

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5391**

By Delegates Holstein, Hornby, Funkhouser, and

Chiarelli

[Introduced February 10, 2026; referred to the

Committee on Finance]

1 A BILL to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §16-5V-25 and §16-5V-27 of said code; and to amend said code by  
 3 adding a new article, designated §16-5EE-1, §16-5EE-2, §16-5EE-3, and §16-5EE-4,  
 4 relating to the creation of the EMS Retirement Equity, Tax Relief, and Workforce Support  
 5 Act; modifying the calculation of retirement benefits based on the five highest earning  
 6 years of a member's career; exempting EMSRS pension income from West Virginia  
 7 personal income tax; and removing the 1040 hour annual work limitation for retired EMS  
 8 personnel who return to service in designated areas of need.

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

**CHAPTER 11. TAXATION.**

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) General. — The West Virginia adjusted gross income of a resident individual means his  
 2 or her federal adjusted gross income as defined in the laws of the United States for the taxable  
 3 year with the modifications specified in this section.

4 (b) Modifications increasing federal adjusted gross income. — There shall be added to  
 5 federal adjusted gross income, unless already included therein, the following items:

6 (1) Interest income on obligations of any state other than this state or of a political  
 7 subdivision of any other state unless created by compact or agreement to which this state is a  
 8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission or  
 10 instrumentality of the United States, which the laws of the United States exempt from federal  
 11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal  
 13 income tax purposes for the taxable year that is not allowed as a deduction under this article for the

14 taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or  
16 securities the income from which is exempt from tax under this article, to the extent deductible in  
17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as an  
19 exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the  
20 federal taxable year;

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

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

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

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

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

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

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

43 (5) Annuities, retirement allowances, returns of contributions and any other benefit  
44 received under the West Virginia Public Employees Retirement System, and the West Virginia  
45 State Teachers Retirement System, including any survivorship annuities derived therefrom, to the  
46 extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding  
47 any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
48 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
49 State Teachers Retirement System and, including any survivorship annuities derived therefrom, to  
50 the extent includable in gross income for federal income tax purposes for taxable years beginning  
51 after December 31, 1986; and the first \$2,000 of benefits received under any federal retirement  
52 system to which 4 U.S.C. § 111 applies: *Provided, however*, That the total modification under this  
53 paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation  
54 shall apply to all returns or amended returns filed after December 31, 1988;

55 (6) Retirement income received in the form of pensions and annuities after December 31,  
56 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West  
57 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police  
58 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any  
59 survivorship annuities derived from any of these programs, to the extent includable in gross  
60 income for federal income tax purposes;

61 (7)(A) For taxable years beginning after December 31, 2000, and ending prior to January  
62 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the  
63 Armed Forces of the United States of America with the product thereof multiplied by the first  
64 \$30,000 of military retirement income, including retirement income from the regular Armed Forces,  
65 Reserves and National Guard paid by the United States or by this state after December 31, 2000,

66 including any survivorship annuities, to the extent included in gross income for federal income tax  
67 purposes for the taxable year.

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

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

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

86 (8) Decreasing modification for social security income.

87 (A) For taxable years beginning on or after January 1, 2022, 100 percent of the social  
88 security benefits received pursuant to Chapter 7 of Title 42 of the United States Code, including,  
89 but not limited to, social security benefits paid by the Social Security Administration as Old Age,  
90 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as  
91 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381

92 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a  
93 decreasing modification from federal adjusted gross income when determining West Virginia  
94 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-  
95 12(c)(8)(B) of this code.

96 (B) The deduction allowed by §11-21-12(c)(8)(A) of this code are allowable only when the  
97 federal adjusted gross income of a married couple filing a joint return does not exceed \$100,000,  
98 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 Chapter 7 of Title 42 of the United States Code,  
101 including, but not limited to, social security benefits paid by the Social Security Administration as  
102 Old Age, Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as  
103 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381  
104 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a  
105 decreasing modification from federal adjusted gross income when determining West Virginia  
106 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-  
107 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 Chapter 7 of Title 42 of the United States Code, including,  
110 but not limited to, social security benefits paid by the Social Security Administration as Old Age,  
111 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as  
112 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. § 1381  
113 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a  
114 decreasing modification from federal adjusted gross income when determining West Virginia  
115 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-  
116 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 Chapter 7 of Title 42 of the United States Code, including,  
119 but not limited to, social security benefits paid by the Social Security Administration as Old Age,  
120 Survivors and Disability Insurance Benefits as provided in 42 U.S.C. § 401 *et. seq.* or as  
121 Supplemental Security Income for the Aged, Blind, and Disabled as provided in 42 U.S.C. 1381 *et.*  
122 *seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a  
123 decreasing modification from federal adjusted gross income when determining West Virginia  
124 taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-  
125 12(c)(8)(F) of this code.

126 (F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-  
127 12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married  
128 couple filing a joint return exceeds \$100,000, or \$50,000 in the case of a single individual or a  
129 married individual filing a separate return.

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

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

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

144 sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

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

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

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

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

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

164 (d) Modification for West Virginia fiduciary adjustment. — There shall be added to or  
165 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as  
166 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-  
167 21-19 of this code.

168 (e) Partners and S corporation shareholders. — The amounts of modifications required to  
169 be made under this section by a partner or an S corporation shareholder, which relate to items of

170 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
171 §11-21-17 of this code.

172 (f) Husband and wife. — If husband and wife determine their federal income tax on a joint  
173 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.

185 (h) For taxable years beginning on or after July 1, 2026, retirement income received from  
186 the Emergency Medical Services Retirement System (EMSRS) shall be exempt from West  
187 Virginia personal income tax, in whole, without limitation on amount.

188 (i) The Tax Commissioner shall issue any rules necessary for administration of this  
189 exemption, and shall update relevant forms and instructions accordingly.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.**

#### **§16-5V-25. Additional death benefits and scholarships -- Dependent children.**

1 (a) In addition to the spouse death benefits in this article, the surviving spouse is entitled to  
2 receive and there shall be paid to the spouse \$100 monthly for each dependent child.

3 (b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly  
4 to each dependent child a sum equal to one hundred percent of the spouse's entitlement under  
5 this article divided by the number of dependent children. If there is neither a surviving spouse nor a  
6 dependent child, the fund shall pay in equal monthly installments to the dependent parents of the  
7 deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse,  
8 without children, would have received: *Provided*, That when there is only one dependent parent  
9 surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both  
10 parents, if living, would have been entitled to receive: *Provided, however*, That if there is no  
11 surviving spouse, dependent child or dependent parent of the deceased member, the  
12 accumulated contributions shall be paid to a named beneficiary or beneficiaries: *Provided further*,  
13 That if there is no surviving spouse, dependent child or dependent parent of the deceased  
14 member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be  
15 paid to the estate of the deceased member.

16 (c) Any person qualifying as a dependent child under this section, in addition to any other  
17 benefits due under this or other sections of this article, is entitled to receive a scholarship to be  
18 applied to the career development education of that person. This sum, up to but not exceeding  
19 \$6,000 per year, shall be paid from the fund to any university or college in this state or to any trade  
20 or vocational school or other entity in this state approved by the board to offset the expenses of  
21 tuition, room and board, books, fees or other costs incurred in a course of study at any of these  
22 institutions so long as the recipient makes application to the board on an approved form and under  
23 rules provided by the board and maintains scholastic eligibility as defined by the institution or the  
24 board. The board may propose legislative rules for promulgation in accordance with article three,  
25 chapter twenty-nine-a of this code which define age requirements, physical and mental  
26 requirements, scholastic eligibility, disbursement methods, institutional qualifications and other  
27 requirements as necessary and not inconsistent with this section. Scholarship benefits awarded  
28 pursuant to this subsection are not subject to division or payable to an alternate payee by any

29 Qualified Domestic Relations Order.

30 (d) "Final average salary" means the average of the highest annual compensation received  
31 by a member during any five years of credited service, whether or not those years are consecutive.  
32 This shall replace any prior calculation method based solely on the final three or five consecutive  
33 years.

34 (e) The Board of Trustees of the West Virginia Emergency Medical Services Retirement  
35 System shall adopt any rules necessary to implement this change and ensure its application is  
36 retroactive to all active members as of July 1, 2026, and forward.

**§16-5V-27. Double death benefits prohibited.**

1 (a) A surviving spouse is not entitled to receive simultaneous death benefits under this  
2 article as a result of the death of two or more members to whom the spouse was married. Any  
3 spouse who becomes eligible for a subsequent death benefit under this article while receiving a  
4 death benefit under this article shall receive the higher benefit, but not both.

5 (b) Notwithstanding any other provision of law, a retired member of the Emergency Medical  
6 Services Retirement System may return to employment as an emergency medical services  
7 provider in a designated area of need without limitation on annual hours worked, and without  
8 suspension or reduction of retirement benefits.

9 (c) The Office of Emergency Medical Services shall define "area of need" by rule,  
10 considering factors such as provider shortages, response times, and community health indicators.

**ARTICLE 5EE. EMS RETIREMENT EQUITY, TAX RELIEF, AND WORKFORCE**

**SUPPORT ACT.**

**§16-5EE-1. Short Title.**

1 This Act shall be known and cited as the "EMS Retirement Equity, Tax Relief, and  
2 Workforce Support Act."

**§16-5EE-2. Legislative Findings.**

1           The Legislature finds that:  
 2           Emergency Medical Services personnel provide critical, life-saving care under high-risk  
 3 and high-stress conditions throughout their careers.

4           The current retirement formula for EMSRS does not adequately reflect the total value or  
 5 burden of EMS service.

6           Aligning retirement benefits with a member’s five highest-earning years recognizes peak  
 7 contributions and supports long-term recruitment and retention.

8           Exempting EMSRS retirement income from state taxation is a fair and reasonable  
 9 acknowledgment of public service and will promote retirement security.

10           Removing the 1040-hour limitation for retired EMS professionals returning to work in areas  
 11 of need will help address workforce shortages and ensure timely emergency response for West  
 12 Virginia communities.

**§16-5EE-3.** **Severability.**

1           If any provision of this Act or its application to any person or circumstance is found to be  
 2 invalid, the remainder of the Act and its application shall remain in full force and effect.

**§16-5EE-4.** **Effective** **Date.**

1           This article shall take effect on July 1, 2026.

NOTE: The purpose of this bill is to create the EMS Retirement Equity, Tax Relief, and Workforce Support Act.

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