

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3280

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

[Originating in the Committee on Finance; February
22, 2023]

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 modifications reducing federal
3 adjusted gross income for certain pension benefits; and authorizing additional
4 modifications for pension benefits paid to Division of Natural Resources police, deputy
5 sheriffs, full-time firefighters, and municipal police officers.

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, the West Virginia
59 Natural Resources Police Officers System, or the West Virginia Public Employees Retirement
60 System if paid to deputy sheriffs, full-time firefighters, municipal police officers or police officers
61 retired from the Division of Natural Resources, including those formerly classified as conservation
62 officers, including any survivorship annuities derived from any of these programs, to the extent
63 includable in gross income for federal 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 Forces,
68 Reserves and National Guard paid by the United States or by this state after December 31, 2000,
69 including any survivorship annuities, to the extent included in gross income for federal income tax
70 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 by
78 the United States or by this state after December 31, 2017, including any survivorship annuities, to
79 the extent included in federal adjusted gross income for the taxable year. For taxable years
80 beginning after December 31, 2018, retirement income from the uniformed services, including the
81 Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic
82 Atmospheric Administration, reserves, and National Guard, paid by the United States or by this
83 state after December 31, 2018, including any survivorship annuities, to the extent included in
84 federal adjusted gross income for the taxable year.

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

89 (8) Decreasing modification for social security income.

90 (A) For taxable years beginning on and after January 1, 2020, 35 percent of the amount of
91 social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited

92 to, social security benefits paid by the Social Security Administration as Old Age, Survivors and
93 Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security
94 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in
95 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
96 from federal adjusted gross income when determining West Virginia taxable income subject to the
97 tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(D) of this code.

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

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

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

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

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

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

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

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

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

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

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

152 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or
153 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
154 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-
155 21-19 of this code.

156 (e) Partners and S corporation shareholders. — The amounts of modifications required to
157 be made under this section by a partner or an S corporation shareholder, which relate to items of
158 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
159 §11-21-17 of this code.

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

164 (g) Effective date. —

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

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

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

171 (4) Changes in the language of this section enacted in the year 2023 shall apply to tax
172 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.~~