

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3114

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

[Introduced January 27, 2023; Referred to the
Committee on Prevention and Treatment of
Substance Abuse then the Judiciary]

1 A BILL to amend and reenact §29-6-10, of the Code of West Virginia, 1931, as amended; relating
 2 to denying severance pay to probationary employees of Department of Transportation who
 3 are terminated for failing or refusing to submit to drug screens.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate, amend or repeal rules, according to
 2 chapter twenty-nine-a of this code, to implement the provisions of this article:

3 (1) For the preparation, maintenance and revision of a position classification plan for all
 4 positions in the classified service and a position classification plan for all positions in the classified-
 5 exempt service, based upon similarity of duties performed and responsibilities assumed, so that
 6 the same qualifications may reasonably be required for and the same schedule of pay may be
 7 equitably applied to all positions in the same class. Except for persons employed by the governing
 8 boards of higher education, all persons receiving compensation as a wage or salary, funded either
 9 in part or in whole by the state, are included in either the position classification plan for classified
 10 service or classified-exempt service. After each such classification plan has been approved by the
 11 board, the director shall allocate the position of every employee in the classified service to one of
 12 the classes in the classified plan and the position of every employee in the classified-exempt
 13 service to one of the positions in the classified-exempt plan. Any employee affected by the
 14 allocation of a position to a class shall, after filing with the director of personnel a written request for
 15 reconsideration thereof in such manner and form as the director may prescribe, be given a
 16 reasonable opportunity to be heard thereon by the director. The interested appointing authority
 17 shall be given like opportunity to be heard.

18 (2) For a pay plan for all employees in the classified service, after consultation with
 19 appointing authorities and the state fiscal officers, and after a public hearing held by the board.
 20 Such pay plan shall become effective only after it has been approved by the Governor after

21 submission to him or her by the board. Amendments to the pay plan may be made in the same
22 manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of
23 position in which he or she is employed. The principle of equal pay for equal work in the several
24 agencies of the state government shall be followed in the pay plan as established hereby.

25 (3) For open competitive examinations to test the relative fitness of applicants for the
26 respective positions in the classified service. Such examinations need not be held until after the
27 rules have been adopted, the service classified and a pay plan established, but shall be held not
28 later than one year after this article takes effect. Such examinations shall be announced publicly at
29 least fifteen days in advance of the date fixed for the filing of applications therefor, and may be
30 advertised through the press, radio and other media. The director may, however, in his or her
31 discretion, continue to receive applications and examine candidates long enough to assure a
32 sufficient number of eligibles to meet the needs of the service and may add the names of
33 successful candidates to existing eligible lists in accordance with their respective ratings.

34 An additional five points shall be awarded to the score of any examination successfully
35 completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than
36 five points as aforesaid, upon successful completion of any examination.

37 (4) For promotions within the classified service which shall give appropriate consideration
38 to the applicant's qualifications, record of performance, seniority and his or her score on a written
39 examination, when such examination is practicable. An advancement in rank or grade or an
40 increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any
41 benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of a
42 benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is
43 required between two or more employees in the classified service as to who will receive the benefit
44 or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal
45 or similar qualifications, consideration shall be given to the level of seniority of each of the
46 respective employees as a factor in determining which of the employees will receive the benefit or

47 have the benefit withdrawn, as the case may be. When an employee classified in a secretarial or
48 clerical position has, irrespective of job classification, actual job experience related to the
49 qualifications for a managerial or supervisory position, the division shall consider the experience
50 as qualifying experience for the position. The division in its classification plan may, for designated
51 classifications, permit substitution of qualifying experience for specific educational or training
52 requirements at a rate determined by the division.

53 (5) For layoffs by classification for reason of lack of funds or work, or abolition of a position,
54 or material changes in duties or organization, or any loss of position because of the provisions of
55 this subdivision and for recall of employees so laid off, consideration shall be given to an
56 employee's seniority as measured by permanent employment in the classified service or a state
57 agency. In the event that the agency wishes to lay off a more senior employee, the agency must
58 demonstrate that the senior employee cannot perform any other job duties held by less senior
59 employees within that agency in the job class or any other equivalent or lower job class for which
60 the senior employee is qualified: *Provided*, That if an employee refuses to accept a position in a
61 lower job class, such employee shall retain all rights of recall as hereinafter provided.

62 (6) For recall of employees, recall shall be by reverse order of layoff to any job class that
63 the employee has previously held or a lower class in the series within the agency as that job class
64 becomes vacant. An employee will retain his or her place on the recall list for the same period of
65 time as his or her seniority on the date of his or her layoff or for a period of two years, whichever is
66 less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class
67 in the series until all eligible employees on layoff are given the opportunity to refuse that job class.
68 An employee shall be recalled onto jobs within the county wherein his or her last place of
69 employment is located or within a county contiguous thereto. Any laid-off employee who is eligible
70 for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of
71 the employee to notify the agency of any change in his or her address.

72 Notwithstanding any other provision of the code to the contrary, except for the provisions of

73 section seven, article two, chapter five-b of this code, when filling vacancies at state agencies the
74 directors of state agencies shall, for a period of twelve months after the layoff of a permanent
75 classified employee in another agency, give preference to qualified permanent classified
76 employees based on seniority and fitness over all but existing employees of the agency or its
77 facilities: *Provided*, That employment of these persons who are qualified and who were
78 permanently employed immediately prior to their layoff shall not supersede the recall rights of
79 employees who have been laid off in such agency or facility.

80 (7) For the establishment of eligible lists for appointment and promotion within the
81 classified service, upon which lists shall be placed the names of successful candidates in the order
82 of their relative excellence in the respective examinations. Eligibility for appointment from any
83 such list shall continue not longer than three years. An appointing authority shall make his or her
84 selection from the top ten names on the appropriate lists of eligibles, or may choose any person
85 scoring at or above the ninetieth percentile on the examination.

86 For the establishment of eligible lists for preference as provided in subdivision (6) of this
87 section, a list shall be provided according to seniority. An appointed authority shall make the
88 selection of the most senior qualified person: *Provided*, That eligibility for appointment from any
89 such list shall continue not longer than one year and shall cease immediately upon appointment to
90 a classified position.

91 (8) For the rejection of candidates or eligibles within the classified service who fail to
92 comply with reasonable requirements in regard to such factors as age, physical condition,
93 character, training and experience who are addicted to alcohol or narcotics or who have attempted
94 any deception or fraud in connection with an examination.

95 (9) For a period of probation not to exceed one year before appointment or promotion may
96 be made complete within the classified service.

97 (10) For provisional employment without competitive examination within the classified
98 service when there is no appropriate eligible list available. No such provisional employment may

99 continue longer than six months, nor shall successive provisional appointments be allowed,
100 except during the first year after the effective date of this article, in order to avoid stoppage of
101 orderly conduct of the business of the state.

102 (11) For keeping records of performance of all employees in the classified service, which
103 service records may be considered in determining salary increases and decreases provided in the
104 pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of
105 lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

106 (12) For discharge or reduction in rank or grade only for cause of employees in the
107 classified service. Discharge or reduction of these employees shall take place only after the
108 person to be discharged or reduced has been presented with the reasons for such discharge or
109 reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or
110 upon request to appear personally and reply to the appointing authority or his or her deputy:
111 *Provided*, That upon an involuntary discharge for cause, the employer may require immediate
112 separation from the workplace, or the employee may elect immediate separation. If separation is
113 required by the employer in lieu of any advance notice of discharge, or if immediate separation is
114 elected by an employee who receives notice of an involuntary discharge for cause, the employee
115 is entitled to receive severance pay attributable to time the employee otherwise would have
116 worked, up to a maximum of fifteen calendar days following separation: *Provided, however, That*
117 any probationary employee of the Department of Transportation who is terminated for failure of a
118 drug screen or refusal to take a drug screen, shall not be entitled to severance pay. Receipt of
119 severance pay does not affect any other right to which the employee is entitled with respect to the
120 discharge. The statement of reasons and the reply shall be filed as a public record with the
121 director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee
122 shall be discharged from the classified service for absenteeism upon using all entitlement to
123 annual leave and sick leave when such use has been due to illness or injury as verified by a
124 physician's certification or for other extenuating circumstances beyond the employee's control

125 unless his or her disability is of such a nature as to permanently incapacitate him or her from the
126 performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave
127 credits for the reasons specified herein and with certification by a physician that the employee is
128 unable to perform his or her duties, a permanent employee shall be granted a leave of absence
129 without pay for a period not to exceed six months if such employee is not permanently unable to
130 satisfactorily perform the duties of his or her position.

131 (13) For such other rules and administrative regulations, not inconsistent with this article,
132 as may be proper and necessary for its enforcement.

133 (14) The board shall review and approve by rules the establishment of all classified-
134 exempt positions to assure consistent interpretation of the provisions of this article.

135 The provisions of this section are subject to any modifications contained in chapter five-f of
136 this code. The board may include in the rules provided for in this article such provisions as are
137 necessary to conform to regulations and standards of any federal agency governing the receipt
138 and use of federal grants-in-aid by any state agency, anything in this article to the contrary
139 notwithstanding. The board and the director shall see that rules and practices meeting such
140 standards are in effect continuously after the effective date of this article.

NOTE: The purpose of this bill is to deny severance pay to DOT employees for failure of a drug screen or refusal to take a drug screen.

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