

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 38

FISCAL
NOTE

BY SENATORS WELD, BOSO, JEFFRIES, AND LINDSAY

[Introduced January 9, 2019; Referred
to the Committee on Pensions; and then to the Committee
on Finance]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §20-7-1 of said code, all relating to pension benefits exempt from state
 3 income taxation; and including Division of Natural Resources police into the class of law-
 4 enforcement officers exempted.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* — The West Virginia adjusted gross income of a resident individual means
 2 his or her federal adjusted gross income as defined in the laws of the United States for the taxable
 3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* — There shall be added to
 5 federal adjusted gross income, unless already included therein, the following items:

6 (1) Interest income on obligations of any state other than this state or of a political
 7 subdivision of any other state unless created by compact or agreement to which this state is a
 8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission,
 10 or instrumentality of the United States, which the laws of the United States exempt from federal
 11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal
 13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
 14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or
 16 securities the income from which is exempt from tax under this article, to the extent deductible in
 17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual
25 under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of
26 medical expenses, as defined in those sections.

27 (c) *Modifications reducing federal adjusted gross income.* — There shall be subtracted
28 from federal adjusted gross income to the extent included therein:

29 (1) Interest income on obligations of the United States and its possessions to the extent
30 includable in gross income for federal income tax purposes;

31 (2) Interest or dividend income on obligations or securities of any authority, commission,
32 or instrumentality of the United States or of the State of West Virginia to the extent includable in
33 gross income for federal income tax purposes but exempt from state income taxes under the laws
34 of the United States or of the State of West Virginia, including federal interest or dividends paid
35 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue
36 Code, for taxable years ending after June 30, 1987;

37 (3) Any amount included in federal adjusted gross income for federal income tax purposes
38 for the taxable year that is not included in federal adjusted gross income under this article for the
39 taxable year;

40 (4) The amount of any refund or credit for overpayment of income taxes imposed by this
41 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal
42 income tax purposes;

43 (5) Annuities, retirement allowances, returns of contributions, and any other benefit

44 received under the West Virginia Public Employees Retirement System, and the West Virginia
45 State Teachers Retirement System, including any survivorship annuities derived therefrom, to the
46 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding
47 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of
48 benefits received under the West Virginia Public Employees Retirement System, the West Virginia
49 State Teachers Retirement System and, including any survivorship annuities derived therefrom,
50 to the extent includable in gross income for federal income tax purposes for taxable years
51 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal
52 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total
53 modification under this paragraph shall not exceed \$2,000 per person receiving retirement
54 benefits and this limitation shall apply to all returns or amended returns filed after December 31,
55 1988;

56 (6) Retirement income received in the form of pensions and annuities after December 31,
57 1979, under any West Virginia police, West Virginia Firemen's Retirement System, or the West
58 Virginia State Police Death, Disability, and Retirement Fund, the West Virginia State Police
59 Retirement System, ~~or~~ the West Virginia Deputy Sheriff Retirement System, or the West Virginia
60 Public Employees Retirement System if paid to police officers retired from the Division of Natural
61 Resources, including those formerly classified as conservation officers, including any survivorship
62 annuities derived from any of these programs, to the extent includable in gross income for federal
63 income tax purposes;

64 (7) (A) For taxable years beginning after December 31, 2000, and ending prior to January
65 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the
66 Armed Forces of the United States of America with the product thereof multiplied by the first
67 \$30,000 of military retirement income, including retirement income from the regular Armed
68 Forces, Reserves, and National Guard paid by the United States or by this state after December
69 31, 2000, including any survivorship annuities, to the extent included in gross income for federal

70 income tax purposes for the taxable year.

71 (B) For taxable years beginning after December 31, 2000, the first \$20,000 of military
72 retirement income, including retirement income from the regular Armed Forces, Reserves, and
73 National Guard paid by the United States or by this state after December 31, 2002, including any
74 survivorship annuities, to the extent included in gross income for federal income tax purposes for
75 the taxable year.

76 (C) For taxable years beginning after December 31, 2017, military retirement income,
77 including retirement income from the regular Armed Forces, Reserves and National Guard paid
78 by the United States or by this state after December 31, 2017, including any survivorship
79 annuities, to the extent included in federal adjusted gross income for the taxable year.

80 (D) In the event that any of the provisions of this subdivision are found by a court of
81 competent jurisdiction to violate either the Constitution of this state or of the United States, or is
82 held to be extended to persons other than specified in this subdivision, this subdivision shall
83 become null and void by operation of law.

84 (8) Federal adjusted gross income in the amount of \$8,000 received from any source after
85 December 31, 1986, by any person who has attained the age of 65 on or before the last day of
86 the taxable year, or by any person certified by proper authority as permanently and totally
87 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable
88 in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical
89 certification from a prior year and he or she is still permanently and totally disabled, a copy of the
90 original certificate is acceptable as proof of disability. A copy of the form filed for the federal
91 disability income tax exclusion is acceptable: *Provided, however*, That:

92 (i) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),
93 §11-21-12(c)(6), and §11-21-12(c)(7) of this code is \$8,000 per person or more, no deduction
94 ~~shall be~~ is allowed under this subdivision; and

95 (ii) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),

96 §11-21-12(c)(6), and §11-21-12(c)(7) of this code is less than \$8,000 per person, the total
97 modification allowed under this subdivision for all gross income received by that person shall be
98 limited to the difference between \$8,000 and the sum of modifications under §11-21-12(c)(1),
99 §11-21-12(c)(2), §11-21-12(c)(5), §11-21-12(c)(6), and §11-21-12(c)(7) of this code;

100 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after
101 December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or
102 who had been certified as permanently and totally disabled, to the extent includable in federal
103 adjusted gross income for federal tax purposes: *Provided, That:*

104 (i) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),
105 §11-21-12(c)(6), §11-21-12(c)(7), and §11-21-12(c)(8) of this code is \$8,000 or more, no
106 deduction ~~shall be~~ is allowed under this subdivision; and

107 (ii) Where the total modification under §11-21-12(c)(1), §11-21-12(c)(2), §11-21-12(c)(5),
108 §11-21-12(c)(6), §11-21-12(c)(7), and §11-21-12(c)(8) of this code is less than \$8,000 per person,
109 the total modification allowed under this subdivision for all gross income received by that person
110 shall be limited to the difference between \$8,000 and the sum of §11-21-12(c)(1), §11-21-12(c)(2),
111 §11-21-12(c)(5), §11-21-12(c)(6), §11-21-12(c)(7), and §11-21-12(c)(8) of this code;

112 (10) Contributions from any source to a medical savings account established by or for the
113 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account,
114 to the extent includable in federal adjusted gross income for federal tax purposes: *Provided, That*
115 the amount subtracted pursuant to this subdivision for any one taxable year may not exceed
116 \$2,000 plus interest earned on the account. For married individuals filing a joint return, the
117 maximum deduction is computed separately for each individual;

118 (11) For the 2006 taxable year only, severance wages received by a taxpayer from an
119 employer as the result of the taxpayer's permanent termination from employment through a
120 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of
121 this subdivision:

122 (i) The term “severance wages” means any monetary compensation paid by the employer
123 in the taxable year as a result of permanent termination from employment in excess of regular
124 annual wages or regular annual salary;

125 (ii) The term “reduction in force” means a net reduction in the number of employees
126 employed by the employer in West Virginia, determined based on total West Virginia employment
127 of the employer’s controlled group;

128 (iii) The term “controlled group” means one or more chains of corporations connected
129 through stock ownership with a common parent corporation if stock possessing at least 50 percent
130 of the voting power of all classes of stock of each of the corporations is owned directly or indirectly
131 by one or more of the corporations and the common parent owns directly stock possessing at
132 least 50 percent of the voting power of all classes of stock of at least one of the other corporations;

133 (iv) The term “corporation” means any corporation, joint-stock company, or association
134 and any business conducted by a trustee or trustees wherein interest or ownership is evidenced
135 by a certificate of interest or ownership or similar written instrument; and

136 (12) Any other income which this state is prohibited from taxing under the laws of the
137 United States.

138 (d) *Modification for West Virginia fiduciary adjustment.* — There shall be added to or
139 subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as
140 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
141 21-19 of this code.

142 (e) *Partners and S corporation shareholders.* — The amounts of modifications required to
143 be made under this section by a partner or an S corporation shareholder, which relate to items of
144 income, gain, loss, or deduction of a partnership or an S corporation, shall be determined under
145 §11-21-17 of this code.

146 (f) *Husband and wife.* — If a husband and wife determine their federal income tax on a
147 joint return but determine their West Virginia income taxes separately, they shall determine their

148 West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had
149 been determined separately.

150 (g) *Effective date.* — (1) Changes in the language of this section enacted in the year 2000
151 shall apply to taxable years beginning after December 31, 2000.

152 (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable
153 years beginning after December 31, 2002.

154 (3) Changes in the language of this section enacted in the year 2019 apply to taxable
155 years beginning after December 31, 2019.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

**§20-7-1. Chief natural resources police officer; natural resources police officers; special
and emergency natural resources police officers; subsistence allowance;
expenses.**

1 (a) The division's law-enforcement policies, practices, and programs are under the
2 immediate supervision and direction of the division law-enforcement officer selected by the
3 director and designated as chief natural resources police officer as provided in §20-1-13 of this
4 code.

5 (b) Under the supervision of the director, the chief natural resources police officer shall
6 organize, develop, and maintain law-enforcement practices, means, and methods geared, timed,
7 and adjustable to seasonal, emergency, and other needs and requirements of the division's
8 comprehensive natural resources program. All division personnel detailed and assigned to law-
9 enforcement duties and services under this section shall be known and designated as natural
10 resources police officers and are under the immediate supervision and direction of the chief
11 natural resources police officer except as otherwise provided. All natural resources police officers
12 shall be trained, equipped, and conditioned for duty and services wherever and whenever

13 required by division law-enforcement needs. The chief natural resources police officer may also
14 assign natural resources police officers to perform law-enforcement duties on any trail, grounds,
15 appurtenant facility, or other areas accessible to the public within the Hatfield-McCoy Recreation
16 Area, under agreement that the Hatfield-McCoy Regional Recreation Authority, created pursuant
17 to §20-14-1 *et seq.* of this code, shall reimburse the division for salaries paid to the officers and
18 shall either pay directly or reimburse the division for all other expenses of the officers in
19 accordance with actual or estimated costs determined by the chief natural resources police officer.

20 (c) The chief natural resources police officer, acting under supervision of the director, is
21 authorized to select and appoint emergency natural resources police officers for a limited period
22 for effective enforcement of the provisions of this chapter when considered necessary because
23 of emergency or other unusual circumstances. The emergency natural resources police officers
24 shall be selected from qualified civil service personnel of the division, except in emergency
25 situations and circumstances when the director may designate officers, without regard to civil
26 service requirements and qualifications, to meet law-enforcement needs. Emergency natural
27 resources police officers shall exercise all powers and duties prescribed in §20-7-4 of this code
28 for full-time salaried natural resources police officers except the provisions of §20-7-4(b)(8) of this
29 code.

30 (d) The chief natural resources police officer, acting under supervision of the director, is
31 also authorized to select and appoint as special natural resources police officers any full-time civil
32 service employee who is assigned to, and has direct responsibility for management of, an area
33 owned, leased, or under the control of the division and who has satisfactorily completed a course
34 of training established and administered by the chief natural resources police officer, when the
35 action is considered necessary because of law-enforcement needs. The powers and duties of a
36 special natural resources police officer, appointed under this provision, is the same within his or
37 her assigned area as prescribed for full-time salaried natural resources police officers. The
38 jurisdiction of the person appointed as a special natural resources police officer, under this

39 provision, shall be limited to the division area or areas to which he or she is assigned and directly
40 manages.

41 (e) The Director of the Division of Forestry is authorized to appoint and revoke Division of
42 Forestry special natural resources police officers who are full-time civil service personnel who
43 have satisfactorily completed a course of training as required by the Director of the Division of
44 Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources
45 police officers are set forth by the Director of the Division of Forestry pursuant to §20-3-1 *et seq.*,
46 §19-1A-1 *et seq.*, and §19-1B-1 *et seq.* of this code.

47 (f) The chief natural resources police officer, with the approval of the director, has the
48 power and authority to revoke any appointment of an emergency natural resources police officer
49 or of a special natural resources police officer at any time.

50 (g) Natural resources police officers are subject to seasonal or other assignment and detail
51 to duty whenever and wherever required by the functions, services, and needs of the division.

52 (h) The chief natural resources police officer shall designate the area of primary residence
53 of each natural resources police officer, including himself or herself. Since the area of business
54 activity of the division is actually anywhere within the territorial confines of the State of West
55 Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the
56 area of primary assignment and still within the state.

57 (i) Natural resources police officers shall receive, in addition to their base pay salary, a
58 minimum biweekly subsistence allowance for their required telephone service, dry cleaning, or
59 required uniforms, and meal expenses while performing their regular duties in their area of primary
60 assignment in the amount of \$60 per biweekly pay. This subsistence allowance does not apply to
61 special or emergency natural resources police officers appointed under this section.

62 (j) After June 30, 2010, all those full-time law-enforcement officers employed by the
63 Division of Natural Resources as conservation officers shall be titled and known as natural
64 resources police officers. Wherever used in this code the term "conservation officer", or its plural,

65 means “natural resources police officer”, or its plural, respectively.

66 ~~(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision~~

67 ~~(6), subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable~~

68 ~~to pensions of natural resources police officers paid through the Public Employees Retirement~~

69 ~~System~~

NOTE: The purpose of this bill is to exempt from state income taxation the state pension benefits received by retired Division of Natural Resources police officers.

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