

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4187

**FISCAL
NOTE**

By Delegate Pritt

[Introduced January 14, 2026; referred to the

Committee on Finance]

1 A BILL amend and reenact §11-15-2 of the Code of West Virginia, 1931, as amended, related to
2 defining professional services and adding certified fire investigators as a professional
3 service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-2. Definitions.

1 (a) *General.* -- When used in this article and article fifteen-a of this chapter, words defined
2 in subsection (b) of this section have the meanings ascribed to them in this section, except in those
3 instances where a different meaning is provided in this article or the context in which the word is
4 used clearly indicates that a different meaning is intended by the Legislature.

5 (b) *Definitions.* --

6 (1) "Business" includes all activities engaged in or caused to be engaged in with the object
7 of gain or economic benefit, direct or indirect, and all activities of the state and its political
8 subdivisions which involve sales of tangible personal property or the rendering of services when
9 those service activities compete with or may compete with the activities of other persons.

10 (2) "Communication" means all telephone, radio, light, light wave, radio telephone,
11 telegraph and other communication or means of communication, whether used for voice
12 communication, computer data transmission or other encoded symbolic information transfers and
13 includes commercial broadcast radio, commercial broadcast television and cable television.

14 (3) "Contracting":

15 (A) *In general.* -- "Contracting" means and includes the furnishing of work, or both
16 materials and work, for another (by a sole contractor, general contractor, prime contractor,
17 subcontractor or construction manager) in fulfillment of a contract for the construction, alteration,
18 repair, decoration or improvement of a new or existing building or structure, or any part thereof, or
19 for removal or demolition of a building or structure, or any part thereof, or for the alteration,
20 improvement or development of real property. Contracting also includes services provided by a

21 construction manager so long as the project for which the construction manager provides the
22 services results in a capital improvement to a building or structure or to real property.

23 (B) *Form of contract not controlling.* -- An activity that falls within the scope of the definition
24 of contracting constitutes contracting regardless of whether the contract governing the activity is
25 written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-
26 plus contract, a time and materials contract, whether or not open-ended, or any other kind of
27 construction contract.

28 (C) *Special rules.* -- For purposes of this definition:

29 (i) The term "structure" includes, but is not limited to, everything built up or composed of
30 parts joined together in some definite manner and attached or affixed to real property or which
31 adds utility to real property or any part thereof or which adds utility to a particular parcel of property
32 and is intended to remain there for an indefinite period of time;

33 (ii) The term "alteration" means, and is limited to, alterations which are capital
34 improvements to a building or structure or to real property;

35 (iii) The term "repair" means, and is limited to, repairs which are capital improvements to a
36 building or structure or to real property;

37 (iv) The term "decoration" means, and is limited to, decorations which are capital
38 improvements to a building or structure or to real property;

39 (v) The term "improvement" means, and is limited to, improvements which are capital
40 improvements to a building or structure or to real property;

41 (vi) The term "capital improvement" means improvements that are affixed to or attached to
42 and become a part of a building or structure or the real property or which add utility to real property,
43 or any part thereof, and that last or are intended to be relatively permanent. As used herein,
44 "relatively permanent" means lasting at least a year in duration without the necessity for regularly
45 scheduled recurring service to maintain the capital improvement. "Regular recurring service"
46 means regularly scheduled service intervals of less than one year;

47 (vii) Contracting does not include the furnishing of work, or both materials and work, in the
48 nature of hookup, connection, installation or other services if the service is incidental to the retail
49 sale of tangible personal property from the service provider's inventory: *Provided*, That the
50 hookup, connection or installation of the foregoing is incidental to the sale of the same and
51 performed by the seller thereof or performed in accordance with arrangements made by the seller
52 thereof. Examples of transactions that are excluded from the definition of contracting pursuant to
53 this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation
54 of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air
55 conditioning units, dishwashers, clothing washing machines or dryers, other household
56 appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing
57 industrial or commercial equipment and other similar items of tangible personal property. Repairs
58 made to the foregoing are within the definition of contracting if the repairs involve permanently
59 affixing to or improving real property or something attached thereto which extends the life of the
60 real property or something affixed thereto or allows or intends to allow the real property or thing
61 permanently attached thereto to remain in service for a year or longer; and

62 (viii) The term "construction manager" means a person who enters into an agreement to
63 employ, direct, coordinate or manage design professionals and contractors who are hired and paid
64 directly by the owner or the construction manager. The business activities of a "construction
65 manager" as defined in this subdivision constitute contracting, so long as the project for which the
66 construction manager provides the services results in a capital improvement to a building or
67 structure or to real property.

68 (4) "Directly used or consumed" in the activities of manufacturing, transportation,
69 transmission, communication or the production of natural resources means used or consumed in
70 those activities or operations which constitute an integral and essential part of the activities, as
71 contrasted with and distinguished from those activities or operations which are simply incidental,
72 convenient or remote to the activities.

73 (A) Uses of property or consumption of services which constitute direct use or
74 consumption in the activities of manufacturing, transportation, transmission, communication or the
75 production of natural resources include only:

76 (i) In the case of tangible personal property, physical incorporation of property into a
77 finished product resulting from manufacturing production or the production of natural resources;

78 (ii) Causing a direct physical, chemical or other change upon property undergoing
79 manufacturing production or production of natural resources;

80 (iii) Transporting or storing property undergoing transportation, communication,
81 transmission, manufacturing production or production of natural resources;

82 (iv) Measuring or verifying a change in property directly used in transportation,
83 communication, transmission, manufacturing production or production of natural resources;

84 (v) Physically controlling or directing the physical movement or operation of property
85 directly used in transportation, communication, transmission, manufacturing production or
86 production of natural resources;

87 (vi) Directly and physically recording the flow of property undergoing transportation,
88 communication, transmission, manufacturing production or production of natural resources;

89 (vii) Producing energy for property directly used in transportation, communication,
90 transmission, manufacturing production or production of natural resources;

91 (viii) Facilitating the transmission of gas, water, steam or electricity from the point of their
92 diversion to property directly used in transportation, communication, transmission, manufacturing
93 production or production of natural resources;

94 (ix) Controlling or otherwise regulating atmospheric conditions required for transportation,
95 communication, transmission, manufacturing production or production of natural resources;

96 (x) Serving as an operating supply for property undergoing transmission, manufacturing
97 production or production of natural resources, or for property directly used in transportation,
98 communication, transmission, manufacturing production or production of natural resources;

99 (xi) Maintaining or repairing of property, including maintenance equipment, directly used in
100 transportation, communication, transmission, manufacturing production or production of natural
101 resources;

102 (xii) Storing, removal or transportation of economic waste resulting from the activities of
103 manufacturing, transportation, communication, transmission or the production of natural
104 resources;

105 (xiii) Engaging in pollution control or environmental quality or protection activity directly
106 relating to the activities of manufacturing, transportation, communication, transmission or the
107 production of natural resources and personnel, plant, product or community safety or security
108 activity directly relating to the activities of manufacturing, transportation, communication,
109 transmission or the production of natural resources; or

110 (xiv) Otherwise using as an integral and essential part of transportation, communication,
111 transmission, manufacturing production or production of natural resources.

112 (B) Uses of property or services which do not constitute direct use or consumption in the
113 activities of manufacturing, transportation, transmission, communication or the production of
114 natural resources include, but are not limited to:

115 (i) Heating and illumination of office buildings;

116 (ii) Janitorial or general cleaning activities;

117 (iii) Personal comfort of personnel;

118 (iv) Production planning, scheduling of work or inventory control;

119 (v) Marketing, general management, supervision, finance, training, accounting and
120 administration; or

121 (vi) An activity or function incidental or convenient to transportation, communication,
122 transmission, manufacturing production or production of natural resources, rather than an integral
123 and essential part of these activities.

124 (5) "Directly used or consumed" in the activities of gas storage, the generation or

125 production or sale of electric power, the provision of a public utility service or the operation of a
126 utility business means used or consumed in those activities or operations which constitute an
127 integral and essential part of those activities or operation, as contrasted with and distinguished
128 from activities or operations which are simply incidental, convenient or remote to those activities.

129 (A) Uses of property or consumption of services which constitute direct use or
130 consumption in the activities of gas storage, the generation or production or sale of electric power,
131 the provision of a public utility service or the operation of a utility business include only:

132 (i) Tangible personal property, custom software or services, including equipment,
133 machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in
134 production or generation activities and equipment, machinery, supplies, tools and repair parts
135 used to keep in operation exempt production or generation devices. For purposes of this
136 subsection, production or generation activities shall commence from the intake, receipt or storage
137 of raw materials at the production plant site;

138 (ii) Tangible personal property, custom software or services, including equipment,
139 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are
140 used immediately in the transmission or distribution of gas, water and electricity to the public, and
141 equipment, machinery, tools, repair parts and supplies used to keep in operation exempt
142 transmission or distribution devices, and these vehicles and their equipment as are specifically
143 designed and equipped for those purposes are exempt from the tax when used to keep a
144 transmission or distribution system in operation or repair. For purposes of this subsection,
145 transmission or distribution activities shall commence from the close of production at a production
146 plant or wellhead when a product is ready for transmission or distribution to the public and shall
147 conclude at the point where the product is received by the public;

148 (iii) Tangible personal property, custom software or services, including equipment,
149 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are
150 used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and

151 repair parts used to keep in operation exempt storage devices;

152 (iv) Tangible personal property, custom software or services used immediately in the
153 storage, removal or transportation of economic waste resulting from the activities of gas storage,
154 the generation or production or sale of electric power, the provision of a public utility service or the
155 operation of a utility business;

156 (v) Tangible personal property, custom software or services used immediately in pollution
157 control or environmental quality or protection activity or community safety or security directly
158 relating to the activities of gas storage, generation or production or sale of electric power, the
159 provision of a public utility service or the operation of a utility business.

160 (B) Uses of property or services which would not constitute direct use or consumption in
161 the activities of gas storage, generation or production or sale of electric power, the provision of a
162 public utility service or the operation of a utility business include, but are not limited to:

163 (i) Heating and illumination of office buildings;

164 (ii) Janitorial or general cleaning activities;

165 (iii) Personal comfort of personnel;

166 (iv) Production planning, scheduling of work or inventory control;

167 (v) Marketing, general management, supervision, finance, training, accounting and
168 administration; or

169 (vi) An activity or function incidental or convenient to the activities of gas storage,
170 generation or production or sale of electric power, the provision of public utility service or the
171 operation of a utility business.

172 (6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas
173 for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir
174 engaged in by businesses subject to the business and occupation tax imposed by sections two
175 and two-e, article thirteen of this chapter.

176 (7) "Generating or producing or selling of electric power" means the generation, production

177 or sale of electric power engaged in by businesses subject to the business and occupation tax
178 imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

179 (8) "Gross proceeds" means the amount received in money, credits, property or other
180 consideration from sales and services within this state, without deduction on account of the cost of
181 property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may
182 not be deducted, but any credit or refund made for goods returned may be deducted.

183 (9) "Includes" and "including", when used in a definition contained in this article, does not
184 exclude other things otherwise within the meaning of the term being defined.

185 (10) "Manufacturing" means a systematic operation or integrated series of systematic
186 operations engaged in as a business or segment of a business which transforms or converts
187 tangible personal property by physical, chemical or other means into a different form, composition
188 or character from that in which it originally existed.

189 (11) "Person" means any individual, partnership, association, corporation, limited liability
190 company, limited liability partnership or any other legal entity, including this state or its political
191 subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator
192 of any person.

193 (12) "Personal service" includes those: (A) Compensated by the payment of wages in the
194 ordinary course of employment; and (B) rendered to the person of an individual without, at the
195 same time, selling tangible personal property, such as nursing, barbering, shoe shining,
196 manicuring and similar services.

197 (13) "Prepaid wireless calling service" means a telecommunications service that provides
198 the right to utilize mobile wireless service as well as other nontelecommunications services,
199 including the download of digital products delivered electronically, content and ancillary services,
200 which must be paid for in advance that is sold in predetermined units or dollars of which the
201 number decline with use in a known amount.

202 (14) Production of natural resources.

203 (A) "Production of natural resources" means, except for oil and gas, the performance, by
204 either the owner of the natural resources or another, of the act or process of exploring, developing,
205 severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit
206 or commercial use of any natural resource products and any reclamation, waste disposal or
207 environmental activities associated therewith and the construction, installation or fabrication of
208 ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated
209 facilities and apparatus, by the producer or others, including contractors and subcontractors, at a
210 coal mine or coal production facility.

211 (B) For the natural resources oil and gas, "production of natural resources" means the
212 performance, by either the owner of the natural resources, a contractor or a subcontractor, of the
213 act or process of exploring, developing, drilling, well-stimulation activities such as logging,
214 perforating or fracturing, well-completion activities such as the installation of the casing, tubing
215 and other machinery and equipment and any reclamation, waste disposal or environmental
216 activities associated therewith, including the installation of the gathering system or other pipeline
217 to transport the oil and gas produced or environmental activities associated therewith and any
218 service work performed on the well or well site after production of the well has initially commenced.

219 (C) All work performed to install or maintain facilities up to the point of sale for severance
220 tax purposes is included in the "production of natural resources" and subject to the direct use
221 concept.

222 (D) "Production of natural resources" does not include the performance or furnishing of
223 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,
224 decoration or improvement of a new or existing building or structure, or any part thereof, or for the
225 alteration, improvement or development of real property, by persons other than those otherwise
226 directly engaged in the activities specifically set forth in this subdivision as "production of natural
227 resources".

228 (15) "Professional services" means services rendered by physicians, dentists, lawyers,

229 certified public accountants, public accountants, optometrists, architects, professional engineers,
230 registered professional nurses, veterinarians, licensed physical therapists, ophthalmologists,
231 chiropractors, podiatrists, embalmers, osteopathic physicians and surgeons, registered
232 sanitarians, pharmacists, psychiatrists, psychoanalysts, psychologists, landscape architects,
233 registered professional court reporters, licensed social workers, enrolled agents, professional
234 foresters, certified fire investigators, licensed real estate appraisers and certified real estate
235 appraisers licensed in accordance with §37-14-1 et seq. of this code, nursing home
236 administrators, licensed professional counselors and licensed real estate brokers. Individuals who
237 provide services classified as nonprofessional for consumers sales and service tax purposes
238 include interior decorators, private detectives/investigators, security guards, bookkeepers,
239 foresters, truck driving schools, hearing aid dealers/fitters, contractors, electricians, musicians,
240 and hospital administrators; the foregoing listing is not all-inclusive but intended as containing
241 examples of trades and occupations.

242 (16) "Providing a public service or the operating of a utility business" means the providing
243 of a public service or the operating of a utility by businesses subject to the business and
244 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

245 (16) (17) "Purchaser" means a person who purchases tangible personal property, custom
246 software or a service taxed by this article.

247 (17) (18) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of
248 tangible personal property or custom software for a consideration, including a lease or rental,
249 when the transfer or delivery is made in the ordinary course of the transferor's business and is
250 made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also
251 includes the furnishing of a service for consideration. Notwithstanding anything to the contrary in
252 this code, effective after June 30, 2008, "sale" also includes the furnishing of prepaid wireless
253 calling service for consideration.

254 (18) (19) "Service" or "selected service" includes all nonprofessional activities engaged in

255 for other persons for a consideration, which involve the rendering of a service as distinguished
256 from the sale of tangible personal property or custom software, but does not include contracting,
257 personal services or the services rendered by an employee to his or her employer or any service
258 rendered for resale: *Provided*, That the term "service" or "selected service" does not include
259 payments received by a vendor of tangible personal property as an incentive to sell a greater
260 volume of such tangible personal property under a manufacturer's, distributor's or other third
261 party's marketing support program, sales incentive program, cooperative advertising agreement
262 or similar type of program or agreement, and these payments are not considered to be payments
263 for a "service" or "selected service" rendered, even though the vendor may engage in attendant or
264 ancillary activities associated with the sales of tangible personal property as required under the
265 programs or agreements.

266 (19) (20) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this
267 article, has the same meaning as when used in article fifteen-b of this chapter, except when the
268 context in which the word "agreement" is used clearly indicates that a different meaning is
269 intended by the Legislature.

270 (20) (21) "Tax" includes all taxes, additions to tax, interest and penalties levied under this
271 article or article ten of this chapter.

272 (21) (22) "Tax Commissioner" means the State Tax Commissioner or his or her delegate.
273 The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax
274 Commissioner, means any officer or employee of the state Tax Division duly authorized by the Tax
275 Commissioner directly, or indirectly by one or more redelegations of authority, to perform the
276 functions mentioned or described in this article or rules promulgated for this article.

277 (22) (23) "Taxpayer" means any person liable for the tax imposed by this article or additions
278 to tax, penalties and interest imposed by article ten of this chapter.

279 (23) (24) "Transmission" means the act or process of causing liquid, natural gas or
280 electricity to pass or be conveyed from one place or geographical location to another place or

281 geographical location through a pipeline or other medium for commercial purposes.

282 (24) (25) "Transportation" means the act or process of conveying, as a commercial
283 enterprise, passengers or goods from one place or geographical location to another place or
284 geographical location.

285 (25) (26) "Ultimate consumer" or "consumer" means a person who uses or consumes
286 services or personal property.

287 (26) (27) "Vendor" means any person engaged in this state in furnishing services taxed by
288 this article or making sales of tangible personal property or custom software. "Vendor" and "seller"
289 are used interchangeably in this article.

290 (c) *Additional definitions.* -- Other terms used in this article are defined in article fifteen-b of
291 this chapter, which definitions are incorporated by reference into article fifteen of this chapter.
292 Additionally, other sections of this article may define terms primarily used in the section in which
293 the term is defined.

NOTE: The purpose of this bill is to define professional services for the sales tax code and
add certified fire investigators to the definition.

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