

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3114

By Delegates Street, Gearheart, Kirby, Butler,
Burkhammer, Chiarelli, Mazzocchi, Hillenbrand,
Petitto, Willis and Brooks

[Originating in the Committee on the Judiciary;

Reported on February 21, 2023]

1 A BILL to amend and reenact §5F-2-8 of the Code of West Virginia, 1931, as amended; relating to
2 requiring the denial of severance pay to probationary employees of Department of
3 Transportation who are terminated for failing or refusing to submit to drug or alcohol
4 screens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-8. Special merit-based personnel system for Department of Transportation employees.

1 (a) In order to attract and retain employees in the Department of Transportation, the
2 Secretary of Transportation shall establish a system of personnel administration based on merit
3 principles and scientific methods governing the appointment, promotion, transfer, layoff, removal,
4 discipline, classification, compensation, and welfare of its employees, and other incidents of state
5 employment. All appointments and promotions to positions shall be made solely on the basis of
6 merit and fitness for the position.

7 (b) The Department of Transportation personnel system shall be founded on effective
8 performance management principles that set clear goals, provide efficient and effective services
9 for our citizens, and appraise and reward employees for being responsible and performing as
10 required.

11 (c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to
12 the contrary, employees and positions within the various agencies, boards, commissions, and
13 divisions within the Department of Transportation currently governed by the provisions of §29-6-1
14 *et seq.* of this code shall be subject to the personnel system created pursuant to this section:
15 *Provided*, That such employees and positions shall be deemed to retain their classified or
16 classified-exempt status and all rights and privileges thereof. The employees of the Department of
17 Transportation shall be afforded due process protections through §6C-2-1 *et seq.* of this code or
18 other procedures established by the department that assure all of the protections required by law.

19 (d) The Department of Transportation personnel system is not exempt from the provisions
20 of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the
21 employment process.

22 (e) The Department of Transportation personnel system may not be applied in any manner
23 that would disqualify the department or its agencies, boards, commissions, or divisions for
24 eligibility for any federal funding or assistance.

25 (f) The Division of Personnel shall, upon request of the Secretary of Transportation, take
26 any action necessary to assist the Department of Transportation in completing the transition to the
27 department's personnel system in an orderly and efficient manner.

28 (g) The Secretary of Transportation may propose rules for legislative approval in
29 accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency
30 rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this
31 section.

32 (h) Notwithstanding any provision of this code to the contrary, the Department of
33 Transportation personnel system shall require that any probationary employee of the Department
34 of Transportation who is terminated for failure of a drug or alcohol screen or refusal to take a drug
35 or alcohol screen, shall not be entitled to severance pay.