

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3305

FISCAL
NOTE

By Delegates Capito, Young, Hornby, Linville and

Willis

[Introduced February 06, 2023; Referred to the
Committee on Economic Development and Tourism
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5B-11-1, §5B-11-2, §5B-11-3, §5B-11-4, §5B-11-5, and §5B-11-6; and to
3 amend said Code, by adding thereto a new section, designated §11-21-4g; and to amend
4 and reenact §11-24-4 of said code; all relating to creating the Small Business and
5 Entrepreneurship Act; requiring annual reports from the Secretary of Administration;
6 requiring a report from the Secretary of Administration and the Office of Entrepreneurship;
7 defining terms; creating the Office of Entrepreneurship; requiring state contract awards to
8 new businesses under certain conditions; requiring tracking of workforce development
9 funding; requiring funding allocations to new business development; waiving certain fees
10 for new business; creating special tax rates on new business income; and creating special
11 tax rates on certain new corporation income.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

§5B-11-1. Small Business and Entrepreneurship Act.

1 (a) This article shall be known as the "Small Business and Entrepreneurship Act".
2 (b) No later than January 1, 2024, and annually thereafter, the Secretary of Administration
3 shall file a report with the Joint Committee on Government and Finance that includes, but is not
4 limited to:
5 (1) The number of contracts awarded to businesses that have been in operation for less
6 than three years;
7 (2) The percentage of the number of contracts awarded to businesses that have been in
8 operation for less than three years compared to the total number of contracts awarded;
9 (3) The total dollar amount of all contracts awarded to businesses that have been in
10 operation for less than three years; and

11 (4) The percentage of the total dollar amount of contracts awarded to businesses that have
12 been in operation for less than three years compared to the total dollar amount of contracts
13 awarded.

14 (c) The Secretary of Administration, in conjunction with the Office of Entrepreneurship
15 established under section §5B-11-2 of this code, shall produce and file a report with the Joint
16 Committee on Government and Finance making recommendations on improving access and
17 resources for new West Virginia businesses that have been in operation for less than three years
18 on or before January 1, 2024.

19 (d) For purposes of this article, "new business" means a business entity or organization
20 validly licensed in the applicable laws of this state, whose headquarters or principal place of
21 business is located and maintained in this state, and that begins operations in this state on or after
22 January 1, 2023. The term "new business" shall not include any business entity or organization
23 that dissolves or otherwise terminates business operations and reincorporates or otherwise
24 reinitiates operations in this state on or after January 1, 2023.

§5B-11-2. Office of Entrepreneurship.

1 There is hereby created within the Department of Economic Development the "Office of
2 Entrepreneurship". The office shall employ an individual to promote policies and initiatives to
3 support the growth of entrepreneurship in the state. The office shall work with stakeholders and
4 communities to provide information and technical support to entrepreneurs engaged in a new
5 business. The office shall support and advise the Secretary of Administration with preparing the
6 report pursuant to §5B-11-1 of this code.

§5B-11-3. New business vendor contracts.

1 Beginning July 1, 2023, the state shall award five percent of the total number of state
2 contracts to new businesses: *Provided*, That the state may vary from the requirements of this
3 section if a determination is made that compliance is not feasible: *Provided, however*, That the
4 reasons for the necessity of the variance shall be included in the report required in §5B-11-1 of this

5 code.

§5B-11-4. Tracking of workforce development funding.

1 Before January 1, 2024, and before January 1, annually thereafter, the Department of
2 Economic Development shall file a report with the Joint Committee on Government and Finance
3 that includes:

4 (1) The percentage of economic development funding supporting organizations or
5 programs for individuals starting new businesses or to those organizations or programs that
6 provide services to new businesses; and

7 (2) The total dollar amount of economic development funding supporting organizations or
8 programs for individuals starting new businesses or to those organizations or programs that
9 provide services to new businesses.

§5B-11-5. Economic development.

1 Beginning July 1, 2023, the state shall allocate five percent of funding budgeted for
2 economic development programs to supporting organizations or programs for individuals starting
3 new businesses or to those organizations or programs that provide services to new businesses.

§5B-11-6. Reducing barriers to start.

1 Beginning July 1, 2023, the fees to be charged by the Secretary of State pursuant to the
2 provisions of §59-1-2 of this code and the fees to be paid to the Secretary of State pursuant to §59-
3 1-2a of this code shall be waived for any new business or person establishing a new business,
4 including home based businesses, for the first three years of business operations. For the fourth
5 year of operation of a new business and for all years thereafter, all fees to be paid to the Secretary
6 of State shall be paid in accordance with law.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Tax rates on new business income.

1 (a) As used in this section, the term "new business income" means any business income
2 from a taxpayer that begins business operations in this state on or after January 1, 2023. The term
3 "new business income" shall not include any business income from a taxpayer that began
4 business operations in this state prior to January 1, 2023, dissolved or otherwise terminated such
5 business operations and reincorporates, or otherwise reinstates such business operations on or
6 after January 1, 2023.

7 (b) The first \$100,000 of any remaining amount of new business income included in a
8 taxpayer's West Virginia adjusted gross income after any subtraction provided for in this chapter
9 shall be reduced for the first through third tax years in which the taxpayer's business is in operation
10 by 20 percent.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.**

1 *Primary tax.* -- (1) In the case of taxable periods beginning after June 30, 1967, and ending
2 prior to January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six percent
3 per annum on the West Virginia taxable income of every domestic or foreign corporation engaging
4 in business in this state or deriving income from property, activity or other sources in this state,
5 except corporations exempt under section five.

6 (2) In the case of taxable periods beginning on or after January 1, 1983, and ending prior to
7 July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income of
8 every domestic or foreign corporation engaging in business in this state or deriving income from
9 property, activity or other sources in this state, except corporations exempt under section five of
10 this article, and any banks, banking associations or corporations, trust companies, building and
11 loan associations and savings and loan associations, at the rates which follow:

12 (A) On taxable income not in excess of \$50,000, the rate of six percent; and

13 (B) On taxable income in excess of \$50,000, the rate of seven percent.

14 (3) In the case of taxable periods beginning on or after July 1, 1987, a tax is hereby
15 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
16 corporation engaging in business in this state or deriving income from property, activity or other
17 sources in this state, except corporations exempt under section five of this article, at the rate of
18 nine and three-quarters percent. Beginning July 1, 1988, and on each July 1 thereafter for four
19 successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent per
20 year, with such rate to be nine percent on and after July 1, 1992.

21 (4) In the case of taxable periods beginning on or after January 1, 2007, a tax is hereby
22 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
23 corporation engaging in business in this state or deriving income from property, activity or other
24 sources in this state, except corporations exempt under section five of this article, at the rate of
25 eight and three-quarters percent.

26 (5) In the case of taxable periods beginning on or after January 1, 2009, a tax is hereby
27 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
28 corporation engaging in business in this state or deriving income from property, activity or other
29 sources in this state, except corporations exempt under section five of this article, at the rate of
30 eight and one-half percent.

31 (6) In the case of taxable periods beginning on or after January 1, 2012, a tax is hereby
32 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
33 corporation engaging in business in this state or deriving income from property, activity or other
34 sources in this state, except corporations exempt under section five of this article, at the rate of
35 seven and three-quarters percent: *Provided*, That the reduction in tax authorized by this
36 subsection shall be suspended if the combined balance of funds as of June 30, 2011, in the
37 Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B
38 established in section twenty, article two, chapter eleven-b of this code does not equal or exceed
39 ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2011:

40 *Provided, however,* That the rate reduction schedule will resume in the calendar year immediately
41 following any subsequent fiscal year when the combined balance of funds as of June 30 of that
42 fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
43 Fund - Part B next equals or exceeds ten percent of the General Revenue Fund budgeted for the
44 immediately succeeding fiscal year.

45 (7) In the case of taxable periods beginning on or after January 1, 2013, a tax is hereby
46 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
47 corporation engaging in business in this state or deriving income from property, activity or other
48 sources in this state, except corporations exempt under section five of this article, at the rate of
49 seven percent: *Provided,* That the reduction in tax authorized by this subsection shall be
50 suspended for one calendar year subsequent to the occurrence of the suspension of the reduction
51 in tax authorized by subdivision (6) of this section: *Provided, however,* That the reduction in tax on
52 the first day of any calendar year authorized by this subsection shall be suspended if the combined
53 balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund
54 and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two,
55 chapter eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund
56 budgeted for the fiscal year commencing July 1, of the preceding year.

57 (8) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby
58 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
59 corporation engaging in business in this state or deriving income from property, activity or other
60 sources in this state, except corporations exempt under section five of this article, at the rate of six
61 and one-half percent: *Provided,* That the reduction in tax authorized by this subsection shall be
62 suspended for one calendar year subsequent to the occurrence of the suspension of the reduction
63 in tax authorized by subdivision (7) of this section: *Provided, however,* That the reduction in tax on
64 the first day of any calendar year authorized by this subsection shall be suspended if the combined
65 balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund

66 and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two,
67 chapter eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund
68 budgeted for the fiscal year commencing July 1, of the preceding year.

69 (9)(A) As used in this subsection, the term "eligible new corporation" means a corporation
70 validly licensed as provided in the applicable laws of this state that begins operations in this state
71 on and after January 1, 2023. The term "eligible new corporation" shall not include any corporation
72 that dissolves or otherwise terminates business operations and reincorporates or otherwise
73 reinitiates operations in this state on or after January 1, 2023.

74 (B) Notwithstanding any provision of this code to the contrary, for all tax years beginning on
75 and after July 1, 2024, a tax is hereby imposed upon the taxable income of each eligible new
76 corporation for the first through third tax years of such eligible corporation of three percent for the
77 first \$100,000 of income and any remaining portion of income shall be taxed at the rate established
78 by this section. For the fourth tax year of an eligible new corporation and for all tax years thereafter,
79 all income shall be taxed as otherwise provided for in this section.

NOTE: The purpose of this bill is to create the Small Business and Entrepreneurship Act.

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