S T A T E O F N E W Y O R K

1113

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. MAZIARZ, SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT relating to constituting chapter 64-C of the consolidated laws, in relation to creating the volunteer peace officers' benefit law; and to amend the executive law and the general municipal law, in relation to volunteer peace officer programs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 64-C of the consolidated laws is added to read as follows:

CHAPTER 64-C OF THE CONSOLIDATED LAWS
VOLUNTEER PEACE OFFICERS' BENEFIT LAW

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ARTICLE I
SHORT TITLE; PURPOSE; DEFINITIONS

Section 1. Short title.
2. Purpose.
3. Definitions.

S 1. Short title. This chapter shall be known and may be cited as the "volunteer peace officers' benefit law".

S 2. Purpose. In recognition of the unselfish service given to the people of New York state by these volunteer peace officers, government has undertaken to provide for them and their families some measure of protection against loss from death or injuries in the line of duty. This chapter establishes a system of benefits for volunteer peace officers

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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and provides for the administration of such system by the workers' compensation board and the chairman of such board.

It is hereby declared that this chapter is intended to effectuate the objects and purposes of section eighteen of article one of the state constitution and that the relationship between the political subdivision or law enforcement agency liable for benefits under this chapter and a volunteer peace officer entitled to such benefits is that of employer and employee within the meaning of such provision of the state constitution.

S 3. Definitions. As used in this chapter:

1. "Volunteer peace officer" means an active volunteer member of a law enforcement agency as specified on a list regularly maintained by that agency for the purpose of this chapter.

2. "Law enforcement agency" means any police department, sheriff's office, local child protective services agency, society for the prevention of cruelty to animals, or any agency authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of criminal law.

3. "Line of duty" means the performance by a volunteer as a volunteer peace officer of the duties and activities for which the volunteer peace officer does not receive any remuneration or a gratuity and shall be deemed to include any date of injury as determined by the workers' compensation board pursuant to the provisions of section forty-one of this chapter. The following shall not be deemed to be remuneration or a gratuity: reimbursement of expenses for meals, lodging and actual and necessary travel; the receipt of a mileage allowance in lieu of travel expense; and the acceptance of transportation, food, drink, shelter, clothing and similar items while on duty or engaged in such activities.

4. "Injury" means any disablement of a volunteer peace officer that results from services performed in the line of duty and such disease or infection as may naturally and unavoidably result from an injury.

5. "Child" includes a posthumous child, a child legally adopted prior to the injury of the volunteer peace officer; and a step-child or acknowledged child born out of wedlock dependent upon the deceased volunteer peace officer.

6. "Surviving spouse" means the legal wife of a deceased male volunteer peace officer or the legal husband of a deceased female volunteer peace officer, as the case may be, but shall not include a spouse who has abandoned the deceased. The term "abandoned", as used in this subdivision, means such an abandonment as would be sufficient under section two hundred of the domestic relations law to sustain a judgment of separation on that ground.

7. "Dependent" means a surviving spouse entitled to receive benefits under this chapter, whether or not actually dependent upon a volunteer peace officer, unless a contrary meaning is clearly intended.

8. "Earning capacity", except as herein provided, means:

a. The ability of a volunteer peace officer to perform on a five day or six day basis either the work usually and ordinarily performed by him or her in his or her remunerated employment or other work which for any such worker would be a reasonable substitute for the remunerated employment in which he or she was employed at the time of his or her injury, or

b. The ability of a volunteer peace officer to perform on a five day or six day basis either the work usually and ordinarily performed by him or her in the practice of his or her profession or in the conduct of his or her trade or business, including farming, and from which he or she

could derive earned income or other work which for any such person would be a reasonable substitute for the profession, trade or business in which he or she was engaged at the time of his or her injury.

Every volunteer peace officer shall be considered to have earning capacity and, if the provisions of paragraphs a and b of this subdivision are not applicable in any given case, the workers' compensation board, in the interest of justice, shall determine the reasonable earning capacity of the volunteer peace officer with due regard to the provisions of such paragraphs and the work he or she reasonably could be expected to obtain and for which he or she is qualified by age, education, training and experience. The ability of a volunteer peace officer to perform the duties of a volunteer peace officer, or to engage in activities incidental thereto, may be considered in determining loss of earning capacity, but the inability of a volunteer peace officer to perform such duties or to engage in such activities shall not be a basis of determining loss of earning capacity.

9. "State" means all territory within the boundaries of the state of New York, including territory which has been or may hereafter be ceded to the federal government or to the United Nations and territory within the boundaries of Indian reservations.

10. "Political subdivision" means a county, city, town, village or fire or law enforcement agency.

11. "State fund" means the state insurance fund provided for in article six of the workers' compensation law.

12. "County plan of self-insurance" means a county plan of self-insurance under article five of the workers' compensation law.

13. "Insurance carrier" means the state fund, the stock corporations, mutual corporations, group self-insurers or reciprocal insurers described in subdivision nine of section thirty of this chapter, a county plan of self-insurance, or a self-insuring political subdivision. For purposes of this chapter, a nonprofit property/casualty insurance company which is licensed pursuant to subsection (b) of section six thousand seven hundred four of the insurance law shall be deemed a stock corporation and a nonprofit property/casualty insurance company which is licensed as a reciprocal insurer pursuant to subsection (c) of section six thousand seven hundred four of the insurance law shall be deemed a reciprocal insurer.

14. "Fund raising activity" means a fund raising activity described in subdivision one of section two hundred four-a of the general municipal law, except that for the purposes of paragraph k of subdivision one of section five of this chapter it shall not include competitive events in which volunteer peace officers are competitors, such as baseball, basketball, football, bowling, tugs of war, donkey baseball, donkey basketball, boxing, wrestling, contests between bands or drum corps, or other competitive events in which volunteer peace officers are competitors and which involve physical exertion on the part of the competitors. Such term "fund raising activity" shall not include drills, parades, inspections, reviews, competitive tournaments, contests or public exhibitions, described in paragraphs e and h of subdivision one of section five of this chapter, even though prizes are awarded at such events.

ARTICLE II
COVERAGE AND BENEFITS

Section 5. Coverage.
6. Volunteer peace officers' benefits; general.
7. Death benefits.

7-a. Date of death benefits.
8. Permanent total disability benefits.
9. Temporary total disability benefits.
10. Permanent partial disability benefits.
11. Temporary partial disability benefits.
11-a. Repair or replacement of prosthetic devices.
11-b. Hazardous exposures.
12. Nonschedule adjustments.
13. Reclassification of disabilities.
14. Previous disability.
15. Expense for rehabilitating injured volunteer peace officers.
16. Treatment and care.
17. Aliens.
18. Disposition of accrued benefits upon death.
19. Exclusiveness of remedy.
20. Other remedies of volunteer peace officers; subrogation.
21. Assistance to other states, the Dominion of Canada, property ceded to the federal government and to Indian reservations.
22. Revenues and benefits from sources other than this chapter.
23. Assignments, exemptions.
24. Waiver agreements void.
25. Limitation of time.

S 5. Coverage. 1. The duties and activities in relation to which benefits shall be paid and provided pursuant to this chapter are:

a. Necessary travel to, working at, and necessary travel returning from an accident, alarm of accident, or other duty to which his or her law enforcement agency, or any unit thereof, either has responded or would be required or authorized to respond, including necessary travel during such work or incidental thereto.

b. While, within the state, personally assisting another law enforcement agency or any unit thereof, including, after his or her services have been duly accepted, necessary travel to and returning from such work and necessary travel during such work or incidental thereto.

c. While, within the state and pursuant to orders or authorization, performing duties at the law enforcement facility, or elsewhere, directly related to: (1) the prevention of accidents or other disasters, or (2) the delivery of emergency health care.

d. While, within this country or in Canada and pursuant to orders or authorization, instructing or being instructed in lawful duties, attending a training school or course of instruction for volunteer peace officers, or attending or participating in any noncompetitive training program, including necessary travel directly connected therewith.

e. While, within the state, any adjoining state or in Canada and pursuant to orders or authorization, attending or participating in any drill, parade, funeral, inspection or review in which his or her law enforcement agency, or any unit thereof, is engaged, including necessary travel directly connected therewith.

f. While, within the state and pursuant to orders or authorization, attending or working at meetings of his or her law enforcement agency, or any organized unit thereof, at the law enforcement agency or other regular or special headquarters of the department, company or unit, including necessary travel directly connected therewith other than travel to or returning from such meetings.

g. While, within the state and pursuant to orders or authorization, working in connection with the construction, testing, inspection, repair or maintenance of (1) the law enforcement agency facility and the fixtures, furnishings and equipment thereof, and (2) the law enforcement agency vehicles, apparatus and equipment used by the law enforcement agency, or other unit thereof, including necessary travel directly connected therewith other than travel to or returning from such work.

h. While, within the state, any adjoining state or in Canada and pursuant to orders or authorization, practicing for, or participating as a contestant or an official in, any competitive tournament, contest or public exhibition conducted for peace officers which is intended to promote the efficiency of the law enforcement agency or any unit thereof, including necessary travel directly connected therewith other than travel to and returning from such practice. The actual rendition of the law enforcement agency or other emergency service shall not be deemed "practicing" within the meaning of this paragraph.

i. While, pursuant to orders or authorization, engaged in the inspection of vehicles and apparatus prior to delivery under a contract of purchase, or performing duties in relation to the delivery thereof, including necessary travel directly connected therewith.

j. While, within this country or Canada and pursuant to orders or authorization, attending a convention or conference of volunteer peace officers as the authorized delegate or representative of his or her department, or any unit thereof, including necessary travel directly connected therewith.

k. While, within the state and pursuant to orders or authorization, working in connection with a fund raising activity of his or her department, including necessary travel directly connected therewith, but shall not include competitive events in which volunteer peace officers are competitors, such as baseball, basketball, football, bowling, tugs of war, donkey baseball, donkey basketball, boxing, wrestling, contests between bands or drum corps, or other competitive events in which volunteer peace officers are competitors and which involve physical exertion on the part of the competitors.

2. Benefits shall not be paid and provided pursuant to this chapter in the following instances:

a. Work or service rendered by a volunteer peace officer while on a leave of absence pursuant to the general municipal law or pursuant to any other general, special or local law, charter or ordinance or pursuant to the constitution, by-laws, rules or regulations applicable to the department of which he or she is a member.

b. Practice for and participation in any recreational, social, or fund raising activity other than a fund raising activity for which coverage is provided under paragraph k of subdivision one of this section.

c. Work or service rendered by a volunteer peace officer while suspended from duty pursuant to any general, special or local law, charter or ordinance or pursuant to the constitution, by-laws, rules or regulations applicable to the department of which he or she is a member.

d. Work or service not rendered as a volunteer peace officer, but rendered as an officer, official or employee of a public corporation or any special district thereof, whether with or without remuneration, even though by law a requirement for such office, position or employment shall be that such officer, official or employee shall have been or must be a volunteer peace officer.

e. Work or service not rendered as a volunteer peace officer, but rendered in the course of his or her employment for a private employer.

f. Work, service or activities in which the volunteer peace officer has been ordered not to participate. This subdivision shall not be deemed to enumerate all of the activities engaged in by volunteer peace officers for which mandatory coverage is not provided by this chapter, or to prohibit any of the activities described in this subdivision, or to prevent the securing of insurance pursuant to section four thousand two hundred thirty-seven of the insurance law to cover volunteer peace officers when engaged in activities other than those for which mandatory coverage is provided by this chapter.

S 6. Volunteer peace officers' benefits; general. If a volunteer peace officer dies from the effects of injury in the line of duty, or if such a peace officer shall be injured in the line of duty, benefits shall be paid and provided pursuant to this chapter, except that there shall be no liability for such benefits when the injury has been solely occasioned by intoxication of the volunteer peace officer while acting in line of duty or by the wilful intention of the volunteer peace officer to bring about the injury or death of himself, herself or another.

S 7. Death benefits. In the event of death the benefit shall be known as a death benefit and shall be paid as follows:

1. The reasonable funeral expenses of the deceased volunteer peace officer shall be paid in an amount not exceeding three thousand dollars.

If such funeral expenses shall have been paid by a person entitled to benefits under this section or by others, the funeral expenses awarded shall be made payable to such beneficiary or others; otherwise they shall be payable to the undertaker who provided the burial. Funeral expenses shall be awarded in all death cases.

2. If there be a surviving spouse, to such spouse the lump sum of five thousand dollars, but if there be no surviving spouse, then to the executor or administrator of the estate of the volunteer peace officer, the lump sum of five thousand dollars. Such sum shall be in addition to any other benefits provided in this chapter and shall not be diminished by benefits paid to the volunteer peace officer during his or her lifetime. Any money paid to an executor or administrator pursuant to the provisions of this subdivision shall be distributed in the manner provided by the laws of this state for the distribution of the personal property of an intestate decedent.

3. In the case of a death of a volunteer peace officer, on or after the effective date of this chapter, if there be a surviving spouse and no surviving child of the deceased under the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution and no surviving child of any age dependent blind or physically disabled, to such spouse three hundred dollars for each week until remarried, and upon such remarriage the lump sum of thirty-one thousand two hundred dollars.

4. If any person under the age of eighteen years is an inmate of any institution and a public charge upon the state or any political subdivision, the benefits allowed hereunder shall be payable to the state or political subdivision to the extent of the reasonable charges for care and maintenance, during the continuance as a public charge in such institution of such beneficiary and until he or she shall have attained the age of eighteen years. Any sum or sums remaining after such payments shall be distributed as provided in this section.

5. The term "dependent blind or physically disabled", as used in this section in relation to dependent children, means totally blind or physically disabled dependent children whose disablement is total and permanent.

6. All questions of dependency shall be determined as of the time of the injury.

7. The workers' compensation board may in its discretion require the appointment of a guardian for the purpose of receiving benefits payable to a minor child or a dependent blind or physically disabled child. In the absence of such a requirement by such board the appointment of a guardian for such purposes shall not be necessary.

8. In the case of a death of a volunteer peace officer, on or after the effective date of this chapter, that results from services performed in the line of duty, if there be a surviving spouse and a surviving child or children of the deceased under the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution or a surviving child or children of any age dependent blind or physically disabled, to such spouse one hundred sixty-five dollars for each week until remarried, and the additional amount of one hundred thirty-five dollars for each week for such child or children, share and share alike, until the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution or until the removal of the dependency of the blind or physically disabled child or children.

In the case of the death of such surviving spouse, the surviving child or children of the deceased peace officer, at the time under eighteen years of age or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution or dependent through mental or physical infirmity, shall have his or her or their benefit increased to three hundred dollars for each week, share and share alike, and the same shall be payable until he or she or they shall reach the age of eighteen years or twenty-five years, as the case may be, or until such dependent blind or physically disabled condition shall have been removed. Upon the remarriage of such surviving spouse prior to the statutory termination of benefits to all such children, such spouse shall be paid the lump sum of seventeen thousand one hundred sixty dollars; and the surviving child shall continue to receive weekly payments of one hundred thirty-five dollars; if there be two surviving children, each shall receive one hundred twelve dollars and fifty cents per week; and if there be more than two surviving children, they shall receive three hundred dollars per week, share and share alike; and the same shall be payable until he or she or they shall reach the age of eighteen years or twenty-five years, as the case may be, or until such dependent blind or physically disabled condition shall have been removed. Upon statutory termination of payments to all such children, the payments to the surviving spouse shall be increased to three hundred dollars for each week until such spouse remarries, and upon such remarriage, such spouse shall be paid the lump sum of thirty-one thousand two hundred dollars. In no event shall the total amount payable for each week under this subdivision exceed three hundred dollars.

9. In the case of a death of a volunteer peace officer, on or after the effective date of this chapter, that results from services performed in the line of duty, if there be surviving a child or children of the deceased under the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution or a dependent blind or physically disabled child or children of any age, but no surviving spouse, for the support of such child or children until the age of eighteen years or twenty-five years as the case may be, or until the removal of the dependency of such blind

or physically disabled child or children, three hundred dollars, share and share alike, for each week; provided that the total amount payable for each week under this subdivision shall not exceed three hundred dollars per week.

10. In the case of a death of a volunteer peace officer, on or after the effective date of this chapter, that results from services performed in the line of duty, if there be no surviving spouse or child of the deceased under the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution or dependent blind or physically disabled child of the deceased of any age, then for the support of grandchildren or brothers and sisters under the age of eighteen years or under the age of twenty-five years who is enrolled as a full time student in any accredited educational institution if dependent upon the deceased at the time of the injury, one hundred twelve dollars and fifty cents for each week for the support of each such person until the age of eighteen years or twenty-five years as the case may be, and for the support of each parent or grandparent of the deceased, if dependent upon the deceased at the time of the injury, one hundred eighty dollars for each week during such dependency, but in no case shall the aggregate amount payable under this subdivision exceed three hundred dollars per week.

S 7-a. Date of death benefits. All weekly benefits payable under section seven of this article shall accrue as of the date of death of the volunteer peace officer. In the event that a person or persons entitled to weekly benefits shall die before a determination is made on the merits of their claim, and such determination on the merits is ultimately in their favor, then all weekly benefits due from the date of death of the volunteer peace officer up to the date of death of the person or persons entitled to such weekly benefits shall be paid to the executor or administrator of the estate of such person or persons.

S 8. Permanent total disability benefits. In the case of total disability adjudged to be permanent the volunteer peace officer shall be paid four hundred dollars for each week during the continuance thereof. Permanent total disability, within the meaning of this section, shall exist only if the earning capacity of the volunteer peace officer has been lost permanently and totally as the result of the injury. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall, in the absence of conclusive proof to the contrary, constitute permanent total disability, but in all other cases permanent total disability shall be determined in accordance with the facts. Notwithstanding any other provisions of this chapter, an injured volunteer peace officer disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs, or any two thereof shall not suffer any diminution of such weekly benefit by engaging in business or employment provided his or her weekly earnings or wages, when combined with his or her weekly benefit shall not be in excess of six hundred dollars; and further provided that the application of this section shall not result in reduction of benefits which an injured volunteer peace officer who is disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs, or any two thereof would otherwise be entitled to under any other provisions of this article.

S 9. Temporary total disability benefits. In the case of temporary total disability the volunteer peace officer shall be paid three hundred dollars for each week during the continuance thereof.

S 10. Permanent partial disability benefits. 1. In the case of disability partial in character, but permanent in quality, the volunteer peace officer, injured in the line of duty shall be paid one hundred fifty dollars for each week for the period specified in this subdivision as follows:

a. Loss of member.

Member lost	Number of weeks
Arm	312
Leg	288
Hand	244
Foot	205
Eye	160
Thumb	75
First finger	46
Great toe	38
Second finger	30
Third finger	25
Toe other than great toe	16
Fourth finger	15

If more than one phalange of a digit shall be lost, the period shall be the same as for the loss of the entire digit. If only the first phalange shall be lost, the period shall be one-half the period for loss of the entire digit. The period for loss or loss of use of two or more digits, or one or more phalanges of two or more digits, of a hand or foot, may be proportioned to the period for the loss of use of the hand or foot occasioned thereby, but shall not exceed the period for the loss of a hand or foot. If an arm or leg shall be amputated at or above the wrist or ankle, the period for such loss shall be in proportion to the period for the loss of the arm or leg. In the case of loss of binocular vision or of eighty per centum or more of the vision of an eye, the period shall be the same as for the loss of the eye.

b. Loss of hearing. In the case of the complete loss of the hearing of one ear, sixty weeks; for the loss of hearing of both ears, one hundred fifty weeks.

c. Total loss of use. In the case of permanent total loss of use of a member, the compensation shall be the same as for the loss of the member.

d. Partial loss or partial loss of use. Except as above provided in this subdivision, in the case of permanent partial loss or loss of use of a member, the period shall be for the proportionate loss or loss of use of the member. Compensation for permanent partial loss of use of an eye shall be awarded on the basis of uncorrected loss of vision or corrected loss of vision resulting from an injury whichever is greater.

e. Disfigurement. In the case of serious facial or head disfigurement, including a disfigurement continuous in length which is partly in the facial area and also extends into the neck region as described in this paragraph, the volunteer peace officer shall be paid in a lump sum a proper and equitable amount, which shall be determined by the workers' compensation board. If the earning capacity of the volunteer peace officer shall have been impaired, or may in the future be impaired, by any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side, the volunteer peace officer shall be paid in a lump sum a proper and equitable amount which shall be determined by such board. Two or more serious disfigurements, not continuous in length, resulting from the same injury, if partially in the facial

area and partially in such neck region, shall be deemed to be a facial disfigurement. An award, or the aggregate of the awards, to a volunteer peace officer under this paragraph shall not exceed twenty thousand dollars.

f. Total or partial loss or loss of use of more than one member. In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth above in paragraphs a through e, both inclusive, of this subdivision, but not amounting to permanent total disability, the periods for loss or loss of use of each such member or part thereof shall run consecutively.

g. Other cases. In all other cases of permanent partial disability the volunteer peace officer shall be paid for each week, during the continuance thereof, as follows:

(1) If the percentage of loss of earning capacity is seventy-five per centum, or greater, he or she shall be paid one hundred fifty dollars for each week.

(2) If the percentage of loss of earning capacity is fifty per centum, or greater, but less than seventy-five per centum, he or she shall be paid one hundred dollars for each week.

(3) If the percentage of loss of earning capacity is twenty-five per centum, or greater, but less than fifty per centum, he or she shall be paid thirty dollars for each week.

(4) If the percentage of loss of earning capacity is less than twenty-five per centum, he or she shall not be paid any weekly benefit.

Permanent partial disability, within the meaning of this paragraph, shall exist only if the earning capacity of the volunteer peace officer has been permanently and partially lost as the result of the injury. The workers' compensation board shall determine the degree of such disability and such board may reconsider such degree on its own motion or upon application of any party in interest.

2. An award made to a claimant under this section shall in case of death arising from causes other than the injury be payable to and for the benefit of the persons following:

a. If there be a surviving spouse and no child of the deceased under the age of eighteen years, to such spouse.

b. If there be a surviving spouse and surviving child or children of the deceased under the age of eighteen years, one-half shall be payable to the surviving spouse and the other half to the surviving child or children.

c. If there be a surviving child or children of the deceased under the age of eighteen years, but no surviving spouse, then to such child or children.

d. If there be no surviving spouse and no surviving child or children of the deceased under the age of eighteen years, then to such dependent or dependents as defined in section seven of this article, as directed by the workers' compensation board; and if there shall be no such dependents, then to the estate of such deceased in an amount not exceeding reasonable funeral expenses as provided in subdivision one of section seven of this article, or, if there be no estate, to the person or persons paying the funeral expenses of such deceased in an amount not exceeding reasonable funeral expenses as provided in such subdivision one.

S 11. Temporary partial disability benefits. In the case of temporary partial disability the volunteer peace officer shall be paid for each week during the continuance thereof, as follows:

1. If the percentage of loss of earning capacity is seventy-five per centum, or greater, he or she shall be paid one hundred fifty dollars for each week.

2. If the percentage of loss of earning capacity is fifty per centum, or greater, but less than seventy-five per centum, he or she shall be paid one hundred dollars for each week.

3. If the percentage of loss of earning capacity is twenty-five per centum, or greater, but less than fifty per centum, he or she shall be paid thirty dollars for each week.

4. If the percentage of loss of earning capacity is less than twenty-five per centum, he or she shall not be paid any weekly benefit.

Temporary partial disability, within the meaning of this section, shall exist only if the earning capacity of the volunteer peace officer has been temporarily and partially lost as the result of the injury. The workers' compensation board shall determine the degree of such disability and such board may reconsider such degree on its own motion or upon application of any party in interest.

S 11-a. Repair or replacement of prosthetic devices. If, as a result of services performed in the line of duty, a volunteer peace officer damages or loses any prosthetic devices required to be worn or used by him or her, whether or not he or she is injured, such prosthetic device shall be repaired, or replaced in the discretion of the workers' compensation board, and necessary medical, surgical or other attendance or treatment, nurse and hospital service, in connection therewith shall be furnished, in the same manner as a prosthetic device would be furnished, replaced or repaired and treatment and care provided under the provisions of section sixteen of this article. Damage to or loss of a prosthetic device shall be deemed an injury, except that no disability benefits shall be payable with respect to such injury under sections eight, nine, ten and eleven of this article. The term "prosthetic device" as used in this section includes an artificial limb, artificial eye, eyeglasses, contact lens, hearing aid, denture or dental appliance or any surgical appliance required to be worn or used by the volunteer peace officer, but shall not include shoes or any other article considered as ordinary wearing apparel, whether or not specially constructed.

S 11-b. Hazardous exposures. If, as a result of services performed in the line of duty, a volunteer peace officer is exposed to or comes in contact with any poisons, gases, x-rays, radium, radioactive materials or other potentially harmful substances or matter, the captain or other executive officer of the department, or law enforcement agency of which he or she is a member may authorize the volunteer peace officer to obtain such examinations, tests, treatment and care as are immediately necessary to determine whether he or she is injured. Any such authorization may be granted prior to the giving of a notice of injury under this chapter. In any such case, the volunteer peace officer shall be deemed to have been injured and shall be entitled to treatment and care and disability benefits as provided in this chapter.

S 12. Nonschedule adjustments. Notwithstanding any other provision of this chapter, in any case coming within the provisions of sections ten and eleven of this article, in which the right to benefits has been established and benefits have been paid for not less than three months, in which the continuance of disability cannot be ascertained with reasonable certainty, the workers' compensation board may, in the interest of justice, approve a nonschedule adjustment agreed to between the claimant and the political subdivision liable for the payment of benefits or its insurance carrier. The provisions of subdivision five-b of

section fifteen of the workers' compensation law shall apply in any such case.

S 13. Reclassification of disabilities. Subject to the limitations in section fifty-one of this chapter and in section one hundred twenty-three of the workers' compensation law as made applicable to this chapter by section fifty-seven of this chapter, the workers' compensation board may at any time, without regard to the date of the injury, upon its own motion, or on application of any party in interest, reclassify a disability upon proof that there has been a change in condition, or that the previous classification was erroneous and not in the interest of justice.

S 14. Previous disability. The fact that a volunteer peace officer has suffered previous disability or received benefits therefor as provided in the workers' compensation law, or this chapter shall not preclude him or her from benefits for a later injury nor preclude death benefits for death resulting therefrom; provided, however, that a volunteer peace officer who is suffering from a previous disability shall not receive benefits for a later injury in excess of the benefits allowed for such injury when considered by itself and not in conjunction with the previous disability. Notwithstanding the foregoing provisions of this section, if a volunteer peace officer has previously incurred permanent partial disability through the loss or loss of use of one hand, one arm, one foot, one leg, or one eye, and suffers the loss or loss of use of another such major member or eye, he or she may be adjudged permanently totally disabled and receive benefits for permanent total disability as provided in section eight of this article.

S 15. Expense for rehabilitating injured volunteer peace officers. A volunteer peace officer, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state education department is being rendered fit to engage in a remunerative occupation, may receive such additional financial benefit necessary for his or her rehabilitation as the workers' compensation board shall determine. Not more than thirty dollars per week of such additional amount shall be expended for maintenance. Such expense and such of the administrative expenses of the state education department as are properly assignable to the expenses of rehabilitating such volunteer peace officers shall be paid out of the vocational rehabilitation fund created pursuant to subdivision nine of section fifteen of the workers' compensation law. Any such volunteer peace officer for the purposes of such fund shall be considered an employee of the political subdivision or law enforcement agency liable for the payment of benefits to such volunteer peace officer under this chapter and such "employer" or its insurance carrier, as the case may be, shall make the same financial contribution to such fund as required by subdivision nine of section fifteen of the workers' compensation law in every case of injury causing death of a volunteer peace officer in which there are no persons entitled to financial benefits under this chapter other than (1) funeral expenses and (2) the death benefit provided in subdivision two of section seven of this article.

S 16. Treatment and care. A volunteer peace officer injured in the line of duty shall be entitled to receive medical, surgical, podiatric, chiropractic, psychological and other attendance and treatment, nurse and hospital service, medicine, crutches, artificial members, devices, appliances, and apparatus, including the replacement and repair thereof, for such period as the nature of the injury or the process of recovery may require and the political subdivision or law enforcement agency

liable for the payment of benefits to the volunteer peace officer under this chapter because of such injury shall be liable therefor and the cost thereof shall be audited, raised and paid as provided in section thirty of this chapter. The provisions of sections thirteen through thirteen-m, inclusive, and sections nineteen through nineteen-b, inclusive, of the workers' compensation law, to the extent that such provisions are not inconsistent with this chapter, shall be applicable in relation to any injured volunteer peace officer, political subdivision and third persons as fully as if set forth in this chapter.

S 17. Aliens. Financial benefits payable under this chapter to aliens not residents or about to become nonresidents of the United States or Canada shall be in the same amount as provided for residents, except that dependents in any foreign country shall be limited to surviving spouse and child or children, or, if there be no surviving spouse or child or children, to the surviving father or mother whom the volunteer peace officer has supported, either wholly or in part, for a period of one year prior to the date of the injury.

S 18. Disposition of accrued benefits upon death. Except as otherwise provided in section ten of this article, in the case of the death of an injured volunteer peace officer to whom there was due at the time of his or her death any benefits under the provisions of this chapter, the amount of such benefits shall be payable to the surviving spouse, if there be one, or, if none, to the surviving child or children of the deceased under the age of eighteen years, and if there be no surviving spouse or children, then to the dependents of such deceased or to any of them as the workers' compensation board may direct, and if there be no surviving spouse, children or dependents of such deceased, then to his or her estate. An award for disability may be made after the death of an injured volunteer peace officer.

S 19. Exclusiveness of remedy. The benefits provided by this chapter shall be the exclusive remedy of a volunteer peace officer, or his or her spouse, parents, dependents, next of kin, executor or administrator, or anyone otherwise entitled to recover damages, at common law or otherwise, for or on account of an injury to a volunteer peace officer in the line of duty or death resulting from an injury to a volunteer peace officer in the line of duty, as against:

1. the political subdivision or law enforcement agency liable for the payment of such benefits,

2. the political subdivision regularly served by the law enforcement agency of which the volunteer peace officer is a member, whether or not pursuant to a contract for law enforcement services, even though any such political subdivision is not liable for the payment of such benefits in the circumstances, and

3. any person or company acting under governmental or statutory authority in furtherance of the duties or activities in relation to which any such injury resulted; provided, however, that the benefits provided by this chapter shall not be the exclusive remedy as against persons who, in the furtherance of the same duties or activities, are not similarly barred from recourse against the volunteer peace officer, or his or her executor or administrator.

S 20. Other remedies of volunteer peace officers; subrogation. The provisions of section twenty-nine of the workers' compensation law to the extent that such provisions are not inconsistent with the provisions of this chapter, shall be applicable as fully as if set forth in this chapter.

S 21. Assistance to other states, the Dominion of Canada, property ceded to the federal government and to Indian reservations. 1. Whenever a department in this state shall answer a call to furnish assistance to any political subdivision or territory of another state of the United States or of the Dominion of Canada, or property ceded to the federal government, the provisions of this chapter shall apply with respect to the volunteer peace officers of such department, while such assistance is being rendered or while going to or returning from the place from where the assistance is to be or was rendered, to the same extent and in the same manner as if such service had been rendered in or for the area regularly served by such volunteer peace officer; provided, however, that there shall be deducted from any amounts payable under this chapter any amounts recoverable by or payable to any such volunteer peace officer under the laws applicable in the political subdivision or territory for which the call for assistance was made.

2. The provisions of this chapter shall apply with respect to volunteer peace officers of departments of other states of the United States and of the Dominion of Canada who render service in this state in answer to a call for assistance to the territory regularly served by a law enforcement agency described in subdivisions one through five, inclusive, of section thirty of this chapter and, for the purposes of determining liability for benefits under this chapter, any such volunteer peace officer shall be considered as a volunteer member of the department of the territory for which service has been rendered in this state pursuant to a call for assistance; provided that the laws of the state served by such volunteer peace officers, departments or law enforcement agency, or of the Dominion of Canada, as the case may be, contain provisions under which benefits are granted in relation to volunteer peace officers of this state who are killed or injured when rendering service in such other states, or the Dominion of Canada, as the case may be, in answer to a call for assistance; provided, however, that there shall be deducted from any amounts payable under the provisions of this chapter to a volunteer peace officer of such other states or of the Dominion of Canada, any amounts recoverable by or payable to such volunteer peace officer under the laws of the state served by such volunteer peace officer or of the Dominion of Canada, as the case may be.

3. Whenever a law enforcement agency in this state shall answer a call for assistance to be rendered to any part of an Indian reservation the provisions of this chapter shall apply with respect to the volunteer peace officers of such law enforcement agency or department, while such assistance is being rendered or while going to or returning from the place from where the assistance is to be or was rendered, to the same extent and in the same manner as if such service had been rendered in or for the area regularly served by such volunteer peace officers.

S 22. Revenues and benefits from sources other than this chapter. 1. Benefits, savings or insurance of the injured or deceased volunteer peace officer, or insurance carried for his or her benefit under subsection (a) of section four thousand two hundred thirty-seven of the insurance law, shall not be considered in determining the benefits to be paid and provided under this chapter, nor shall such benefits be diminished or reduced by reason of the payment to an injured volunteer peace officer of salary, wages or other remuneration by any political subdivision liable for the payment of such benefits.

2. Benefits received from any political subdivision pursuant to service award payments authorized by article eleven-AA of the general

municipal law shall not be considered in determining the benefits to be paid and provided under this chapter.

S 23. Assignments, exemptions. Benefits payable under this article shall not be assigned, released or commuted, except as provided by this chapter, and shall be exempt from all claims of creditors and from levy, execution and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived. Such benefits shall be paid only to volunteer peace officers or their dependents except as otherwise provided in this chapter.

S 24. Waiver agreements void. No agreement by a volunteer peace officer to waive his or her right to benefits under this chapter shall be valid.

S 25. Limitation of time. No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor so long as he has no committee or guardian.

ARTICLE III

LIABILITY FOR BENEFITS; INSURANCE

Section 30. Liability for and payment of benefits.
31. The insurance contract.
32. Group insurance.

S 30. Liability for and payment of benefits. Except as otherwise provided in article five of the workers' compensation law and in section twenty-one of this chapter:

1. If at the time of injury the volunteer peace officer was a member of a law enforcement agency of a county, city, town, village or law enforcement agency, any benefit under this chapter shall be a county, city, town, village or law enforcement agency charge, as the case may be, and any claim therefor shall be audited in the same manner as other claims against the county, city, town, village or law enforcement agency and the amount thereof shall be raised and paid in the same manner as other county, city, town, village or law enforcement agency charges.

2. If at the time of injury the volunteer peace officer was a volunteer member of a law enforcement agency which uses volunteer peace officers, any benefit under this chapter shall be a city, village or law enforcement agency charge, as the case may be, and any claim therefor shall be audited in the same manner as other claims against the city, village or law enforcement agency and the amount thereof shall be raised and paid in the same manner as other city, village or law enforcement agency charges.

3. If at the time of injury the volunteer peace officer was a member of a law enforcement agency and located outside of a city, village or law enforcement agency any benefit under this chapter shall be a town charge and any claim therefor shall be audited and paid in the same manner as town charges and the amount thereof raised upon the property liable to taxation in such outside territory protected by such law enforcement agency in the same manner as town charges therein are raised.

4. If at the time of injury the volunteer peace officer was a member of a law enforcement agency operating in, or maintained jointly by two or more villages, or two or more towns, or two or more law enforcement agencies, any benefit under this chapter shall be a charge against such villages, towns or law enforcement agencies, in the proportion that the full valuation of taxable real estate in each bears to the aggregate full valuation of the taxable real estate of all such villages, towns or law enforcement agencies and the amount thereof shall be audited, raised and paid in the same manner as other village, town or law enforcement

agency charges. Full valuation shall be determined by dividing the assessed valuations of taxable real estate of each such village, town or law enforcement agency as shown by the latest completed assessment roll of the village, town or law enforcement agency by the equalization rate established by the authorized state agency or officer for such roll; provided, however, in a county having a county department of assessment the full valuation in towns and law enforcement agencies shall be determined by applying the state equalization rate established for the town, or the town in which the law enforcement agency is located, to the appropriate portion of the last completed county roll.

5. Any political subdivision may finance the payment of any benefits to be paid and provided under this chapter by the issuance of serial bonds or capital notes pursuant to the local finance law unless it is required by some law, other than this chapter, to pay such benefits from current funds.

6. Any political subdivision may contract for insurance indemnifying against the liability imposed by this chapter and the cost of such insurance shall be audited, raised and paid in the same manner as benefits are required to be audited, raised and paid in this section.

7. Insurance authorized to be purchased pursuant to subdivision seven of this section may be secured from the state fund or any stock corporation, mutual corporation, group self-insurers or reciprocal insurer authorized to transact the business of workers' compensation in this state. If such insurance is not secured, the political subdivision liable shall be deemed to have elected to be a self-insurer unless it is a participant in a county plan of self-insurance or its liability for benefits under this chapter is covered by a town's participation in a county plan of self-insurance as provided in subdivision nine of section sixty-three of the workers' compensation law. Every such self-insurer shall file with the chair of the workers' compensation board a notice of such election prescribed in form by such chair. For failure to file such notice within ten days after such election is made, the treasurer or other fiscal officer of such political subdivision shall be liable to pay to the chair of the workers' compensation board the sum of one hundred dollars as a penalty, to be transferred to the state treasury. A notice of election to be a self-insurer for compensation and benefits to volunteer peace officers under the provisions of the workers' compensation law and the general municipal law in effect prior to March first, in the year of the effective date of this chapter, which was filed prior to such date pursuant to the provisions of subdivision four of section fifty of the workers' compensation law as in effect prior to such date shall be deemed to be a notice of election filed under this section unless the chair of the workers' compensation board is notified to the contrary. The provisions of subdivision five of section fifty of the workers' compensation law shall be applicable to such self-insurers.

8. The governing board of a political subdivision liable for the payment of such benefits may authorize the treasurer or other fiscal officer thereof to pay the financial benefits provided for in this chapter to the person entitled thereto without waiting for an award in any case in the manner provided in section forty-nine of this chapter. The amount payable prior to an award pursuant to such authorization shall constitute a settled claim within the meaning of the local finance law.

9. Where a city, village, or town is furnished service by law enforcement agency, or any unit thereof pursuant to a contract entered into prior to the enactment date of this chapter with another city, village, law enforcement agency, having its headquarters outside the city,

village or law enforcement agency receiving such service and the liability for benefits under this chapter in relation to volunteer peace officers rendering such service pursuant to such contract on and after the effective date of this chapter is not covered pursuant to a county self-insurance plan pursuant to section sixty-three of the workers' compensation law, the contract may be amended after a public hearing held in the manner provided by law for the amendment of any such contract, or at the option of the contracting parties without a public hearing, to provide for payment by the city, village or law enforcement agency receiving such service to the city, village, law enforcement agency or town in which such law enforcement agency has its headquarters, of a sum in addition to the amount to be paid for such service pursuant to the contract, to provide for any increase in cost, or new or added cost, to such city, village, law enforcement agency or town for insurance coverage for liability for benefits under this chapter on and after the effective date of this chapter, by reason of the service rendered pursuant to such contract. Where such service is received pursuant to a contract entered into prior to the effective date of this chapter with a law enforcement agency having its headquarters outside the city, village or law enforcement agency receiving such service, then whether or not such contract is amended as provided in this section, or a contract entered into on or after the effective date of this chapter so provides, a city, village or law enforcement agency receiving such service on and after the effective date of this chapter pursuant to a contract, shall pay to the city, village, or town in which such law enforcement agency has its headquarters a sum in addition to the amount to be paid for such service pursuant to the contract, to provide for any increase in cost, or new or added cost, to such city, village, law enforcement agency or town for insurance coverage for the liability for benefits under this chapter on and after the effective date of this chapter by reason of the service rendered pursuant to such contract. Any such additional sum so paid shall not be subject to division with a law enforcement agency as otherwise provided by law in the case of contracts for such service.

S 31. The insurance contract. 1. The provisions of subdivisions one, two, four, five and seven of section fifty-four of the workers' compensation law, in relation to the insurance contract, which are not inconsistent with this chapter, shall be applicable as fully as if set forth herein. The insurance carrier shall be a party to all hearings and determinations by the workers' compensation board or the courts and shall have the right to raise or plead any defense available to the political subdivision liable in the first instance for the benefits to be paid and provided by this chapter.

2. A contract of insurance indemnifying against the liability imposed by this chapter issued by an insurance carrier to a county or a town and in force on or after the effective date of such chapter, shall contain a provision reading as follows: "This contract does not provide (a) any coverage under the workers' compensation law or the volunteer peace officers' benefit law for which any law enforcement agency would be liable under such laws, (b) any workers' compensation benefits for volunteer peace officers and employees for which any law enforcement agency would be liable under the workers' compensation law, or (c) any volunteer peace officers' benefits for any volunteer peace officers for which any law enforcement agency would be liable under the volunteer peace officers' benefit law." The foregoing provision does not apply in relation to volunteer peace officers' benefit coverage and volunteer peace officers' benefits provided for and in relation to the following

named law enforcement agencies which have expressly requested coverage under this contract pursuant to the provisions of section thirty-two of this article, to wit: (If there are no exceptions, enter "No exceptions").

3. An insurance contract to indemnify against liability imposed by this chapter originally issued to take effect on or after March first, next succeeding the effective date of this chapter, and any renewal thereof, (a) shall be a separate and distinct contract, (b) shall not be attached as an endorsement or rider to, or in any other way form a part of, a workers' compensation insurance contract, (c) shall not have attached thereto any endorsement or rider covering any liability under the workers' compensation law and (d) shall not be on a contract form used by the insurance carrier for the purpose of insuring employers against liabilities imposed by the workers' compensation law, or is attached to any such form as an endorsement or rider.

4. An insurance contract to indemnify against liability imposed by this chapter originally issued to take effect prior to the effective date of such chapter, shall not be renewed to continue in effect on or after March first, in the year of the effective date of this chapter, if (a) it is attached as an endorsement or rider to, or in any other way forms a part of, a workers' compensation insurance contract, (b) it has attached thereto any endorsement or rider covering liability under the workers' compensation law or (c) it is on a contract form used by the insurance carrier for the purpose of insuring employers against liabilities imposed by the workers' compensation law, or is attached to any such form as an endorsement or rider.

S 32. Group insurance. 1. Notwithstanding any provision of section thirty of this article, any town may contract for a single policy of insurance indemnifying (a) all law enforcement agencies wholly within such town which are liable for the payment of benefits under this chapter, (b) all territory within such town outside cities, villages and law enforcement agencies which is liable for the payment of benefits under this chapter, and (c) the town in relation to such law enforcement agencies, and outside territory, against liability imposed by this chapter. If a town has any such liability and contracts for such a single policy, then and in that event only any such policy, if requested by the board of trustees of any village wholly within the town, or by the board of commissioners of any law enforcement agency wholly within the town, shall also indemnify such village or law enforcement agency against such liability. The cost of such insurance shall be a town charge and shall be levied and collected in the same manner as other town charges only in the territory of such town which is liable for the payment of benefits under this chapter and which is outside of any village and law enforcement agencies not covered by such a policy. Nothing in this section contained shall impose any additional liability on any town for any benefit payments in relation to volunteer peace officers.

2. Notwithstanding any other provision of section thirty of this article, any group of cities, villages, law enforcement agencies or town boards acting for and on behalf of law enforcement agencies or territories outside any such municipal corporations or districts which are liable for the payment of benefits under this chapter, all of which cities, villages, districts and territories are located in whole or in part within one county, may elect by resolution of the governing board of each member of the group to be insured against liability imposed by this chapter, as a group under a single policy. Such resolutions shall be filed with the chairman of the board of supervisors. The group shall

file with the chairman of the board of supervisors an agreement, signed by the officer of the governing body designated by such resolution, agreeing to the effective date of such policy and to the population of each such city, village, law enforcement agency and such territory outside any such municipal corporation or district, and, if any such law enforcement agency lies wholly or partly within two or more towns, the population of the district within each such town. The population shall be that which is shown by the latest federal census, or, if not shown by such census, then as estimated. The estimate used for any village, district or other area in a town plus the estimated or actual population of all other villages, districts and areas in such town shall not exceed the population of such town as shown by the latest federal census. It shall be the duty of the chairman of the board of supervisors of the county, upon the filing of such resolutions and agreement, promptly to contract for insurance indemnifying against the liability imposed by this chapter in the manner provided in section thirty of this article. Except by mutual consent of the participating members, a member may withdraw from such a group only upon the anniversary date of the policy, and then only upon thirty days' notice of withdrawal by mail to the chairman of the board of supervisors. The cost of such insurance shall be apportioned by the clerk of the board of supervisors of the county to each such city, village, law enforcement agency and such territory outside such municipal corporations and districts, in the proportion that the agreed population bears to the entire population of the group. Refunds, dividends and discounts in relation to such insurance shall be distributed or credited according to the same apportionment. Upon notification by the clerk of the board of supervisors, the chief fiscal officer of each such city, village or law enforcement agency shall pay to the county treasurer, from moneys available or made available, the amount apportioned to such city, village or district. Upon like notification, the supervisor of each town in which such law enforcement agency is located in whole or in part, or in which such outside territory is located, shall pay to the county treasurer the amount apportioned for such district, in whole or in part, or territory, as the case may be, using moneys raised or made available for the purposes of service in such district or outside territory, or if there be no such moneys or insufficient moneys, using funds of the town available or made available, which funds shall be a charge upon such district or territory for which the town shall be reimbursed. The county treasurer shall pay the cost of such insurance with such moneys, or if any apportioned share has not been paid, the county treasurer shall advance the amount necessary from moneys of the general fund upon resolution of the board of supervisors. Any such advance shall be repaid as soon as moneys are available therefor. If any apportioned share remains unpaid, the county may recover the same by action at law. If any member of the group shall fail to pay its apportioned share within thirty days after notice that such amount has become due and payable, the chairman of the board of supervisors may terminate the participation of such member in the group by notice by mail to such member on a date specified in the notice, and a copy of such notice shall be filed by the chairman of the board of supervisors with the insurance carrier, who shall notify the chairman of the workers' compensation board of the termination of coverage in the same manner as provided for cancellation of policy under subdivision five of section fifty-four of the workers' compensation law. If any village or law enforcement agency is located in two or more counties, it may elect to join such a group in one of such counties. If any law

enforcement agency includes territory in more than one county, it shall become a participant only if all the town boards acting for and on behalf of such district shall have elected that such district shall become a participant in such a group, and in such case such town boards shall elect as to which county group it shall join. If any participating law enforcement agency includes territory in more than one town, whether or not in more than one county, the amount of cost of insurance, refund, dividend or discount apportioned to such district shall be apportioned in the proportion that the population of the district within each such town bears to the population of the entire district. The figure used for population in such case shall be the one stated in the agreement. If the boundaries of any city, village, law enforcement agency or such outside territory in the group shall be changed during the effective period of any such insurance policy, or if there are changes in the membership of the group, the agreement heretofore mentioned concerning population shall be appropriately amended by a supplementary agreement to be executed and filed in the same manner as the original agreement, in which case the coverage of the policy and the apportionment of the cost thereof shall be changed accordingly.

3. Each policy issued pursuant to subdivisions one and two of this section shall identify clearly each city, town, village, or law enforcement agency and outside territory covered thereby.

ARTICLE IV
PROCEDURE

Section 40. Notice of injury or death.
41. Claim for benefits.
42. Reports of injuries, claims and proceedings.
43. Determination of claims for benefits.
44. Presumptions.
45. Modification of awards, decisions or orders.
46. Appeals.
47. Costs and fees.
48. Representation before the workers' compensation board.
49. Benefits; how payable.
50. Payments pending controversies.
51. Fund for reopened cases.
52. Awards to nonresidents; nonresident compensation fund.
53. Enforcement of payment.
54. Aggregate trust fund.
55. Penalty for false representation.
56. Non-duplication of benefits.
57. Miscellaneous provisions.
58. Application of provisions of workers' compensation law.
59. Liberal construction.
60. Administrative expenses.
61. Death or disability due to disease or malfunction of heart or coronary arteries; claims and procedures.

S 40. Notice of injury or death. Notice of an injury or death for which benefits are to be paid or provided under this chapter shall be given to the political subdivision or the law enforcement agency liable for the payment thereof within ninety days after such injury or death except that such notice need not be given if a claim is filed pursuant to section forty-one of this article within ninety days after such injury or death. Either such notice may be given by any person claiming to be entitled to such benefits or by someone in his or her behalf. The notice shall be in writing, shall contain the name and address of the

volunteer peace officer, and state in ordinary language the time, place, nature and cause of the injury and shall be signed by him or her or by a person on his or her behalf or, in case of death, by any one or more of his or her dependents, or by a person on their behalf. The notice shall be given to the clerk of the board of supervisors of the county, the comptroller or chief financial officer of the city, the town clerk of the town, the clerk of the village, the secretary of the law enforcement agency or the law enforcement agency, as the case may be, by delivering it to such officer or by registered letter properly addressed to such officer. The failure to give notice of injury or notice of death shall be a bar to any claim under this chapter unless such failure is excused by the workers' compensation board on any of the following grounds:

1. that for some sufficient reason the notice could not have been given,

2. that a member of a body in charge of, or any officer of, the law enforcement agency had knowledge within such ninety-day period of the injuries or death,

3. that the political subdivision, or its insurance carrier had not been prejudiced by a delay in giving such notice, or

4. that the cause of disablement or death was not known to be the result of service performed in the line of duty as a volunteer peace officer in sufficient time to comply with the provisions of this section.

S 41. Claim for benefits. The right to claim benefits under this chapter shall be barred, except as hereinafter provided, unless within two years after the injury, or, if death results therefrom, within two years after such death, a claim for the benefits under this chapter shall be filed with the chairman of the workers' compensation board and a copy of such claim shall be filed with the same officer to whom a notice of injury must be given under section forty of this article. The right of a volunteer peace officer or his or her dependents to claim benefits under this chapter for disablement or death, as the case may be, caused by disease shall not be barred by the failure of the volunteer peace officer or his or her dependents to file a claim within either such period of two years, provided such claim shall be filed after either such period of two years and within ninety days after disablement or ninety days after knowledge that the disease is or was due to service as a volunteer peace officer, whichever is the later date. The claim shall be in substantially the same form and shall give substantially the same information as is required to be given in a claim under the provisions of section twenty-eight of the workers' compensation law. Notwithstanding the provisions of any other law, any such claim need not be sworn to, verified or acknowledged. No case in which an advance payment is made to a volunteer peace officer or to his or her dependents in case of death shall be barred by the failure of the volunteer peace officer or his or her dependents to file a claim, and the workers' compensation board may at any time order a hearing on any such case in the same manner as though a claim for benefits had been filed.

The date of injury caused by disease shall be the date of contracture of such disease as determined by the workers' compensation board on the hearing of the claim and the responsibility of the political subdivision liable for the payment of benefits and its insurance carrier shall be fixed by the date of injury as so determined.

S 42. Reports of injuries, claims and proceedings. If an injury is one for which an insurance carrier might be liable under a contract of insurance or a county plan of self-insurance might be required to pay,

the officer to whom a notice of injury is required to be delivered or mailed and with whom the claim in relation to such injury is required to be filed under the provisions of this chapter shall send a copy of such notice and claim and a copy of any notice of a proceeding relating to an injury or claim to such insurance carrier or county plan of self-insurance, as the case may be, promptly after receiving the same. The political subdivision or law enforcement agency liable for the payment of benefits under this chapter shall keep such records and make such reports to the chairman of the workers' compensation board as required by section one hundred ten of the workers' compensation law, which by section fifty-seven of this article is made applicable to this chapter. Failure to comply with the provisions of this section shall not relieve such an insurance carrier of liability or a county plan of self-insurance from its obligation to pay.

S 43. Determination of claims for benefits. The provisions of section twenty of the workers' compensation law shall be applicable as fully as if set forth in this chapter, except that the waiting period of seven days for the presentation of claims for benefits shall not apply to the presentation of claims for benefits under this chapter.

S 44. Presumptions. If a claim for benefits is filed within two years after the injury, or, if death results therefrom, is filed within two years after such death, as provided in section forty-one of this article, then in any proceeding for the enforcement of such claim, it shall be presumed in the absence of substantial evidence to the contrary:

1. That the claim comes within the provisions of this chapter.

2. That sufficient notice thereof was given.

3. That the injury was not occasioned by the wilful intention of the injured volunteer peace officer to bring about the injury or death of himself, herself or another.

4. That the injury did not result solely from the intoxication of the injured volunteer peace officer while acting in line of duty.

5. That the contents of medical and surgical reports introduced in evidence by claimants for benefits shall constitute prima facie evidence of fact as to the matter contained therein.

S 45. Modification of awards, decisions or orders. The provisions of section twenty-two of the workers' compensation law shall be applicable as fully as if set forth in this chapter.

S 46. Appeals. The provisions of section twenty-three of the workers' compensation law shall be applicable as fully as if set forth in this chapter except that reimbursement following modification or recession upon appeal shall be paid from administration expenses as provided by section sixty of this article.

S 47. Costs and fees. The provisions of section twenty-four of the workers' compensation law shall be applicable as fully as if set forth in this chapter.

S 48. Representation before the workers' compensation board. The provisions of section twenty-four-a of the workers' compensation law which are not inconsistent with the provisions of this chapter shall be applicable as fully as if set forth in this chapter.

S 49. Benefits; how payable. Except as otherwise provided in subdivisions one and two of section seven of this chapter, benefits under this chapter shall be paid in the manner provided in section twenty-five of the workers' compensation law. The provisions of such section twenty-five, other than those relating to welfare, pension or benefit plans, agreements and trusts, shall be applicable as fully as if set forth in this chapter.

S 50. Payments pending controversies. In order that the benefits to be paid and provided under this chapter shall be paid promptly where such benefits are conceded to be due to any person because of the death of or injuries to a volunteer peace officer, but controversy exists as to which political subdivision or law enforcement agency is liable for the payment thereof, the municipal corporations, law enforcement agencies involved in such controversy and their insurance carriers, if any, may agree that any one or more of such municipal corporations, law enforcement agency or its insurance carrier shall pay or provide the benefits to, or in relation to, the person conceded to be entitled to such benefits without waiting for a final determination of the controversy, and may carry out the provisions of such an agreement. Notwithstanding any such payment, any party to the agreement may seek a final determination of the controversy in the same manner as if such benefits had not been paid or provided and any such payment or provision of benefits shall not prejudice any rights of the political subdivision, law enforcement agency or its insurance carrier paying or providing the same, nor be taken as an admission against interest. After a final determination the parties to the agreement shall make any necessary and proper reimbursement to conform to the determination.

S 51. Fund for reopened cases. 1. The provisions of section twenty-five-a of the workers' compensation law shall be applicable as fully as if set forth in this chapter, except that, other than with respect to the annual assessment under such section, payments to an executor or administrator of the estate of a volunteer peace officer pursuant to subdivision two of section seven of this chapter shall not constitute payment of benefits for the purpose of determining the amount of the payment to the fund for reopened cases. Benefits paid to volunteer peace officers and other persons entitled to benefits under this chapter from the fund for reopened cases shall be in accordance with the provisions of this chapter.

2. The insurance carrier or entity responsible for payment of benefits paying such benefit increase shall claim for such benefit increase reimbursement from the special fund for reopened cases commencing one year from the date of the first such payment and annually thereafter while such payments continue, on a form prescribed by the chair.

3. All carriers shall pay benefits in conformance with rates set forth in section eight of this chapter without awaiting modification by the board of any prior inconsistent award.

S 52. Awards to nonresidents; nonresident compensation fund. The provisions of section twenty-five-b of the workers' compensation law shall be applicable as fully as if set forth in this chapter.

S 53. Enforcement of payment. 1. The provisions of section twenty-six of the workers' compensation law, other than the portions relating to section fourteen-a, subdivision eight of section fifteen and section fifty of the workers' compensation law, shall be applicable as fully as if set forth in this chapter.

2. The provisions of section fifty-four-b of the workers' compensation law shall be applicable as fully as if set forth in this chapter.

S 54. Aggregate trust fund. The provisions of section twenty-seven of the workers' compensation law which are not inconsistent with the provisions of this section, shall be applicable as fully as if set forth in this chapter with respect to claims for benefits under this chapter.

S 55. Penalty for false representation. If, for the purpose of obtaining any benefit or payment under the provisions of this chapter, or for the purpose of influencing any determination regarding any benefit or

payment under the provisions of this chapter, either for himself, herself or for any other person, any person wilfully makes a false statement or representation, he or she shall be guilty of a misdemeanor.

S 56. Non-duplication of benefits. If benefits are required to be paid under this chapter in the event of injury to or death of a volunteer peace officer, the volunteer peace officer or other persons entitled to such benefits shall not receive workers' compensation under the provisions of the workers' compensation law in relation to such injury or death.

S 57. Miscellaneous provisions. The provisions of article seven of the workers' compensation law which are not inconsistent with the provisions of this chapter shall be applicable as if fully set forth herein. The reference to sections twenty-five-a and fifty of the workers' compensation law in section one hundred twenty-three of the workers' compensation law shall be deemed to refer to sections fifty-one and thirty of this chapter.

S 58. Application of provisions of workers' compensation law. All the powers and duties conferred or imposed upon the chairman of the workers' compensation board and the workers' compensation board by the workers' compensation law which are necessary for the administration of this chapter and not inconsistent with this chapter are, to that extent, made applicable to this chapter, even though such provisions of the workers' compensation law are not expressly made applicable to this chapter by the provisions of this chapter or the workers' compensation law.

S 59. Liberal construction. The provisions of this article relating to giving notice of injury and filing of claim, and to the contents of any such notice or claim, shall be construed liberally in order to effectuate the objects and purposes of this chapter.

S 60. Administrative expenses. 1. The chairman of the workers' compensation board and the department of audit and control, as soon as practicable after April first, next succeeding the effective date of this chapter, and annually as soon as practicable after April first in each year thereafter, shall ascertain the total amount of expenses, including in addition to the direct costs of personal service, the cost of maintenance and operation, the cost of retirement contributions made and workers' compensation premiums paid by the state for or on account of personnel, rentals for space occupied in state owned or state leased buildings, such additional sum as may be certified to the chairman of the workers' compensation board and the department of audit and control as a reasonable compensation for services rendered by the department of law and expenses incurred by such department, and all other direct or indirect costs, incurred by the chairman or the board during the preceding fiscal year in connection with the administration of this chapter and in connection with the preparations for the taking effect thereof. The services and expenses of the members, employees and officers of the board related to this chapter and such preparations shall be apportioned and included in the amount to be assessed. If any officers or employees of the state perform duties directly which in part are related to the administration of this chapter and such preparations and in part not related thereto and if there are other expenses which are incurred jointly in connection with the administration of this chapter and such preparations and in activities not so connected, an equitable apportionment shall be made and only such parts thereof as apply to the administration of this chapter and such preparations shall be chargeable to the administrative expenses as provided in this section.

2. An itemized statement of the expenses so ascertained shall be open to public inspection in the office of the chairman for thirty days after notice to all carriers by publication, before an assessment may be made upon such carriers as hereinafter provided.

3. The expenses of administration, including such expenses for preparation, for the fiscal years ending March thirty-first, in the year of and the year following the effective date of this chapter shall be consolidated and reimbursed by one assessment made after April first, in the year following the year of the effective date of this chapter. The chairman shall as soon as practicable after April first, in the year following the year of the effective date of this chapter, assess upon and collect from each carrier the proportion of such consolidated expenses for the fiscal years ending March thirty-first, in the year of and the year following the effective date of this chapter, and annually thereafter as soon as practicable after the close of each fiscal year the proportion of such expenses for the preceding fiscal year, that the total indemnity benefit payments made by such carrier in such year bore to the total indemnity benefit payments made by all insurance carriers. The amounts so secured shall be used to reimburse the state treasury for appropriations theretofore made by the state for the payment in the first instance of the expenses of administering this chapter and in connection with the preparations for the taking effect thereof.

4. The board shall keep an accurate record of all hearings held. Where the decision of a referee is affirmed by the board upon review, the board shall assess against each insurance carrier seeking such review the sum of twenty-five dollars and may assess against any other party the sum of five dollars. These assessments shall be paid into the state treasury.

5. The provisions of subdivision two of section one hundred fifty-one of the workers' compensation law shall not be applicable with respect to the apportionment and assessment of the expenses of administering this chapter, but shall be applicable with respect to the apportionment and assessment to replenish the fund for reopened cases under section twenty-five-a of the workers' compensation law and section fifty-one of this article.

6. Assessments for the fund for reopened cases and for the operations of the workers' compensation board shall not constitute elements of loss but shall for recoupment purposes be treated as separate costs by carriers. Carriers shall assess such costs on their policyholders in accordance with rules set forth by the New York compensation insurance rating board, as approved by the superintendent of insurance.

7. Notwithstanding the provisions of subdivision three of this section, the chair may require that partial payments for expenses of the fiscal year beginning April first, in the year of the effective date of this chapter, and for each fiscal year thereafter, shall be made on June thirtieth, September thirtieth, December thirty-first and March tenth of each year, or on such other dates as the director of the budget may prescribe, by each insurance carrier, including the state insurance fund. Each such payment shall be a sum equal to twenty-five per centum of the annual expenses assessed upon each carrier, including the state insurance fund, as estimated by the chair. The balance of assessments for the fiscal year beginning April first, in the year of the effective date of this chapter and each fiscal year thereafter, shall be paid upon determination of the actual amount due in accordance with the provisions of subdivision three of this section. Any overpayment of annual assessments resulting from the requirements of this subdivision shall be

refunded or at the option of the chair shall be applied as a credit against the assessment of the succeeding fiscal year. The requirements of this subdivision shall not apply to those carriers whose estimated annual assessment is less than one hundred dollars and such carriers shall make a single payment of the estimated annual assessment on or before September thirtieth of the fiscal year.

8. Commencing with the fiscal year beginning April first, in the year following the year of the effective date of this chapter, the provisions of subdivision six of this section shall be applicable to any county, city, town, village or other political subdivision failing to secure insurance pursuant to subdivisions eight and nine of section thirty of this chapter.

S 61. Death or disability due to disease or malfunction of heart or coronary arteries; claims and procedures. 1. A claim for benefits for the death or disability of a volunteer peace officer due to disease or malfunction of the heart or of one or more coronary arteries filed in accordance with section forty-one of this article, shall not be denied provided the claimant introduces evidence which establishes that a volunteer peace officer suffered disease or malfunction of the heart or of one or more coronary arteries which caused the disablement or death of the volunteer peace officer, and that such disease or malfunction resulted from the duties and activities in which the volunteer peace officer was engaged as set forth in section five of this chapter for which benefits shall be paid, unless it can be shown by substantial evidence to the contrary that the duties and activities of the volunteer peace officer in which the volunteer peace officer was engaged at the time of such disease or malfunction did not cause or precipitate such disease or malfunction; and further provided that the injury did not result solely from the intoxication of the volunteer peace officer while acting in the line of duty or was not occasioned by the wilful intention of the volunteer peace officer to bring about the injury or death of himself, herself or another.

2. The chairman of the workers' compensation board shall promulgate rules and regulations providing a priority for controverted claims for benefits filed as provided in subdivision one of this section. Such rules and regulations shall also prescribe a form to be used for making claims for such benefits. Such form shall specifically request the information necessary in order to receive an award of benefits.

3. This section shall not be construed to repeal by implication any existing provision of law.

ARTICLE V
EFFECT UPON OTHER LAWS

Section 90. References to workers' compensation law.

S 90. References to workers' compensation law. Where the provisions of any section or part of any section of the workers' compensation law are made applicable to this chapter and are incorporated herein by reference, the following terms used in such provisions of the workers' compensation law shall have the following meanings when read in connection with this chapter:

1. "Accident" means "injury" as defined in this chapter.

2. "Surviving spouse" means the legal wife of a deceased male volunteer peace officer or the legal husband of a deceased female volunteer peace officer, as the case may be, but shall not include a spouse who has abandoned the deceased. The term "abandoned", as used in this subdivision, means such an abandonment as would be sufficient under section

two hundred of the domestic relations law to sustain a judgment of separation on that ground.

3. "Employee" means a volunteer peace officer who has been or might be injured in line of duty or who dies or might die from the effects of such an injury.

4. "Employment" means service of a volunteer peace officer in the line of duty.

5. "Employer" means the political subdivision or law enforcement agency liable for payment of financial benefits pursuant to this chapter.

6. "Injury" means "injury" as defined in this chapter.

7. "Injured worker" means injured volunteer peace officer.

8. "Insurance carrier" means "insurance carrier" as defined in this chapter.

9. "Same employ" means the same law enforcement agency, or in the same service for a political subdivision, or district or area thereof, pursuant to a call for assistance.

10. "Workers' compensation" means the benefits payable to a volunteer peace officer or his or her dependents pursuant to this chapter, including medical treatment and care, except when a different meaning obviously is intended.

Where any such section is so made applicable and is so incorporated, and there is a reference therein to another section or provision of the workers' compensation law which also has been made applicable to this chapter, such reference shall be deemed to include the applicable section or provision of this chapter if such inclusion is consistent with the provisions of this chapter.

S 2. Section 837 of the executive law is amended by adding a new subdivision 19 to read as follows:

19. OPERATE A REGISTRY OF VOLUNTEER PEACE OFFICER PROGRAMS ESTABLISHED BY LOCAL MUNICIPALITIES PURSUANT TO SECTION TWO HUNDRED SIX-C OF THE GENERAL MUNICIPAL LAW, AND PRESCRIBE A TRAINING COURSE FOR SUCH PEACE OFFICERS.

S 3. The general municipal law is amended by adding a new section 206-c to read as follows:

S 206-C. VOLUNTEER PEACE OFFICER PROGRAMS. 1. AS USED IN THIS SECTION, A VOLUNTEER PEACE OFFICER SHALL MEAN AN UNPAID EMPLOYEE OF A PROGRAM REGISTERED WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUBDIVISION SEVENTEEN OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW, WHO HAS BEEN TRAINED BY POLICE, SHERIFF OR OTHER ACADEMY APPROVED BY SUCH DIVISION.

2. ANY LOCAL MUNICIPALITY MAY ESTABLISH A VOLUNTEER PEACE OFFICER PROGRAM BY REGISTERING WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES, INCLUDING A ROSTER OF APPLICANTS, ALL OF WHOM SHALL MEET THE QUALIFICATIONS LISTED IN SUBDIVISION THREE OF THIS SECTION.

3. APPLICANTS FOR VOLUNTEER PEACE OFFICER SHALL MEET ALL OF THE FOLLOWING QUALIFICATIONS:

A. BE A CITIZEN OF THE UNITED STATES AND A RESIDENT OF THE STATE OF NEW YORK.

B. BE AT LEAST TWENTY-ONE YEARS OF AGE AND NO MORE THAN SIXTY-FIVE YEARS OF AGE. CONTINUANCE AS A VOLUNTEER PEACE OFFICER DEPENDS ON SUCH PERSON'S ABILITY TO FULFILL ASSIGNED DUTIES AS DETERMINED BY MUNICIPALITIES APPROVED BY A PHYSICIAN IN CONJUNCTION WITH THE PROVISIONS OF THIS SUBDIVISION.

C. PASS A GENERAL PHYSICAL AS PRESCRIBED BY THE HIRING MUNICIPALITY AND GIVEN BY AN AUTHORIZED DOCTOR WHO IS FAMILIAR WITH THE DEMANDS OF ACTIVE POLICE WORK. SUCH PHYSICAL SHALL INCLUDE EYESIGHT CORRECTABLE TO

A MINIMUM STANDARD AS PRESCRIBED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

D. PASS ANY OTHER QUALIFYING TESTS NECESSARY FOR THEIR DUTIES AS PRESCRIBED BY HIRING MUNICIPALITY BY PERSONS QUALIFIED IN THEIR RESPECTIVE AREAS SUCH AS BUT NOT LIMITED TO EYESIGHT, AGILITY AND PSYCHOLOGICAL EXAMS.

E. PASS ONGOING PHYSICAL AND OTHER TESTS AS DEEMED NECESSARY BY THE HIRING MUNICIPALITY TO QUALIFY FOR ONGOING EMPLOYMENT.

F. HAVE A VALID DRIVER'S LICENSE FREE FROM MAJOR MOVING VIOLATIONS.

G. HAVE BOTH A VERBAL AND WRITTEN PROFICIENCY IN THE ENGLISH LANGUAGE.

4. IN ADDITION TO THE REQUIREMENTS OF SUBDIVISION THREE OF THIS SECTION, THE LOCAL MUNICIPALITY SHALL PROVIDE AN INTERVIEW PROCEDURE, INCLUDING THE FINGERPRINTING OF THE INDIVIDUAL. THE FINGERPRINTS SHALL BE USED AS A CHECK ON ANY PRIOR CRIMINAL HISTORY WHICH WOULD DISQUALIFY THE APPLICANT FROM PEACE OFFICER STATUS.

5. THE MUNICIPALITY MAY PETITION THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR SPECIFIC LIMITED DUTY WAIVERS AS TO AGE, PHYSICAL CONDITION, DRIVING ABILITY, OR FLUENCY IN ENGLISH.

6. APPLICANT MUST PASS A TRAINING COURSE PRESCRIBED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. THE MUNICIPALITY SHALL ESTABLISH A STANDARD OPERATING PROCEDURE, WHICH SHALL BE FILED WITH THE DIVISION, AND WHICH SHALL SET FORTH THE DUTIES ANTICIPATED WHICH MAY INCLUDE UNARMED SELF DEFENSE, USE OF IMPACT AND CHEMICAL WEAPONS; TRAFFIC CONTROL AND DRIVING SKILLS. IF THE OFFICER IS REQUIRED TO CARRY A FIREARM, TRAINING SHALL BE GIVEN AS PRESCRIBED BY THE DIVISION, AND AN APPROPRIATE LICENSE SHALL BE OBTAINED AS PROVIDED IN SECTION 400.00 OF THE PENAL LAW.

7. UPON SUCCESSFUL COMPLETION OF ALL REQUIRED CLASSES AND TESTS, THE APPLICANT WILL BE REGISTERED WITH THE DIVISION AS A VOLUNTEER PEACE OFFICER AND WILL HAVE THE LEGAL STATUS OF A PEACE OFFICER WHILE PERFORMING AUTHORIZED ACTIVITIES WITHIN THE DUTIES ASSIGNED BY THE LOCAL MUNICIPALITY.

S 4. Effect of unconstitutionality in part. If any clause, sentence, paragraph, subdivision, section or part of the volunteer peace officers' benefit law, as established by section one of this act, shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgement shall have been rendered.

S 5. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.