

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

### Introduced

## Senate Bill 498

FISCAL  
NOTE

By Senators Trump, Weld, Azinger, Caputo, Grady,  
Karnes, Phillips, Rucker, Smith, Stover, Takubo,  
Woelfel, Woodrum, Deeds, Maynard, Chapman,  
Plymale, Queen, Swope, Clements, Roberts, Martin,  
and Hunt

INTERIM  
BILL

[Introduced January 27, 2023; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §11-29-1; to amend and reenact §52-1-11 and §52-1-17 of said code; and to  
3 amend said code by adding thereto a new section, designated §52-1-27, all relating to jury  
4 service; providing a tax creditor to eligible taxpayers for wages paid to any employee  
5 during the first five days of such employee’s jury service; providing the amount and  
6 applicability of the tax credit; and providing for treatment of unused tax credit; clarifying that  
7 a potential juror may be excused from jury service upon a showing of undue physical or  
8 financial hardship; defining undue physical or financial hardship; eliminating extreme  
9 inconvenience as a reason that a potential juror may be excused from jury service;  
10 clarifying that absence from place of employment may not excuse a potential juror from  
11 jury service; authorizing courts to grant postponement of jury service and establishing  
12 requirements therefor; authorizing courts to grant a second or subsequent postponement  
13 of jury service in extreme emergencies and establishing requirements therefor;  
14 establishing \$80 per day juror compensation and providing an internal effective date  
15 therefor; authorizing courts to offer post-trial psychological counseling to jurors and  
16 alternates in trials of certain criminal offenses; establishing requirements and options for  
17 juror counseling; creating the Juror Counseling Fund as a special revenue account to be  
18 maintained by the Supreme Court of Appeals and establishing requirements therefor; and  
19 clarifying that funding of or legislative appropriation to the Juror Counseling Fund is not  
20 mandatory.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 11. TAXATION.**

**ARTICLE 29. EMPLOYEE JURY SERVICE TAX CREDIT.**

**§11-29-1. Tax credit for employee jury service.**

1 (a) Credit allowed. — For those tax years beginning on or after January 1, 2024, there is  
2 allowed a credit for any eligible taxpayer against certain taxes imposed by this state as described  
3 in subsection (c) of this section for wages paid to any employee of the taxpayer during the first five  
4 days of such employee's jury service pursuant to §52-1-1 et seq. of this code: *Provided*, That a  
5 credit shall not be allowed if the taxpayer requires the employee to utilize his or her annual,  
6 vacation, sick, personal, or other leave for such jury service.

7 (b) Amount of credit. — The aggregate amount of credit allowable under this section shall  
8 in no event exceed fifty percent of the tax due for the taxable year, computed prior to application of  
9 the tax credits provided by this section.

10 (c) Application of annual credit allowance. — The amount of credit as determined under  
11 subsection (b) of this section is allowed as a credit against the taxpayer's state tax liability applied  
12 as provided in subdivisions (1) through (2), inclusive, of this subsection, and in that order.

13 (1) Corporation net income taxes. — The credit must first be applied to reduce the taxes  
14 imposed by §11-24-1 et seq. of this code for the taxable year.

15 (2) Personal income taxes. — After application of subdivision (1) of this subsection, any  
16 unused credit is next applied as follows:

17 (A) If the person making the qualified investment is an electing small business corporation  
18 (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a  
19 partnership, a limited liability company that is treated as a partnership for federal income tax  
20 purposes, or a sole proprietorship, then any unused credit (after application of subdivision (1) of  
21 this subsection) is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code  
22 on the income from business or other activity on income of a sole proprietor attributable to the  
23 business.

24 (B) Electing small business corporations, limited liability companies, partnerships and  
25 other unincorporated organizations shall allocate the credit allowed by this article among its  
26 members in the same manner as profits and losses are allocated for the taxable year.

27 (3) A credit is not allowed under this section against any employer withholding taxes  
28 imposed by §11-21-1 et seq. of this code.

29 (d) Unused credit. — If any credit remains after application of subsection (c) of this section,  
30 that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any  
31 unused portion of any annual credit allowance.

**CHAPTER 52. JURIES.**

<b>ARTICLE</b>	<b>1.</b>	<b>PETIT</b>	<b>JURIES.</b>
<b>§52-1-11.</b>	<b>Excuses</b>	<b>from</b>	<b>jury service.</b>

1 (a) The court, upon request of a prospective juror or on its own initiative, shall determine on  
2 the basis of information provided on the juror qualification form or interview with the prospective  
3 juror or other competent evidence whether the prospective juror should be excused from jury  
4 service. The clerk shall enter this determination in the space provided on the juror qualification  
5 form.

6 (b) A person who is not disqualified for jury service under ~~section eight of this article~~ §52-1-  
7 8 of this code may be excused from jury service by the court upon a showing of undue physical or  
8 financial hardship ~~extreme inconvenience~~ or public necessity, for a period the court deems  
9 necessary, at the conclusion of which the person shall reappear for jury service in accordance with  
10 the court's direction. For purposes of this subsection, "undue physical or financial hardship"  
11 means:

12 (1) The person has a mental or physical condition which causes him or her to be incapable  
13 of performing jury service, or jury service would cause the person to suffer physical hardship which  
14 would result in illness or disease;

15 (2) Jury service would require the person to abandon another person under his or her  
16 personal care or supervision due to the impossibility of obtaining a caregiver; or

17 (3) Jury service would require the person to incur costs that would cause a substantial

18 adverse effect on payment of the person’s daily living expenses.

19 (c) A person who is not disqualified for jury service under ~~section eight of this article~~ §52-1-  
20 8 of this code may be excused from jury service by the court if the person is a current member of  
21 the National Guard or reserves.

22 (d) A person may not be excused from jury service under this section on basis of absence  
23 from his or her place of employment.

24 (e) A person may request at least seven business days before his or her initial appearance  
25 for jury duty by telephone, in writing, or by electronic mail, and the court shall grant, a  
26 postponement of the person’s initial appearance for jury duty if both of the following apply:

27 (1) The person has not previously been granted a postponement; and

28 (2) The person and the court agree to a specified date on which the juror will appear for jury  
29 service. Unless extraordinary circumstances exist, the specified date shall be one in which not  
30 more than six months after the date for which the juror was originally called to serve. If  
31 extraordinary circumstances exist, the court may, at its discretion, specify a date on which the  
32 person will appear for jury service that is more than six months after the date for which the juror  
33 was originally called to serve.

34 (f) A court may grant a second or subsequent postponement of jury service to a person  
35 only in the event of an extreme emergency, such as a death in the person’s family, a sudden illness  
36 of the person, or a natural disaster or national emergency in which the person is personally  
37 involved, that could not have been anticipated at the time the initial postponement was granted  
38 Before receiving a second or subsequent postponement, the person shall agree to a specified  
39 date on which the person will appear for jury service, not more than six months after the date of the  
40 postponement.

**§52-1-17. Reimbursement of jurors.**

1 (a) A juror shall be paid mileage, at the rate set by the Secretary of the Department of  
2 Administration, for travel expenses to and from the juror’s residence to the courthouse or other

3 place where the court is convened and shall be reimbursed for other expenses incurred as a result  
4 of his or her required attendance at sessions of the court at a rate of ~~not less than \$15 nor more~~  
5 ~~than \$40, set at the discretion of the circuit court or the chief judge of the circuit court~~ \$80 per day  
6 for each day of required attendance. The reimbursement shall be based on vouchers submitted to  
7 the sheriff and shall be paid out of the State Treasury.

8 (b) When a jury in any case is placed in the custody of the sheriff, he or she shall provide  
9 the jury with meals and lodging while they are in the sheriff's custody at a reasonable cost to be  
10 determined by an order of the court. The costs of the meals and lodging shall be paid out of the  
11 State Treasury.

12 (c) Any time a panel of prospective jurors has been required to report to court for the  
13 selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court  
14 order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual  
15 cost of the jurors' service: *Provided*, That the actual cost of a magistrate jury can only be assessed  
16 where the jury request or demand occurs on or after July 1, 2007. For any magistrate court case in  
17 which the jury request or demand occurred prior to July 1, 2007, the jury cost assessed shall be  
18 \$200. The jury costs shall be assessed against the parties as follows:

19 (1) In every criminal case, against the defendant upon conviction, whether by plea, by  
20 bench trial or by jury verdict;

21 (2) In every civil case, against either party or prorated against both parties, at the court's  
22 discretion, if the parties settle the case or elect for a bench trial; and

23 (3) In the discretion of the court, and only when fairness and justice so require, a circuit  
24 court or magistrate court may forego assessment of the jury fee, but shall set out the reasons for  
25 waiving the fee in a written order: *Provided*, That a waiver of the assessment of a jury fee in a case  
26 tried before a jury in magistrate court may only be permitted after the circuit court, or the chief  
27 judge of the circuit court, has reviewed the reasons set forth in the order by the magistrate and has  
28 approved the waiver.

29 (d)(1) The circuit or magistrate court clerk shall by the 10th day of the month following the  
 30 month of collection remit to the State Treasurer for deposit as described in subdivision (2) of this  
 31 subsection all jury costs collected and the clerk and the clerk’s surety are liable for the collection  
 32 on the clerk’s official bond as for other money coming into the clerk’s hands by virtue of the clerk’s  
 33 office. When the amount of the jury costs collected in a magistrate court case exceeds \$200, the  
 34 magistrate court clerk shall separately delineate the portion of the collected jury costs which  
 35 exceeds \$200.

36 (2) The jury costs described in subdivision (1) of this subsection shall upon receipt by the  
 37 State Treasurer be deposited as follows:

38 (A) All jury costs collected in a magistrate court case which exceed \$200 shall be deposited  
 39 in the State’s General Revenue Fund; and

40 (B) The remaining balance of the collected jury costs shall be deposited as follows:

41 (i) One-half shall be deposited into the Parent Education and Mediation Fund created in  
 42 §48-9-604 of this code; and

43 (ii) One-half shall be deposited into the Domestic Violence Legal Services Fund created in  
 44 §48-26-603 of this code.

45 (e) The amendments to this section enacted during the Regular Session of the Legislature,  
 46 2023 shall become effective July 1, 2023.

**§52-1-27. Juror psychological counseling.**

1 (a) Subject to approval of the Administrative Director of the Supreme Court of Appeals, the  
 2 court may offer up to 10 hours of post-trial psychological counseling, without charge, to a juror or  
 3 an alternate juror who serves on a trial jury pursuant to this article involving extraordinarily graphic,  
 4 gruesome, or emotional evidence or testimony.

5 (b) The counseling offered under this section applies only to a juror or alternate juror who  
 6 serves on a trial jury for a trial involving the following offenses:

7 (1) First or second degree murder under §61-2-1 of this code;

8 (2) Malicious or unlawful assault under §61-2-9(a) of this code;

9 (3) Any offense under §61-8B-1 et seq. of this code; or

10 (4) Any offense under §61-8C-1 et seq. of this code;

11 (c) The counseling offered under this subsection:

12 (1) Must occur not later than 180 days after the jury is dismissed;

13 (2) May be provided by the court system, by a state agency, or by contract; and

14 (3) May be individual or group counseling.

15 (d) There is hereby created in the State Treasury a special revenue account designated as  
 16 the "Juror Counseling Fund", which is an interest and earnings-accumulating account. This fund  
 17 shall consist of any appropriation from the legislature and may receive any gifts, grants,  
 18 contributions, or income from investments or other money from any source which is specifically  
 19 designated for deposit in the fund.

20 (e) The "Juror Counseling Fund" shall be maintained by the Supreme Court of Appeals and  
 21 for purposes of juror counseling pursuant to the provisions of this section.

22 (f) Nothing in this article may be construed to mandate funding for the Juror Counseling  
 23 Fund or to require any appropriation by the Legislature.

NOTE: The purpose of this bill is to clarify the process of jury service. The bill provides for a tax creditor to eligible taxpayers for wages paid to any employee during the first five days of such employee's jury service. The bill provides for the amount and applicability of the tax credit. The bill provides for treatment of unused tax credit. The bill clarifies that a potential juror may be excused from jury service upon a showing of undue physical or financial hardship. The bill defines undue physical or financial hardship. The bill eliminates extreme inconvenience as a reason that a potential juror may be excused from jury service. The bill clarifies that absence from place of employment may not excuse a potential juror from jury service. The bill authorizes courts to grant postponement of jury service and establishes requirements therefor. The bill authorizes courts to grant a second or subsequent postponement of jury service in extreme emergencies and establishes requirements therefor. The bill authorizes \$80 per day juror compensation and provides an internal effective date therefor. The bill authorizes courts to offer post-trial psychological counseling to jurors and alternates in trials of certain criminal offenses. The bill authorizes requirements and options for juror counseling. The bill creates the "Juror Counseling Fund" as a special revenue account to be maintained by the Supreme Court of Appeals and establishes requirements therefor. Finally, the bill clarifies that funding of or legislative appropriation to the Juror Counseling Fund is not mandatory

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