

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2053

By Delegates D. Smith and Heckert

[Originating in the Committee on Government

Organization; Reported on February 18, 2025]

1 A BILL to amend and reenact §5-10-15, §8-22A-2, §9A-3-1, §11-21-12, §15-2-28, §15-2A-2, §18-
2 7A-17a, §18-10F-2, §30-29-6, §48-31-102, and §62-16-3 of the Code of West Virginia,
3 1931, as amended, relating to including the United States Space Force in the definitions of
4 certain terms that individually reference the Armed Forces of the United States.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-15. Military service credit; qualified military service.

1 (a)(1) The Legislature recognizes the men and women of this state who have served in the
2 armed forces of the United States during times of war, conflict and danger. It is the intent of this
3 subsection to confer military service credit upon persons who are eligible at any time for public
4 employees retirement benefits for any time served in active duty in the armed forces of the United
5 States, regardless of whether the person was a public employee at the time of entering the military
6 service.

7 (2) In addition to any benefit provided by federal law, any member of the retirement system
8 who has previously served in or enters the active service of the armed forces of the United States,
9 including active duty in the National Guard performed pursuant to Title 10 or Title 32 of the United
10 States Code, shall receive credited service for the time spent in the armed forces of the United
11 States, not to exceed five years, if the member:

12 (A) Has been honorably discharged from the armed forces; and

(B) Substantiates by appropriate documentation or evidence his or her active military service.

If a member of the retirement system enters the active service of the armed forces of the United States, the member's contributions to the retirement system are suspended during the period of the active service and until the member's return to the employ of a participating public employer, and any credit balance remaining in the member's deposit fund shall accumulate regular interest: *Provided*, That notwithstanding any provision in this article to the contrary, if an employee of a participating political subdivision serving on active duty in the military has accumulated credited service prior to the last entry into military service, in an amount that, added to the time in active military service while an employee equals nine or more years, and the member is unable to resume employment with a participating employer upon completion of duty due to death during or as a result of active service, all time spent in active military service, up to and including a total of five years, is considered to be credited service and death benefits are vested in the member: *Provided, however*, That the active service during the time the member is an employee must be as a result of an order or call to duty, and not as a result of volunteering for assignment or volunteering to extend the time in service beyond the time required by order or call.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection does not apply to any member who first became an employee of a participating public employer before July 1, 2015.

(1) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase up to ~~sixty~~ 60 months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed at least ~~twelve~~ 12 consecutive months of contributory service upon first becoming an employee of a participating public employer;

39 (B) The active military duty occurs prior to the date on which the member first becomes an
40 employee of a participating public employer; and

41 (C) The employee pays to the retirement system the actuarial reserve purchase amount
42 within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first
43 received by the retirement system for the member and while he or she continues to be in the
44 employ of a participating public employer and contributing to the retirement system: *Provided,*
45 That any employee who ceases employment with a participating public employer before
46 completing the required actuarial reserve purchase amount in full shall not be eligible to purchase
47 the military service.

48 (2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
49 becomes an employee of a participating public employer on or after July 1, 2015, but who does not
50 remain employed and contributing to the retirement system for at least ~~twelve~~ 12 consecutive
51 months after his or her initial employment, shall be considered to have met the requirement of
52 paragraph (A), subdivision (1) of this subsection the first time he or she becomes an employee of a
53 participating public employer and completes at least ~~twelve~~ 12 consecutive months of contributing
54 service. Such a member shall be considered to have met the requirement of paragraph (C),
55 subdivision (1) of this subsection if he or she pays to the retirement system the actuarial reserve
56 purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee
57 contributions are first received by the retirement system for the member the first time he or she
58 becomes an employee of a participating public employer and completes at least ~~twelve~~ 12
59 consecutive months of contributing service, and while he or she continues to be in the employ of a
60 participating public employer and contributing to the retirement system.

61 (3) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first
62 becomes an employee of a participating public employer on or after July 1, 2015, as an elected
63 official, shall be considered to have met the requirement of paragraph (A), subdivision (1) of this
64 subsection after remaining employed for the first ~~twelve~~ 12 consecutive months of his or her term

and first becoming an employee, regardless of whether a salary is paid to the employee for each such month. An elected official who does not elect to begin participating in the retirement system upon first becoming an employee of a participating public employer as an elected official is not eligible to purchase military service credit pursuant to subdivision (1) of this subsection.

(4) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least ~~twelve~~ 12 consecutive months of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve lump sum purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least ~~twelve~~ 12 consecutive months of contributory service and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least ~~twelve~~ 12 consecutive months when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection the first time he or she again becomes an employee of a participating public employer and completes at least ~~twelve~~ 12 consecutive months of contributing service. Such a member shall be considered to have met the requirement of paragraph (C), subdivision (4) of this subsection if he or she pays to the retirement system the actuarial reserve lump sum purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least ~~twelve~~ 12 consecutive months of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(6) Notwithstanding paragraph (A), subdivision (4) of this subsection, a member who becomes an employee of a participating public employer after such a period of active military duty and break in service as an elected official shall be considered to have met the requirement of paragraph (A), subdivision (4) of this subsection after remaining employed for the first ~~twelve~~ 12 consecutive months of his or her term after again becoming an employee, regardless of whether a salary is paid to the employee for each such month. Such an individual must elect to begin participating in the retirement system immediately upon again becoming an employee of a participating public employer after the period of active military duty and break in service.

(7) For purposes of this subsection, the following definitions apply:

(A) "Active military duty" means full-time active duty in the armed forces of the United States for a period of ~~thirty~~ 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing at ~~seven and one-half~~ 7.5 percent from the calculation month through the purchase month, compounded monthly: *Provided*, That if the employee elects to pay the full purchase amount on an installment or partial payment basis, the actuarial reserve purchase amount will include the lump sum payment plus additional interest accruing at ~~seven and one-half~~ 7.5 percent until the purchase amount is paid in full.

(C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the United States or the National Guard of a state or territory when members of the same are on full-time active duty pursuant to Title 10 or Title 32 of the United States Code.

(D) "Calculation month" means the month immediately following the month in which the member completes the ~~twelve~~ 12 consecutive months of contributory service with a participating public employer required by this subsection, as applicable.

(E) "Purchase accrued benefit" means two percent times the purchase military service times the purchase average monthly salary.

(F) "Purchase age" means the age of the employee in years and completed months as of the first day of the calculation month.

(G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of the calculation month based on the following actuarial assumptions: Interest rate of ~~seven and one-half~~ 7.5 percent; mortality of the 1971 group annuity mortality table, ~~fifty~~ 50 percent blended male and female rates, applied on a unisex basis to all members; if purchase age is under age ~~sixty-two~~ 62, a deferred annuity factor with payments commencing at age ~~sixty-two~~ 62; and if purchase age is ~~sixty-two~~ 62 or over, an immediate annuity factor with payments starting at the purchase age.

(H) "Purchase average monthly salary" means the average monthly salary of the member during the months two through ~~twelve~~ 12 of the ~~twelve~~ 12 consecutive month period required by this subsection of this section, as applicable.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the ~~sixty~~ 60-month maximum, calculated in accordance with subdivision (9) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(8) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for such period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service.

(9) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by ~~thirty~~ 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the ~~sixty~~ 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(10) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the ~~twelve~~ 12 consecutive month period required by this subsection, as applicable. The board shall

then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by this subsection, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to ~~section 44 of this article~~ §5-10-44 of this code and no military service shall be credited.

(11) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(12) Military service credit purchased pursuant to this subsection may not be considered contributing service credit or contributory service for purposes of this article.

(13) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service may be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may be amended from time to time. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code.

(e) In any case of doubt as to the period of service to be credited a member under the provisions of this section, the board has final power to determine the period. Notwithstanding the provisions of ~~section three-a of this article~~ §5-10-3a of this code, the provisions of this section are not subject to liberal construction. The board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in ~~section one, article ten-d of this chapter~~ §5-10D-1 of this code, may propose rules to administer this section for legislative approval in accordance with the provisions of ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-2.

Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member 2.75 percent per year of the member's final average salary for the first 20 years of credited service. Additionally, 2 percent per year for 21 through 25 years and 1.5 percent per year for each year over 25 years will be credited with a maximum benefit of 90 percent of a member's final average salary. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §8-22A-10 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time duty in the active military service of the United States Army, Navy, Air Force, Coast Guard, Space Force, or Marine Corps. The term does not

14 include regularly required training or other duty performed by a member of a reserve component or
15 National Guard unless the member can substantiate that he or she was called into the full-time
16 active military service of the United States and has received no compensation during the period of
17 that duty from any board or employer other than the armed forces.

18 (d) "Actuarial equivalent" means a benefit of equal value computed on the basis of the
19 mortality table and interest rates as set and adopted by the board in accordance with the
20 provisions of this article: *Provided*, That when used in the context of compliance with the federal
21 maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarial
22 equivalent" shall be computed using the mortality tables and interest rates required to comply with
23 those requirements.

24 (e) "Annual compensation" means the wages paid to the member during covered
25 employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined
26 without regard to any rules that limit the remuneration included in wages based on the nature or
27 location of employment or services performed during the plan year plus amounts excluded under
28 Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense
29 allowances, cash or noncash fringe benefits, or both, deferred compensation and welfare benefits.
30 Annual compensation for determining benefits during any determination period may not exceed
31 the maximum compensation allowed as adjusted for cost-of-living in accordance with §5-10D-7 of
32 this code and Section 401(a)(17) of the Internal Revenue Code.

33 (f) "Annual leave service" means accrued annual leave.

34 (g) "Annuity starting date" means the first day of the month for which an annuity is payable
35 after submission of a retirement application or the required beginning date, if earlier. For purposes
36 of this subsection, if retirement income payments commence after the normal retirement age,
37 "retirement" means the first day of the month following or coincident with the latter of the last day
38 the member worked in covered employment or the member's normal retirement age and after
39 completing proper written application for retirement on an application supplied by the board.

(h) "Beneficiary" means a natural person who is entitled to, or will be entitled to, an annuity or other benefit payable by the plan.

(i) "Board" means the Consolidated Public Retirement Board.

(j) "Covered employment" means either: (1) Employment as a full-time municipal police officer or firefighter and the active performance of the duties required of that employment; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by a municipal police officer or firefighter in a job or jobs in addition to his or her employment as a municipal police officer or firefighter in this plan where the secondary employment requires the police officer or firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the police officer or firefighter contributes to the fund created in this article the amount specified as the member's contribution in §8-22A-8 of this code.

(k) "Credited service" means the sum of a member's years of service, active military duty, and disability service.

(l) "Dependent child" means either: (1) An unmarried person under age 18 who is: (A) A natural child of the member; (B) a legally adopted child of the member; (C) a child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or (D) a stepchild of the member residing in the member's household at the time of the member's death; or (2) Any unmarried child under age 23: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and (C) whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(m) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(n) "Disability service" means service credit received by a member, expressed in whole years, fractions thereof, or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(o) "Effective date" means January 1, 2010.

(p) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(q) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly compensation which the member was receiving in the plan year prior to the initial disability. "Final average salary" does not include any lump sum payment for unused, accrued leave of any kind or character.

(r) "Full-time employment" means permanent employment of an employee by a participating municipality in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(s) "Fund" means the West Virginia Municipal Police Officers and Firefighters Retirement Fund created by this article.

(t) "Hour of service" means: (1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and (2) each hour for which a member is paid or entitled to payment for covered employment during a plan year

but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member may not be credited with any hours of service for any period of time he or she is receiving benefits under §8-22A-17 and §8-22A-18 of this code; and (3) each hour for which back pay is either awarded or agreed to be paid by the employing municipality, irrespective of mitigation of damages. The same hours of service may not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(u) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(v) "Member" means, except as provided in §8-22A-32 and §8-22A-33 of this code, a person hired as a municipal police officer or municipal firefighter, as defined in this section, by a participating municipal employer on or after January 1, 2010. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(x) "Municipality" has the meaning ascribed to it in this code.

(y) (1) "Municipal police officer" means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal policemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal policemen's pension and relief fund as provided in §8-

22-16 of this code: *Provided*, That municipal police officer also means an individual employed as a member of a paid police department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid police department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(2) "Municipal firefighter" means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which has established and maintains a municipal firemen's pension and relief fund, and who is not a member of, and not eligible for membership in, a municipal firemen's pension and relief fund as provided in §8-22-16 of this code: *Provided*, That municipal firefighter also means an individual employed as a member of a paid fire department by a West Virginia municipality or municipal subdivision which is authorized to elect to participate in the plan pursuant to §8-22A-33 of this code. Paid fire department does not mean a department whose employees are paid nominal salaries or wages or are paid only for services actually rendered on an hourly basis.

(z) "Municipal subdivision" means any separate corporation or instrumentality established by one or more municipalities, as permitted by law; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more municipalities.

(aa) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(bb) "Normal retirement age" means the first to occur of the following: (1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service; (2) while still in

covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory service equals or exceeds 70 years; (3) while still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or (4) attainment of age 62 years and completion of five or more years of regular contributory service.

(cc) "Plan" means the West Virginia Municipal Police Officers and Firefighters Retirement System established by this article.

(dd) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, firefighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(ff) "Regular contributory service" means a member's credited service excluding active military duty, disability service and accrued annual and sick leave service.

(gg) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) "Retirement income payments" means the monthly retirement income payments payable.

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(kk) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(ll) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subsection: (1) A member is totally disabled only if his or her physical or mental impairment or impairments are so severe that he or she is not only unable to perform his or her previous work as a police officer or firefighter but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration; and (2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(mm) "Vested" means eligible for retirement income payments after completion of five or more years of regular contributory service.

(nn) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based on the hours of service performed as covered employment and credited to the member during the plan year based on the following schedule:

Hours of Service	Year of Service Credited
Less than 500	0
500 to 999	1/3

194 1,000 to 1,499 2/3

195 1,500 or more 1

196 During a member's first and last years of covered employment, the member shall be
197 credited with one-twelfth of a year of service for each month during the plan year in which the
198 member is credited with an hour of service for which contributions were received by the fund. A
199 member is not entitled to credit for years of service for any time period during which he or she
200 received disability payments under §8-22A-17 and §8-22A-18 of this code.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 3. STATE CEMETERY FOR VETERANS.

§9A-3-1. Department empowered to establish and maintain cemetery.

1 The ~~department of Veterans Affairs~~ Department of Veterans' Assistance is hereby
2 empowered to establish and maintain a state veterans' cemetery which shall be centrally located
3 within the state and easily accessible. Interment in the state veterans' cemetery shall be available
4 to all persons who are residents and citizens of the state and who have served in the Armed
5 Forces of the United States, including the ~~army, air force, navy, marine corps and coast guard~~
6 Army, Air Force, Navy, Marine Corps, Space Force, and Coast Guard, and who have a discharge
7 other than dishonorable.

8 Further, the ~~department of Veterans Affairs~~ Department of Veterans' Assistance is hereby
9 granted authority to acquire and transfer real property to the United States ~~veterans administration~~
10 Department of Veterans Affairs contingent upon the utilization of such real property by that federal
11 agency for the establishment of a new national cemetery or for the expansion of an existing
12 national cemetery.

13 For the purposes set forth in this article the ~~department of Veterans Affairs~~ Department of
14 Veterans' Assistance is hereby authorized to receive funds by gift, grant, appropriation or by any
15 other means from any source available or to become available.

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;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding

any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement system to which Title 4 U.S.C. § 111 applies: *Provided, however,* That the total modification under this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

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

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

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

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

(8) Decreasing modification for social security income.

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

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

99 (C) For taxable years beginning on and after January 1, 2024, 35 percent of the amount of
100 social security benefits received pursuant to ~~Title 42 U.S.C., Chapter 7~~ Chapter 7 of Title 42 of the
101 United States Code, including, but not limited to, social security benefits paid by the Social
102 Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42
103 U.S.C. § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as
104 provided in §42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable
105 year shall be allowed as a decreasing modification from federal adjusted gross income when
106 determining West Virginia taxable income subject to the tax imposed by this article, subject to the
107 limitation in §11-21-12(c)(8)(F) of this code.

108 (D) For taxable years beginning on or after January 1, 2025, 65 percent of the social
109 security benefits received pursuant to ~~Title 42 U.S.C., Chapter 7~~ Chapter 7 of Title 42 of the United
110 States Code, including, but not limited to, social security benefits paid by the Social Security
111 Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C.
112 § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided
113 in §42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall
114 be allowed as a decreasing modification from federal adjusted gross income when determining
115 West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in
116 §11-21-12(c)(8)(F) of this code.

117 (E) For taxable years beginning on or after January 1, 2026, 100 percent of the social
118 security benefits received pursuant to ~~Title 42 U.S.C., Chapter 7~~ Chapter 7 of Title 42 of the United
119 States Code, including, but not limited to, social security benefits paid by the Social Security
120 Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C.
121 § 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided
122 in §42 U.S.C. § 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall
123 be allowed as a decreasing modification from federal adjusted gross income when determining

West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return exceeds \$100,000, or \$50,000 in the case of a single individual or a married individual filing a separate return.

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

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

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

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

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

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

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

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

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

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

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West

174 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
175 determined separately.

176 (g) Effective date. —

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

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

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

183 (4) Changes in the language of this section enacted in the year 2024 shall apply
184 retroactively to taxable years beginning after December 31, 2023.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

**§15-2-28. Credit toward retirement for member's prior military service; credit toward
retirement when employee has joined Armed Forces in time of armed conflict;
qualified military service.**

1 (a) For purposes of this section, the term "active military duty" means full-time active duty
2 with the Armed Forces of the United States, namely the United States Air Force, Army, Coast
3 Guard, Marines, Space Force, or Navy; and service with the National Guard or reserve military
4 forces of any of the Armed Forces when the employee has been called to active full-time duty and
5 has received no compensation during the period of the duty from any person other than the Armed
6 Forces.

7 (b) Any member of the fund who has previously served on active military duty is entitled to
8 and shall receive credit on the minimum period of service required by law for retirement pay from

the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is not receiving credit from any other retirement system administered by the board for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under ~~section thirty of this article~~ §15-2-30 of this code, he or she has actually served with the fund for ~~twenty~~ 20 years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to ~~eighteen~~ 18 percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the Armed Forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the Armed Forces between September 1, 1940, and the close of hostilities in World War II, or between June 27, 1950, and the close of the armed conflict in Korea on July 27, 1953, between August 1, 1964, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant

to the commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the Armed Forces;

(2) That within ~~ninety~~ 90 days after honorable discharge from the Armed Forces he or she has presented himself or herself to the superintendent and offered to resume service as an active employee of the agency; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the Armed Forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any employee is entitled shall be calculated and determined as if the employee has continued in the active service of the agency at the rank or grade to him or her appertaining at the time of the commission, induction, enlistment or call, during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call. The superintendent of the agency shall transfer and pay each month into the fund from moneys appropriated for the agency a sum equal to ~~eighteen~~ 18 percent of the aggregate of salary which all employees would have been entitled to receive had they continued in the active service of the agency during a period coextensive with the time the employee served with the Armed Forces pursuant to the commission, induction, enlistment or call: *Provided*, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The board may determine all questions and make all decisions relating to this section and, pursuant to the

61 authority granted to the board in ~~section one, article ten-d, chapter five~~ §5-10D-1 of this code, may
62 promulgate rules relating to contributions, benefits and service credit to comply with Section
63 414(u) of the Internal Revenue Code.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2.

Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Accumulated contributions" means the sum of all amounts deducted from base salary,
3 together with four percent interest compounded annually.

4 (2) "Active military duty" means full-time active duty with the armed forces of the United
5 States, namely, the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy;
6 and service with the National Guard or reserve military forces of any of the armed forces when the
7 employee has been called to active full-time duty.

8 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value
9 computed upon the basis of the mortality table and interest rates as set and adopted by the
10 retirement board in accordance with the provisions of this article: *Provided*, That when used in the
11 context of compliance with the federal maximum benefit requirements of Section 415 of the
12 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and
13 interest rates required to comply with those requirements.

14 (4) "Agency" means the West Virginia State Police.

15 (5) "Base salary" means compensation paid to an employee without regard to any overtime
16 pay.

17 (6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to,
18 or will be entitled to, an annuity or other benefit payable by the fund.

19 (7) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-
20 1 *et seq.* of this code.

(8) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of 18;

(B) After reaching 18 years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of 23 years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) "Dependent parent" means the member's or retirant's parent or step-parent claimed as a dependent by the member or retirant for federal income tax purposes at the time of the member's or retirant's death.

(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(11) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West Virginia Code, the West Virginia Code of State Regulations, or the relevant provisions of both the West Virginia Code and the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(12) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last 10 years of service: *Provided*, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(13) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(15) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.

(16) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(17) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(18) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(19) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(20) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(21) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(22) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire-fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.

(23) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (B) the calendar year in which he or she retires or otherwise separates from service with the agency.

(24) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(25) "Salary" means the compensation of an employee, excluding any overtime payments.

(26) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member's or retirant's death and who survived the member or retirant.

(27) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(28) "Years of service" means the months of service acquired by a member while in active employment with the agency divided by 12. Years of service shall be calculated in years and

fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under §15-2A-8 of this code, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in §15-2A-8 of this code, to reinstate the years of service.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-17a. Qualified military service.

(a) Except as provided in subsection (b) of this section, for the purpose of this article, the retirement board shall grant prior service credit to members of the retirement system who were honorably discharged from active duty service in any of the Armed Forces of the United States in any period of national emergency within which a federal Selective Service Act was in effect. For purposes of this section, "Armed Forces" includes Women's Army Corps, women's appointed volunteers for emergency service, Army Nurse Corps, SPARS, Women's Reserve and other similar units officially part of the military service of the United States. The military service is considered equivalent to public school teaching, and the salary equivalent for each year of that service is the actual salary of the member as a teacher for his or her first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ~~ten~~ 10 years for any one member, nor shall it exceed ~~twenty-five~~ 25 percent of total service at the time of retirement. Notwithstanding the preceding provisions of this subsection, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with

Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The retirement board is authorized to determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the retirement board in ~~section one, article ten-d, chapter five~~ §5-10D-1 of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code. No military service credit may be used in more than one retirement system administered by the Consolidated Public Retirement Board.

(b) Subsection (a) of this section does not apply to any member who first becomes an employee of a participating public employer on or after July 1, 2015. This subsection applies to any member who first became an employee of a participating public employer on or after July 1, 2015, and also applies to any member who became an employee of a participating public employer before July 1, 2015, and is unable to meet the requirements of subsection (a) of this section.

(1) Any member may purchase up to ~~sixty 60~~ months of military service credit for time served in active military duty prior to first becoming an employee of a participating public employer if all of the following conditions are met:

(A) The member has completed a complete fiscal year of contributory service;

(B) The active military duty occurs prior to the date on which the member first becomes an employee of a participating public employer; and

(C) The employee pays to the retirement system the actuarial reserve purchase amount within ~~forty-eight 48~~ months after the date on which employer and employee contributions are first received by the retirement system for the member and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system, or within ~~forty-eight 48~~ months of July 1, 2015, whichever is later: *Provided*, That any employee who ceases employment with a participating public employer before completing the required actuarial reserve purchase amount in full shall not be eligible to purchase the military service.

(2) Notwithstanding paragraph (A), subdivision (1) of this subsection, a member who first becomes an employee of a participating public employer on or after July 1, 2015, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year after his or her initial employment, shall be considered to have met the requirement of said paragraph the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first received by the retirement system for the member the first time he or she becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(3) A member who first becomes an employee of a participating public employer on or after July 1, 2015, may purchase military service credit for active military duty performed on or after the date he or she first becomes an employee of a participating public employer only if all of the following conditions are met: *Provided*, That the maximum military service credit such member may purchase shall take into account any military service credit purchased for active military duty pursuant to subdivision (1) of this subsection in addition to any military service credit purchased pursuant to this subdivision:

(A) The member was an employee of a participating public employer, terminated employment and experienced a break in contributing service in the retirement system of one or more months, performed active military service while not an employee of the participating public employer and not contributing to the retirement system, then again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributory service;

(B) The member does not qualify for military service credit for such active military duty pursuant to subsection (d) of this section; and

(C) The member pays to the retirement system the actuarial reserve purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first received by the retirement system for the member after he or she again becomes an employee of a participating public employer immediately following the period of active military duty and break in service and completes at least a complete fiscal year of contributory service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(4) Notwithstanding paragraph (A), subdivision (3) of this subsection, a member who otherwise meets the requirements of said paragraph, but who does not remain employed and contributing to the retirement system for at least a complete fiscal year when he or she first becomes an employee of a participating public employer after the period of active military duty and break in service, shall be considered to have met the requirement of said paragraph the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service. Such a member shall be considered to have met the requirement of paragraph (C) of said subdivision if he or she pays to the retirement system the actuarial reserve purchase amount within ~~forty-eight~~ 48 months after the date on which employer and employee contributions are first received by the retirement system for the member for the first time he or she again becomes an employee of a participating public employer and completes at least a complete fiscal year of contributing service, and while he or she continues to be in the employ of a participating public employer and contributing to the retirement system.

(5) For purposes of this subsection, the following definitions shall apply:

(A) "Active military duty" means full-time active duty in the Armed Forces of the United States for a period of ~~thirty~~ 30 or more consecutive calendar days. Active military duty does not include inactive duty of any kind.

(B) "Actuarial reserve purchase amount" means the purchase annuity rate multiplied by the purchase accrued benefit, calculated as of the calculation month, plus annual interest accruing

92 at ~~seven and one-half~~ 7.5 percent from the calculation month through the purchase month,
93 compounded monthly.

94 (C) "Armed forces of the United States" means the Army, Navy, Air Force, Marine Corps,
95 Space Force, and Coast Guard, the reserve components thereof, and the National Guard of the
96 United States or the National Guard of a state or territory when members of the same are on full-
97 time active duty pursuant to Title 10 or Title 32 of the United States Code.

98 (D) "Calculation month" means the month immediately following the month in which the
99 member completes a complete fiscal year of contributory service with a participating public
100 employer required by subdivision (1), (2), (3) or (4) of this subsection, as applicable.

101 (E) "Purchase accrued benefit" means two percent times the purchase military service
102 times the purchase average monthly salary.

103 (F) "Purchase age" means the age of the employee in years and completed months as of
104 the first day of the calculation month.

105 (G) "Purchase annuity rate" means the actuarial lump sum annuity factor calculated as of
106 the calculation month based on the following actuarial assumptions: Interest rate of ~~seven and~~
107 ~~one-half~~ 7.5 percent; mortality of the 1971 group annuity mortality table, ~~fifty~~ 50 percent blended
108 male and female rates, applied on a unisex basis to all members; if purchase age is under age
109 ~~sixty-two~~ 62, a deferred annuity factor with payments commencing at age ~~sixty-two~~ 62; and if
110 purchase age is ~~sixty-two~~ 62 or over, an immediate annuity factor with payments starting at the
111 purchase age.

112 (H) "Purchase average monthly salary" means the average monthly salary of the member
113 during the number of months of the member's contract during the fiscal year of contributory service
114 required by subdivisions (1), (2), (3) and (4) of this subsection, as applicable. For any member who
115 first became an employee of a participating public employer before July 1, 2015, the purchase
116 average monthly salary means the average monthly salary of the member during the number of

months of the member's contract during his or her complete fiscal year of contributory service on or after July 1, 2015.

(I) "Purchase military service" means the amount of military service being purchased by the employee in months up to the ~~sixty~~ 60-month maximum, calculated in accordance with subdivision (7) of this subsection.

(J) "Purchase month" means the month in which the employee deposits the actuarial reserve lump sum purchase amount into the plan trust fund in full payment of the service credit being purchased or makes the final payment of the actuarial reserve purchase amount into the plan trust fund in full payment of the service credit being purchased.

(6) A member may purchase military service credit for a period of active military duty pursuant to this subsection only if the member received an honorable discharge for the period. Anything other than an honorable discharge, including, but not limited to, a general or under honorable conditions discharge, an entry-level separation discharge, an other than honorable conditions discharge or a dishonorable discharge, shall disqualify the member from receiving military service credit for the period of service. The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(7) To calculate the amount of military service credit a member may purchase, the board shall add the total number of days in each period of a member's active military duty eligible to be purchased, divide the total by ~~thirty~~ 30, and round up or down to the nearest integer (fractions of 0.5 shall be rounded up), in order to yield the total number of months of military service credit a member may purchase, subject to the ~~sixty~~ 60-month maximum. A member may purchase all or part of the maximum amount of military service credit he or she is eligible for in one-month increments.

(8) To receive credit, a member must submit a request to purchase military service credit to the board, on such form or in such other manner as shall be required by the board, within the

complete fiscal year period required by subdivision (1), (2), (3) or (4) of this subsection, as applicable. The board shall then calculate the actuarial reserve lump sum purchase amount, which amount must be paid by the member within the 48-month period required by said subdivisions, as applicable. A member purchasing military service credit pursuant to this subsection must do so in a single, lump sum payment: *Provided*, That the board may accept partial, installment or other similar payments if the employee executes a contract with the board specifying the amount of military service to be purchased and the payments required: *Provided, however*, That any failure to pay the contract amount in accordance with this section shall be treated as an overpayment or excess contribution subject to ~~section fourteen-c of this article~~ §18-7A-14c of this code and no military service shall be credited.

(9) The board shall require a member requesting military service credit to provide official documentation establishing that the requirements set forth in this subsection have been met.

(10) Military service credit purchased pursuant to this subsection shall not be considered contributing service credit or contributory service for purposes of this article.

(11) If a member who has purchased military service credit pursuant to this subsection is eligible for and requests a withdrawal of accumulated contributions pursuant to the provisions of this article, he or she shall also receive a refund of the actuarial reserve purchase amount he or she paid to the retirement system to purchase military service credit, together with regular interest on such amount.

(c) No period of military service shall be used to obtain credit in more than one retirement system administered by the board and once used in any system, a period of military service may not be used again in any other system.

(d) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code and the Federal Uniformed Services Employment and Reemployment Rights Act (USERRA), and regulations promulgated thereunder, as the same may

169 be amended from time to time. For purposes of this section, "qualified military service" has the
170 same meaning as in Section 414(u) of the Internal Revenue Code.

171 (e) In any case of doubt as to the period of service to be credited a member under the
172 provisions of this section, the board has final power to determine the period. The board is
173 authorized to determine all questions and make all decisions relating to this section and, pursuant
174 to the authority granted to the board in ~~section one, article ten-d of this chapter~~ §18-10D-1 of this
175 code, may propose rules to administer this section for legislative approval in accordance with the
176 provisions of ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code.

ARTICLE 10F. DISABLED PERSONS AND PUBLIC USE BUILDINGS AND FACILITIES.

§18-10F-2. Enactment of Interstate Compact.

1 The Interstate Compact on Educational Opportunity for Military Children is hereby enacted
2 into law and entered into by the State of West Virginia with any and all states legally joining therein
3 in accordance with its terms, in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL

OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I. PURPOSE.

7 It is the purpose of this compact to remove barriers to educational success imposed on
8 children of military families because of frequent moves and deployment of their parents by:

9 (a) Facilitating the timely enrollment of children of military families and ensuring that they
10 are not placed at a disadvantage due to difficulty in the transfer of education records from a
11 previous school district or variations in entrance or age requirements;

12 (b) Facilitating the student placement process through which children of military families
13 are not disadvantaged by variations in attendance requirements, scheduling, sequencing,
14 grading, course content or assessment;

(c) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic and social activities;

(d) Facilitating the on-time graduation of children of military families;

(e) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact;

(g) Promoting coordination between this compact and other compacts affecting military children; and

(h) Promoting flexibility and cooperation between the educational system, parents and students in order to achieve educational success for students.

ARTICLE II. DEFINITIONS.

As used in this article and compact, unless the context clearly requires a different meaning:

(a) "Active duty" means full-time duty status in any of the active uniformed services of the United States, including service in the National Guard and Reserve pursuant to active duty orders in accordance with 10 U.S.C. Sections 1209 and 1211;

(b) "Child of a military family" means any school-aged child enrolled in any of grades kindergarten through twelfth who is in the household of an active duty uniformed services member;

(c) "Compact commissioner" means the voting representative of a compacting state appointed pursuant to Article VIII of this compact;

(d) "Deployment" means the time period beginning one month prior to a uniformed services member's departure from his or her home station on military orders and ending six months after return to his or her home station;

(e) "Education records" means all documents, files, data and official records directly related to a student and maintained by a school or county board. This includes all material kept in the student's cumulative file, such as but not limited to generally-identifying data, attendance

records, academic work completion records, achievement records, evaluative test results, health data, disciplinary records, test protocols, and individualized education program or service records;

(f) "Extracurricular activities" means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the state board of education. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs;

(g) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the Commission that is created by Article IX of this compact;

(h) "County board" means a county board of education, which is the public entity legally constituted by this state as an administrative agency to provide control of and direction for grades kindergarten through twelfth in the public schools in the county in which it operates;

(i) "Member state" means a state that has enacted this compact;

(j) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or any other United States Territory. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects;

(k) "Non-member state" means a state that has not enacted this compact;

(l) "Receiving state" means a state to which a child of a military family is sent, brought, or caused to be sent or brought;

(m) "Rule" means a written statement by the Interstate Commission which:

(1) Is promulgated pursuant to Article XII of this compact;

(2) Is of general applicability;

(3) Implements, interprets or prescribes a policy or provision of this compact, or an organizational, procedural, or practice requirement of the Interstate Commission;

(4) Has the force and effect of statutory law in a member state; and

(5) May be amended, repealed, or suspended by act of the Interstate Commission;

(n) "Sending state" means a state from which a child of a military family is sent, brought, or caused to be sent or brought;

(o) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States Territory;

(p) "Student" means a child of a military family who is formally enrolled in any of grades kindergarten through twelfth and for whom a county board receives public funding;

(q) "Transition" means:

(1) The formal and physical process of transferring from one school to another; or

(2) The period of time during which a student moves from one school in a sending state to another school in the receiving state;

(r) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services;

(s) "Veteran" means a person who performed active duty service and was discharged or released therefrom under conditions other than dishonorable; and

(t) "The West Virginia Council for Educational Opportunity for Military Children" or "West Virginia Council" means the state coordinating council established in Article VIII of this compact.

ARTICLE III. APPLICABILITY.

(a) This compact applies to:

(1) Each county board of education; and

(2) The children of:

91 (A) Active duty members of the uniformed services as defined in this compact, including
92 members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections
93 1209 and 1211;

94 (B) Members or veterans of the uniformed services who are severely injured and medically
95 discharged or retired for a period of one year after medical discharge or retirement; and

96 (C) Members of the uniformed services who die on active duty or as a result of injuries
97 sustained on active duty for a period of one (1) year after death.

98 (b) Except as provided in subsection (a) of this Article III, this compact does not apply to the
99 children of:

100 (1) Inactive members of the National Guard or military reserves;

101 (2) Retired members of the uniformed services;

102 (3) Veterans of the uniformed services;

103 (4) Other United States Department of Defense personnel; nor

104 (5) Any other federal agency civilian or contract employees not defined as active duty
105 members of the uniformed services.

106 ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT.

107 (a) *Unofficial or "hand-carried" education records* —

108 In the event that official education records cannot be released to a student's parents or
109 legal guardians for the purpose of transfer, the custodian of the records in the sending state shall
110 prepare and furnish to the parents a complete set of unofficial educational records containing
111 uniform information as determined by the Interstate Commission. As quickly as possible upon
112 receipt of the unofficial education records by a school in the receiving state, the school shall enroll
113 and appropriately place the student based on the information provided in the unofficial records
114 pending validation by the official records.

115 (b) *Official education records/transcripts* —

Simultaneous with the enrollment and conditional placement of a student, the school in the receiving state shall request the student's official education records from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within ~~ten~~ 10 days or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(c) Immunizations —

(1) A county board shall allow a student ~~thirty~~ 30 days from the date of enrollment to obtain any required immunizations, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(2) In any case where a series of immunizations is required, the student shall obtain the initial vaccination within ~~thirty~~ 30 days of enrollment, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(d) Enrollment at current grade level —

(1) A student shall be permitted to enroll in the grade level in this state, including kindergarten, which is commensurate with the grade level in which he or she was enrolled in the sending state at the time of transition, regardless of his or her age.

(2) A student that has satisfactorily completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in this state, regardless of his or her age.

ARTICLE V. PLACEMENT & ATTENDANCE.

(a) Course placement —

(1) When a student transfers to this state before or during the school year, the school in this state shall initially place the student in educational courses based on the courses in which he or she was enrolled in the sending state, educational assessments conducted at the school in the sending state, or both, if the courses are offered at the school to which the student is transferring.

This course placement provision includes, but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses.

(2) A school shall give paramount consideration to continuing a student's academic program from the previous school, and promoting placement in academically and career-challenging courses, when considering course placement.

(3) A school is not precluded from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in any course.

(b) Educational program placement —

When a student transfers to this state, the school shall initially place the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to gifted and talented programs and English as a second language (ESL). A school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(c) Special education services —

(1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 *et seq.* a school in this state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and

(2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794 (Section 504), and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165 (Title II), any school in this state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II plan, to provide the student with equal access to education. The school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(d) *Placement flexibility* —

County board administrative officials have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses or programs offered under the authority of the county board.

(e) *Absence as related to deployment activities* —

A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the county superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI. ELIGIBILITY.

(a) *Eligibility for enrollment* —

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A county board may not charge local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

(b) *Eligibility for extracurricular participation* —

The State Board of Education and county boards shall facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

ARTICLE VII. GRADUATION.

In order to facilitate the on-time graduation of children of military families the State Board of Education and each county board shall incorporate the following procedures:

(a) Waiver requirements —

County board administrative officials shall either waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the county board shall provide an alternative means of acquiring required coursework so that the student may graduate on time.

(b) Exit exams —

Any school in this state shall accept:

(1) Exit or end-of-course exams required for graduation from the sending state;

(2) National norm-referenced achievement tests; or

(3) Alternative testing, in lieu of testing requirements for graduation in the receiving state.

In the event that the alternatives in this subsection cannot be accommodated by a school for a student transferring in his or her senior year, then the provisions of subsection (c) of Article VII of this compact apply.

(c) Transfers during senior year —

If a student transferring at the beginning of or during his or her senior year is ineligible to graduate from a school in this state after all alternatives have been considered, the county board and the local education agency in the sending state shall ensure that the student receives a diploma from the sending state, if the student meets the graduation requirements of the local education agency in the sending state. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (a) and (b) of this Article VII.

ARTICLE VIII. STATE COORDINATION.

(a) The West Virginia Council for Educational Opportunity for Military Children is hereby established for the purpose of coordinating entities in this state regarding participation in the Interstate Compact on Educational Opportunity for Military Children.

(b) Membership of the Council consists of at least six members as follows:

(1) The State Superintendent of Schools;

(2) The superintendent of a county board in the state which has a high concentration of military children, appointed by the Governor. If the Governor determines there is not a county school district that contains a high concentration of military children, he or she may appoint a superintendent from any county school district to represent county boards on the State Council;

(3) An individual representing a military installation in this state appointed by the Governor by and with the advice and consent of the Senate. This member serves a term of four years, except that the term of the individual initially appointed expires June 30, 2015. Each subsequent term begins on July 1 in the year of appointment.

(4) An individual representing the executive branch of government, appointed by the Governor;

(5) One member of the West Virginia Senate, appointed by the President of the West Virginia Senate; and

(6) One member of the West Virginia House of Delegates, appointed by the Speaker of the West Virginia House of Delegates.

(c) The Governor shall appoint a Compact Commissioner who is responsible for administering and managing the state's participation in the compact. The Governor may select the Commissioner from members appointed to the Council as provided in subsection (b) of this Article VIII, or may appoint another individual to serve in this capacity. A individual who is not already a full voting member of the Council becomes an ex-officio member of the Council if appointed as Commissioner.

(d) The West Virginia Council has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this compact, including, but not limited to the following:

(1) Facilitate coordination among state agencies and governmental entities of West Virginia, including county boards and military installations, concerning the state's participation in, and compliance with, this compact and Interstate Commission activities; and

(2) Appoint or designate a military family education liaison to assist military families and the state in facilitating implementation of the compact. This individual becomes an ex-officio member of the West Virginia Council if he or she is not already a full voting member of the Council when so appointed or designated.

ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN.

(a) The member states hereby create the "Interstate Commission on Educational Opportunity for Military Children." The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(b) The Interstate Commission:

(1) Is a body corporate and joint agency of the member states and has all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective Legislatures of the member states in accordance with the terms of this compact;

(2) Consists of one Interstate Commission voting representative from each member state who is that state's Compact Commissioner.

(A) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(B) A majority of the total member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(C) A representative may not delegate a vote to another member state. In the event a Compact Commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council of the Compact Commissioner's state may delegate voting authority to another person from that state for a specified meeting.

(D) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication;

(3) Consists of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but are not limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;

(4) Meets at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

(5) Establishes an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as established in the bylaws. Each member of the executive committee serves a one-year term. Each member of the executive committee is entitled to one vote. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the daily activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and such other duties as it determines are necessary. A representative of the United States Department of Defense serves as an ex-officio, nonvoting member of the executive committee;

(6) Establishes bylaws and rules that provide for conditions and procedures under which the Interstate Commission makes its information and official records available to the public for

inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

(7) Gives public notice of all meetings. All meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

(A) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by federal and state statute;

(C) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(D) Involve accusing a person of a crime, or formally censuring a person;

(E) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Disclose investigative records compiled for law enforcement purposes; or

(G) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding;

(8) Causes its legal counsel or designee to certify that a meeting may be closed, and reference each relevant exemptable provision for any meeting or portion of a meeting which is closed pursuant to this provision. The Interstate Commission shall maintain a minute record of each meeting which shall fully and clearly describe all matters discussed in the meeting. The minute record shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minute record. All

minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collects standardized data concerning the educational transition of the children of military families under this compact as directed through its rules. The rules shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(10) Creates a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subdivision does not create a private right of action against the Interstate Commission or any member state.

ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

The Interstate Commission has the following powers:

(a) To provide for dispute resolution among member states;

(b) To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules have the force and effect of statutory law and are binding in the compact states to the extent and in the manner provided in this compact;

(c) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(e) To establish and maintain offices which shall be located within one or more of the member states;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, hire or contract for services of personnel;

(h) To establish and appoint committees including, but not limited to, an executive committee as required by Article IX of this compact, which have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of such;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(m) To establish a budget and make expenditures;

(n) To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(o) To report annually to the Legislatures, Governors, Judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports also shall include any recommendations that may have been adopted by the Interstate Commission;

(p) To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;

(q) To establish uniform standards for reporting, collecting and exchanging data;

(r) To maintain corporate books and records in accordance with the bylaws;

(s) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

(t) To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

(a) The Interstate Commission shall, by a majority of the members present and voting, within ~~twelve~~ 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the returning surplus funds that may exist upon termination of the compact after the payment and reserving of all of its debts and obligations; and

(7) Providing start-up rules for initial administration of the compact.

(b) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the

chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected serve without compensation or remuneration from the Interstate Commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(c) Executive Committee, Officers and Personnel —

(1) The executive committee has such authority and duties as may be set forth in the bylaws, including but not limited to:

(A) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(B) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(C) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director serves as secretary to the Interstate Commission, but is not a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(d) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for

believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities. The executive director and employees are not protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of employment or duties for acts, errors, or omissions occurring within his or her state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection does not protect the executive director or employees from suit or liability for damage, loss, injury, or liability caused by his or her intentional or willful and wanton misconduct.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the individual arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the individual

had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the individual.

ARTICLE XII. RULEMAKING FUNCTIONS
OF THE INTERSTATE COMMISSION.

(a) Rulemaking Authority —

The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission is invalid and has no force nor effect.

(b) Rulemaking Procedure —

Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(c) Not later than ~~thirty~~ 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. Filing such a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(d) If a majority of the Legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then that rule has no further force nor effect in any compacting state.

ARTICLE XIII. OVERSIGHT, ENFORCEMENT,
AND DISPUTE RESOLUTION.

(a) *Oversight* —

(1) The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding, and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission renders a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

(b) *Default, Technical Assistance, Suspension and Termination* —

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's Legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The Interstate Commission does not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) Dispute Resolution —

(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement —

(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may by majority vote of the members initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(3) The remedies herein are not the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION.

(a) The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(c) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited annually by a

certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT.

(a) Any state is eligible to become a member state.

(b) This compact became effective and binding upon legislative enactment of the compact into law by ten states in July 2008. It becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment does not become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

AND ARTICLE XVI. WITHDRAWAL DISSOLUTION.

(a) *Withdrawal* —

(1) Once effective, the compact continues in force and remains binding upon each member state. A member state may withdraw from the compact upon repealing the specific statute that enacted the compact into law.

(2) Withdrawal from the compact occurs by repeal of the enacting statute, but withdrawal does not take effect until one year after the effective date of the repealing legislation and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of any legislation to repeal this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's potential to withdraw within ~~sixty~~ 60 days of receiving notice.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur if the withdrawing state reenacts the compact or upon such later date as may be determined by the Interstate Commission.

(b) Dissolution of Compact —

(1) This compact shall dissolve effective upon the date of the withdrawal or default of any member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII. SEVERABILITY AND CONSTRUCTION.

(a) The provisions of this compact are severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact prohibits the applicability of any other interstate compact to which the states are members.

ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

(a) Other Laws —

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact —

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-6. Review of certification.

Certification of each West Virginia law-enforcement officer shall be reviewed annually following the first certification and until such time as the officer may achieve exempt rank. Certification may be revoked, suspended or not renewed if any law-enforcement officer fails to attend annually an in-service approved law-enforcement training program, or if a law-enforcement officer achieving exempt rank fails to attend biennially an approved in-service supervisory level training program. When a law-enforcement officer is a member of the United States Air Force, Army, Coast Guard, Marines, Space Force, or Navy, or a member of the national guard or reserve military forces of any such armed forces, and has been called to active duty, resulting in separation from a law-enforcement agency for more than ~~twelve~~ 12 months but less than ~~twenty-four~~ 24 months, he or she shall attend and complete the mandated in-service training for the period and rank and qualify with his or her firearm within ~~ninety~~ 90 days from his or her reappointment as a law-enforcement officer by a law-enforcement agency.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 31. UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT.

§48-31-102. Definitions.

1 In this article:

2 (1) "Adult" means an individual who has attained ~~eighteen~~ 18 years of age or an
3 emancipated minor.

4 (2) "Caretaking authority" means the right to live with and care for a child on a day-to-day
5 basis. The term includes physical custody, parenting time, right to access, and visitation.

6 (3) "Child" means:

7 (A) An unemancipated individual who has not attained ~~eighteen~~ 18 years of age; or

8 (B) An adult son or daughter by birth or adoption, or under law of this state other than this
9 article, who is the subject of a court order concerning custodial responsibility.

10 (4) "Close and substantial relationship" means a relationship in which a significant bond
11 exists between a child and a nonparent.

12 (5) "Court" means a tribunal, authorized under law of this state other than this article to
13 make, enforce, or modify a decision regarding custodial responsibility.

14 (6) "Custodial responsibility" has the same meaning as in ~~section two hundred nineteen,~~
15 ~~article one of this chapter~~ §48-1-219 of this code.

16 (7) "Decision-making authority" means the power to make important decisions regarding a
17 child, including decisions regarding the child's education, religious training, health care,
18 extracurricular activities, and travel. The term does not include the power to make decisions that
19 necessarily accompany a grant of caretaking authority.

20 (8) "Deploying parent" means a service member, who is deployed or has been notified of
21 impending deployment and is:

22 (A) A parent of a child under law of this state other than this article; or

23 (B) An individual who has custodial responsibility for a child under law of this state other
24 than this article;

25 (9) "Deployment" means the movement or mobilization of a service member for more than
26 ninety days but less than ~~eighteen~~ 18 months pursuant to uniformed service orders that:

(A) Are designated as unaccompanied;

(B) Do not authorize dependent travel; or

(C) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(10) "Family member" means a sibling, aunt, uncle, cousin, step-parent or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(11) "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(12) "Nonparent" means an individual other than a deploying parent or other parent.

(13) "Other parent" means an individual who, in common with a deploying parent, is:

(A) A parent of a child under law of this state other than this article; or

(B) An individual who has custodial responsibility for a child under law of this state other than this article.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.

(16) "Service member" means a member of a uniformed service.

(17) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States;

(B) The United States Merchant Marine;

(C) The commissioned corps of the United States Public Health Service;

(D) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) The National Guard of a state.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-3. Definitions.

For the purposes of this article:

"Assessment" means an evaluation to determine whether a criminal defendant is a military service member as defined by this section, that the offense he or she has been charged with are attributable to their military service, and if the offender would benefit from the provisions set forth in this article.

"Court" means a Military Service Members Court.

"Department" means the West Virginia Department of Veterans' Assistance.

"Military Service Members Court program" or "program" is a program that includes pre-adjudicatory and post-adjudicatory treatment for military service members.

"Military service member" means a person who is currently serving in the Army, Air Force, Marines, Navy, Space Force, or Coast Guard on active duty, reserve status, or in the National Guard, or a person who served in the active military, or who was discharged or released under conditions other than dishonorable.

14 "Offender" means a criminal defendant who qualifies as a military service member under
15 this article.

16 "Post-adjudicatory program" means a program in which the offender has admitted guilt or
17 has been found guilty and agrees, with the prosecutor's consent, to enter a court program as part
18 of his or her sentence.

19 "Pre-adjudicatory program" means a program that allows the offender, with the consent of
20 the prosecutor, team, and the court to expedite the offender's criminal case before conviction or
21 before filing of a criminal case and requires the offender to agree to and successfully complete the
22 court program as part of the written agreement.

23 "VA" means the United States Department of Veterans Affairs.

24 "VJO" means the Veterans Justice Outreach program of the United States Department of
25 Veterans Affairs.

26 "Written agreement" means the agreement executed to allow a military service member to
27 participate in a court program.