

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3280

FISCAL  
NOTE

By Delegates Marple, Dean, Hott, Anderson,  
Zatezalo, Jennings, Adkins, Mallow, Petitto, DeVault,  
and Kimble

[Introduced February 03, 2023; Referred to the  
Committee on Pensions and Retirement then  
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  
 3 income taxation; and including Division of Natural Resources police, deputy sheriffs, full-  
 4 time firefighters, and municipal police officers into the class of law-enforcement officers  
 5 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 his  
 2 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 or  
 10 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 the  
 14 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 an  
19 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 or  
32 instrumentality of the United States or of the State of West Virginia to the extent includable in gross  
33 income for federal income tax purposes but exempt from state income taxes under the laws of the  
34 United States or of the State of West Virginia, including federal interest or dividends paid to  
35 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, to  
50 the extent includable in gross income for federal income tax purposes for taxable years beginning  
51 after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement  
52 system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under  
53 this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation  
54 shall apply to all returns or amended returns filed after December 31, 1988;

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

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

69 purposes for the taxable year.

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

75 (C) For taxable years beginning after December 31, 2017, military retirement income,  
76 including retirement income from the regular Armed Forces, Reserves and National Guard paid by  
77 the United States or by this state after December 31, 2017, including any survivorship annuities, to  
78 the extent included in federal adjusted gross income for the taxable year. For taxable years  
79 beginning after December 31, 2018, retirement income from the uniformed services, including the  
80 Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic  
81 Atmospheric Administration, reserves, and National Guard, paid by the United States or by this  
82 state after December 31, 2018, including any survivorship annuities, to the extent included in  
83 federal adjusted gross income for the taxable year.

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

88 (8) Decreasing modification for social security income.

89 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of  
90 social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited  
91 to, social security benefits paid by the Social Security Administration as Old Age, Survivors and  
92 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
93 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
94 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification

95 from federal adjusted gross income when determining West Virginia taxable income subject to the  
96 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

97 (B) For taxable years beginning on or after January 1, 2021, 65 percent of the social  
98 security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,  
99 social security benefits paid by the Social Security Administration as Old Age, Survivors and  
100 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
101 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
102 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
103 from federal adjusted gross income when determining West Virginia taxable income subject to the  
104 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

105 (C) For taxable years beginning on or after January 1, 2022, 100 percent of the social  
106 security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to,  
107 social security benefits paid by the Social Security Administration as Old Age, Survivors and  
108 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security  
109 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in  
110 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification  
111 from federal adjusted gross income when determining West Virginia taxable income subject to the  
112 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

113 (D) The deduction allowed by §11-21-12(c)(8)(A), §11-21-12(c)(8)(B), and §11-21-  
114 12(c)(8)(C) of this code are allowable only when the federal adjusted gross income of a married  
115 couple filing a joint return does not exceed \$100,000, or \$50,000 in the case of a single individual  
116 or a married individual filing a separate return.

117 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after  
118 December 31, 1986, by any person who has attained the age of 65 on or before the last day of the  
119 taxable year, or by any person certified by proper authority as permanently and totally disabled,  
120 regardless of age, on or before the last day of the taxable year, to the extent includable in federal

121 adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical  
122 certification from a prior year and he or she is still permanently and totally disabled, a copy of the  
123 original certificate is acceptable as proof of disability. A copy of the form filed for the federal  
124 disability income tax exclusion is acceptable: *Provided, however*, That:

125 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this  
126 subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision;  
127 and

128 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this  
129 subsection is less than \$8,000 per person, the total modification allowed under this subdivision for  
130 all gross income received by that person shall be limited to the difference between \$8,000 and the  
131 sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

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

136 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this  
137 subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

138 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this  
139 subsection is less than \$8,000 per person, the total modification allowed under this subdivision for  
140 all gross income received by that person shall be limited to the difference between \$8,000 and the  
141 sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

142 (11) Contributions from any source to a medical savings account established by or for the  
143 individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to  
144 the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the  
145 amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000  
146 plus interest earned on the account. For married individuals filing a joint return, the maximum

147 deduction is computed separately for each individual; and

148 (12) Any other income which this state is prohibited from taxing under the laws of the  
149 United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of  
150 the Internal Revenue Code.

151 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or  
152 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as  
153 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-  
154 21-19 of this code.

155 (e) Partners and S corporation shareholders. — The amounts of modifications required to  
156 be made under this section by a partner or an S corporation shareholder, which relate to items of  
157 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
158 §11-21-17 of this code.

159 (f) Husband and wife. — If husband and wife determine their federal income tax on a joint  
160 return but determine their West Virginia income taxes separately, they shall determine their West  
161 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been  
162 determined separately.

163 (g) Effective date. —

164 (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable  
165 years beginning after December 31, 2000.

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

168 (3) Changes in the language of this section enacted in the year 2019 shall apply to taxable  
169 years beginning after December 31, 2018.

170 (4) Changes in the language of this section enacted in the year 2023 shall apply to tax  
171 years beginning after December 31, 2022.



## 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 section thirteen,  
4 article one of this chapter.

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 required  
13 by division law-enforcement needs. The chief natural resources police officer may also assign  
14 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 article fourteen of this chapter, 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 of  
23 emergency or other unusual circumstances. The emergency natural resources police officers shall  
24 be selected from qualified civil service personnel of the division, except in emergency situations  
25 and circumstances when the director may designate officers, without regard to civil service  
26 requirements and qualifications, to meet law-enforcement needs. Emergency natural resources  
27 police officers shall exercise all powers and duties prescribed in section four of this article for full-  
28 time salaried natural resources police officers except the provisions of subdivision (8), subsection  
29 (b) of said section.

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 of  
34 training established and administered by the chief natural resources police officer, when the action  
35 is considered necessary because of law-enforcement needs. The powers and duties of a special  
36 natural resources police officer, appointed under this provision, is the same within his or her  
37 assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction  
38 of the person appointed as a special natural resources police officer, under this provision, shall be  
39 limited to the division area or areas to which he or she is assigned and directly manages.

40 (e) The Director of the Division of Forestry is authorized to appoint and revoke Division of  
41 Forestry special natural resources police officers who are full-time civil service personnel who  
42 have satisfactorily completed a course of training as required by the Director of the Division of  
43 Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources  
44 police officers are set forth by the Director of the Division of Forestry pursuant to article three of this  
45 chapter and articles one-a and one-b, chapter nineteen of this code.

46 (f) The chief natural resources police officer, with the approval of the director, has the

47 power and authority to revoke any appointment of an emergency natural resources police officer  
48 or of a special natural resources police officer at any time.

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

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

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

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

65 ~~(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision~~  
66 ~~(6), subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to~~  
67 ~~pensions of natural resources police officers paid through the Public Employees Retirement~~  
68 ~~System~~

NOTE: The purpose of this bill relates to pension benefits which are exempt from income taxation. The bill adds Division of Natural Resources police, deputy sheriffs, full-time firefighters, and municipal police officers into the class of law-enforcement officers exempted.

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