: *Provided,* That when used in
49 the context of compliance with the federal maximum benefit requirements of Section 415 of the
50 Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and
51 interest rates required to comply with those requirements.

52 (c) “Beneficiary” means any person, except a member, who is entitled to an annuity or
53 other benefit payable by the retirement system.

54 (d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-
55 1 *et seq.* of this code.

56 (e) “Final average salary” means the average of the highest 36 consecutive months’
57 compensation received by the member as a judge of any court of record of this state.

58 (f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
59 amended.

60 (g) “Member” means a judge participating in this system.

61 (h) “Plan year” means the 20-month period commencing on July 1 of any designated year
62 and ending the following June 30.

63 (i) “Required beginning date” means April 1 of the calendar year following the later of: (i)
64 The calendar year in which the member attains age 70 and $4\frac{1}{2}$ one-half years; or (ii) the calendar
65 year in which the member retires or otherwise separates from covered employment.

66 (j) "Retirement system" or "system" means the Judges' Retirement System created and
67 established by this article. Notwithstanding any other provision of law to the contrary, the
68 provisions of this article are applicable only to family court judges, circuit judges, and justices of
69 the Supreme Court of Appeals in the manner specified in this article. ~~No service as a family court
70 judge may be construed to qualify a person to participate in the Judges' Retirement System or
71 used in any manner as credit toward eligibility for retirement benefits under the Judges'
72 Retirement System~~

NOTE: The purpose of this bill is to include family court judges in the Judges' Retirement System.

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