
WEST VIRGINIA CODE CHAPTER 29
ARTICLE 6

WV Legislature

§29-6-1. General purpose.

The general purpose of this article is to attract to the service of this state personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness, except as hereinafter specified. All employment positions not in the classified service, with the exception of the board of regents, are included in a classification plan known as classified-exempt service.

§29-6-2. Definition of terms.

As used in this article, unless the context indicates otherwise, the term:

(a) "Administrator" means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

(b) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

(c) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

(d) "Board" means the state Personnel Board created by section six of this article;

(e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

(f) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class;

(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the higher education governing boards;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) "Director" means the head of the Division of Personnel as appointed by section seven of this article;

(k) "Division" means the Division of Personnel herein created;

(l) "Policy-making position" means a position in which the person occupying it: (1) Acts as an advisor to or formulates plans for the implementation of broad goals for an administrator or the Governor; (2) is in charge of a major administrative component of the agency; and (3) reports directly and is directly accountable to an administrator or the Governor;

- (m) "Position" means a particular job which has been classified based on specifications;
- (n) "Secretary" means the Secretary of the Department of Administration created in section two, article one, chapter five-f of this code;
- (o) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment;
- (p) "Veteran" means any person who has served in the Armed Forces of the United States of America during World War I (April 6, 1917--November 11, 1918), World War II (December 7, 1941--December 31, 1946), the Korean Conflict (June 27, 1950--January 31, 1955), the Vietnam Conflict (August 5, 1964--May 7, 1975) or in a campaign, expedition or conflict for which a campaign badge has been authorized and received by such person and who has received a discharge under honorable conditions from such service.

§29-6-3. Classified service.

The classified service includes all positions covered by the civil service system as of the effective date of this article, except as otherwise provided in this article. Positions may be added to the classified service as provided in section four of this article.

WV Legislature

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

NOTE: West Virginia Code §29-6-4 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The latter act, House Bill 4059 (passed on March 12, 2022), amended West Virginia Code §29-6-4 to read as follows:

- (a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.
- (b) Except for the period commencing on July 1, 1992, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the written consent of the State Personnel Board and the appointing authority concerned, add to the list of positions in the classified service, but the additions may not include any positions specifically exempted from coverage as provided in this section.
- (c) The following offices and positions are exempt from coverage under the classified service:
 - (1) All judges, officers, and employees of the judiciary;
 - (2) All members, officers, and employees of the Legislature;
 - (3) All officers elected by popular vote and employees of the officer;
 - (4) All secretaries of departments and employees within the office of a secretary;
 - (5) Members of boards and commissions and heads of departments appointed by the Governor or heads of departments selected by commissions or boards when expressly exempt by law or board order;
 - (6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the Governor or Legislature;
 - (7) All policy-making positions, which includes newly hired Deputy Commissioners within the Department of Health and Human Resources;
 - (8) Patients or inmates employed in state institutions;
 - (9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee

thereof, an executive department, or by authority of the Governor;

(10) All employees of the office of the Governor, including all employees assigned to the executive mansion;

(11) Part-time professional personnel engaged in professional services without administrative duties;

(12) Temporary employees;

(13) Members and employees of the board of trustees and board of directors or their successor agencies;

(14) Uniformed personnel of the State Police;

(15) Temporary employees in the state forests, parks, and recreational areas; and

(16) Any person hired as an attorney beginning July 1, 2022.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the Governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the Governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the Governor including all employees assigned to the executive mansion, as well as any persons appointed by the Governor to fill policy-making positions, in that those offices or positions are confidential in character and require their holders to act as advisors to the Governor or the Governor's appointees, to formulate and implement the policies and goals of the Governor or the Governor's appointees, or to help the Governor or the Governor's appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

(e) All county road supervisor positions are covered under the classified service effective July 1, 1999. A person employed as a county road supervisor on the effective date of this section is not required to take or pass a qualifying or competitive examination upon, or as a condition of, becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed, or terminated in his or her employment must be severed, removed, or terminated as if the person was a classified service employee.

The earlier act, House Bill 4286 (passed on March 7, 2022) amended West Virginia Code §29-6-4 to read as follows:

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on July 1, 1992, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year 1996, and in each fourth year thereafter, the Governor may, by executive order, with the written consent of the State Personnel Board and the appointing authority concerned, add to the list of positions in the classified service, but the additions may not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

- (1) All judges, officers, and employees of the judiciary;
- (2) All members, officers, and employees of the Legislature;
- (3) All officers elected by popular vote and employees of the officer;
- (4) All secretaries of departments and employees within the office of a secretary;
- (5) Members of boards and commissions and heads of departments appointed by the Governor or heads of departments selected by commissions or boards when expressly exempt by law or board order;
- (6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the Governor or Legislature;
- (7) All policy-making positions;
- (8) Patients or inmates employed in state institutions;
- (9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof, an executive department, or by authority of the Governor;
- (10) All employees of the office of the Governor, including all employees assigned to the executive mansion;
- (11) Part-time professional personnel engaged in professional services without administrative duties;
- (12) Temporary employees;
- (13) Members and employees of the board of trustees and board of directors or their successor agencies;

(14) Uniformed personnel of the State Police;

(15) Temporary employees in the state forests, parks, and recreational areas; and

(16) Any person hired as an attorney beginning July 1, 2022.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the Governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the Governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the Governor including all employees assigned to the executive mansion, as well as any persons appointed by the Governor to fill policy-making positions, in that those offices or positions are confidential in character and require their holders to act as advisors to the Governor or the Governor's appointees, to formulate and implement the policies and goals of the Governor or the Governor's appointees, or to help the Governor or the Governor's appointees communicate with and explain their policies and views to the public, the Legislature, and the press.

(e) All county road supervisor positions are covered under the classified service effective July 1, 1999. A person employed as a county road supervisor on the effective date of this section is not required to take or pass a qualifying or competitive examination upon, or as a condition of, becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed, or terminated in his or her employment must be severed, removed, or terminated as if the person was a classified service employee.

§29-6-4a.

Repealed.

Acts, 1989 Reg. Sess., Ch. 29.

WV Legislature

§29-6-5. Division of Personnel continued; functions.

- (a) The Division of Personnel is continued within the Department of Administration.
- (b) The Division of Personnel shall perform the following functions:
 - (1) Evaluating applicants for appointment or promotion to positions in the classified service;
 - (2) Establishing and applying a system of classification for positions in the classified and classified-exempt service;
 - (3) Establishing and applying a system of compensation for positions in the classified service;
 - (4) Establishing and maintaining records of employment for classified employees;
 - (5) Advising appointing authorities and supervisory personnel regarding disciplinary matters, the provisions of this article, rules implementing the provisions of this article, and laws and rules affecting human resource management;
 - (6) Providing training in human resource management and the operation of the state personnel system;
 - (7) Assuring compliance with this article and rules implementing the provisions of this article; and
 - (8) Other functions necessary to the establishment of a system of personnel administration as provided in this article.

§29-6-5a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§29-6-6. State Personnel Board continued; members; term; quorum; vacancies; powers and duties.

(a) There is continued within the Division a State Personnel Board consisting of the Secretary of the Department of Administration or his or her designee who serves as an ex officio nonvoting member and five members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and until the appointment of their successors. No more than four members may be of the same political party. Four members of the board constitute a quorum.

(b) A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only in the manner prescribed in article six, chapter six of this code for the removal by the Governor of state elected officers.

(c) Citizen members of the board shall each be compensated for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties, as recommended by the Citizens Legislative Compensation Commission as authorized by law, and may be reimbursed actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(d) The Secretary of the Department of Administration or his or her designee serves as Chair of the board. The Board shall meet at the time and place specified by the call of the Chair. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the Director at least three days in advance of the meeting period.

(e) In addition to other powers and duties invested in it by this article or by any other law, the board shall:

(1) Propose rules for legislative approval, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article;

(2) Interpret the application of this article to any public body or entity; and

(3) Authorize and conduct any studies, inquiries, investigations or hearings in the operation of this article it considers necessary.

(f) The Director or the board may subpoena and require the attendance of witnesses in the production of evidence or documents relevant to any proceeding under this article.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

(a) The Secretary of the Department of Administration shall appoint the director. The director shall be a person knowledgeable of the application of the merit principles in public employment as evidenced by the obtainment of a degree in business administration, personnel administration, public administration or the equivalent or at least five years of administrative experience. The salary for the director shall be that which is set out in section two-a, article seven, chapter six of this code.

(b) The director shall:

(1) Consistent with the provisions of this article, administer the operations of the division, allocating the functions and activities of the division among sections as the director may establish;

(2) Maintain a personnel management information system necessary to carry out the provisions of this article;

(3) Supervise payrolls and audit payrolls, reports or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer and implement personnel programs and policies in state government and to political subdivisions after agreement by the parties;

(5) Supervise the employee selection process and employ performance evaluation procedures;

(6) Develop programs to improve efficiency and effectiveness of the public service, including, but not limited to, employee training, development, assistance and incentives, which, notwithstanding any provision of this code to the contrary, may include a one-time monetary incentive for recruitment and retention of employees in critically understaffed classifications. The director, in consultation with the board, shall determine which classifications are critically understaffed. The one-time monetary incentive program shall continue until June 30, 2009. The director shall report annually on or before December 31, commencing in the year 2007, to the Joint Committee on Government and Finance. The annual report shall provide all relevant information on the one-time monetary incentive program and the understaffed classifications in state agencies;

(7) Establish pilot programs and other projects for a maximum of one year outside of the provisions of this article, subject to approval by the board, to be included in the annual report;

(8) Establish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees;

(9) Establish an internship program;

- (10) Assist the Governor and Secretary of the Department of Administration in general workforce planning and other personnel matters;
- (11) Make an annual report to the Governor and Legislature and all other special or periodic reports as may be required;
- (12) Assess cost for special or other services;
- (13) Recommend rules to the board for implementation of this article; and
- (14) Conduct schools, seminars or classes for supervisory employees of the state regarding handling of complaints and disciplinary matters and the operation of the state personnel system.

§29-6-7a. Report on a centralized personnel system.

[Repealed.]

WV Legislature

§29-6-8. Duties of board generally.

In addition to the duties expressly set forth elsewhere in this article, the board shall:

- (1) Represent the public interest in the improvement of personnel administration in the classified service.
- (2) Advise the Governor, the secretary, and the director on problems concerning personnel administration.
- (3) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the classified service.
- (4) Make any investigation which it may consider desirable concerning the administration of personnel in the classified service and make recommendations to the director with respect thereto.
- (5) Approve the budget as prepared by the director for administration of this article before submission to the Division of Finance and administration.

§29-6-9. Civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules.

(a) The civil service commission is hereby abolished. All duties and responsibilities heretofore imposed upon the civil service commission are hereby imposed upon the state personnel board, and all duties and responsibilities heretofore imposed upon the director of the civil service system are hereby imposed upon the director of the Division of Personnel. Except as used in this section, the words "civil service commission" or "commission," when used in this article, shall refer to and mean the state personnel board. Whenever reference is made to the director of the civil service commission, the power or duty prescribed shall apply to the director of the Division of Personnel.

(b) Persons employed on the effective date of this article by the civil service commission, the duties and functions of which have been transferred to the Division of Personnel, are hereby assigned and transferred to the Division of Personnel. It is the intent of this article to consolidate into the Division of Personnel those agencies and employees performing personnel functions which will be facilitated by their consolidation, except as excluded in section four of this article. On the effective date of this article, all personnel payroll positions and employees occupying those positions necessary to effectuate the purposes of this article shall be transferred to the Division of Personnel: Provided, That in order to provide for a smooth transition, the Governor may, by executive order, determine those positions and employees that shall be transferred and provide that the transfers provided for in this subsection take effect no later than September 30, 1989.

(c) Upon the transfer, if any, of any personnel payroll positions as provided in subsection (b) of this section from the Division of Highways, the Division of Motor Vehicles, the workers' compensation fund, the Public Service Commission, or any other department or division operating from special revenue funds or federal funds, such department or division shall pay to the Division of Personnel the costs of personnel services, as determined by the secretary of the Department of Administration, provided to their respective divisions. When no specific appropriation is made for this purpose, such payments shall be made from personal services, annual increment, and employee benefit appropriations to the department or division. Upon the transfer of any personnel payroll positions to the Division of Personnel from any department or division funded from general revenues of the state, the Governor is authorized and empowered to order the transfer of funds for those positions.

(d) The abolishment of the civil service commission and the creation of the Division of Personnel shall in no way hinder any ongoing programs, benefits, litigation, or grievance procedures. Employees in the classified service who have gained permanent status as of the effective date of this article will not be subject to further qualifying examination by reason of any transfer required by the provisions of this section, except when they wish to qualify for promotion. Nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state to the procedures and protections set forth in sections ten and ten-a of this article, except as provided in subsection (d), section

two, article two, chapter five-f of this code.

(e) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Personnel: Provided, That in order to provide for a smooth transition, the Governor may, by executive order, determine the equipment and records to be transferred and provide that the transfers provided for in this subsection take effect no later than September 30, 1989.

(f) The rules of the civil service commission shall remain in force and effect until promulgation of new or additional rules by the state personnel board.

(g) Nothing contained in this article shall be construed to preclude the reclassification or reallocation of positions in accordance with procedures set forth in section ten of this article.

§29-6-9a.

Repealed.

Acts, 2009 Reg. Sess., Ch. 202.

WV Legislature

§29-6-10. Rules of division.

The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a of this code, to implement the provisions of this article:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Except for persons employed by the governing boards of higher education, all persons receiving compensation as a wage or salary, funded either in part or in whole by the state, are included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the board. Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the board. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions in the classified service. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his or her discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant's qualifications, record of performance, seniority and his or her score on a written examination, when such examination is practicable. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is required between two or more employees in the classified service as to who will receive the benefit or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal or similar qualifications, consideration shall be given to the level of seniority of each of the respective employees as a factor in determining which of the employees will receive the benefit or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial or clerical position has, irrespective of job classification, actual job experience related to the qualifications for a managerial or supervisory position, the division shall consider the experience as qualifying experience for the position. The division in its classification plan may, for designated classifications, permit substitution of qualifying experience for specific educational or training requirements at a rate determined by the division.

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any other job duties held by less senior employees within that agency in the job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his or her place on the recall list for the same period of time as his or her seniority on the date of his or her layoff or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his or her last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any change in his or her address.

Notwithstanding any other provision of the code to the contrary, except for the provisions of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies the directors of state agencies shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to qualified

permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities: Provided, That employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility.

(7) For the establishment of eligible lists for appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top ten names on the appropriate lists of eligibles, or may choose any person scoring at or above the ninetieth percentile on the examination.

For the establishment of eligible lists for preference as provided in subdivision (6) of this section, a list shall be provided according to seniority. An appointed authority shall make the selection of the most senior qualified person: Provided, That eligibility for appointment from any such list shall continue not longer than one year and shall cease immediately upon appointment to a classified position.

(8) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience who are addicted to alcohol or narcotics or who have attempted any deception or fraud in connection with an examination.

(9) For a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service.

(10) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment may continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(11) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(12) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his or her deputy: Provided, That upon an involuntary discharge for cause, the employer may require immediate separation from the workplace, or the employee may elect immediate

separation. If separation is required by the employer in lieu of any advance notice of discharge, or if immediate separation is elected by an employee who receives notice of an involuntary discharge for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the discharge. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control unless his or her disability is of such a nature as to permanently incapacitate him or her from the performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his or her duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his or her position.

(13) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

(14) The board shall review and approve by rules the establishment of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

The provisions of this section are subject to any modifications contained in chapter five-f of this code. The board may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The board and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

§29-6-10a. Reduction in work force.

(a) Notwithstanding any other provision of this article or any rule promulgated thereunder to the contrary, an employee in the classified service who has performed work for a reasonable period of time in a position with a classification that is higher than the position in which he is employed and classified may, in the event that his regular position would be terminated as a result of a reduction in force in his division, have the right to request that his classification be reviewed and that, in his or her supervisor's discretion, he be promoted to the higher classified position by passing a qualifying examination for such higher position and providing sufficient evidence of his work periods and satisfactory performance of the duties and responsibilities of the higher classified position.

The commission shall provide by legislative rule for the maintenance of records by all covered agencies of the work periods and rating of job performance of employees performing work in a position or positions with a classification that is higher than the position in which he is employed and classified and the duration of work periods required to request review and promotion.

(b) The provisions of this subsection shall be of no force and effect on and after July 1, 1995. Notwithstanding any other provision of this code to the contrary, a managerial or supervisory employee in the classified service of this state with a classified service pay grade of sixteen or higher who is adversely affected by a reduction in force shall not be entitled to be reassigned, transferred or otherwise retained for any position in state government except as provided in this section, and no regulation or policy shall provide for such a right: Provided, That there shall be no redesignation of the levels of pay grades in the classified service in effect on May 1, 1994. Any such employee shall have the right, upon notice of and prior to the effective date of the reduction in force, to accept a position in a lower job class at no less than the entry salary of that position if the employee: (1) Has formerly performed the duties of that position or the substantial equivalent thereof and is otherwise qualified within the classified service for that position; and (2) is a more senior employee than the least senior employee then employed in such position. No provision of this section shall be construed to deny the right of the appointing authority, in his or her discretion, to reassign, transfer or otherwise retain such employee to or for another position for which the employee is qualified within the classified service. Where the employee is not reassigned, transferred or otherwise retained pursuant to the provisions of this section, no provision of this section shall be construed to deny the employee the opportunity to reapply for entrance in the classified service of the state through participation in competitive examinations.

§29-6-11. Duty to furnish facilities for division's use.

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the division the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The division shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

WV Legislature

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this article and the rules and orders thereunder. All officers and employees shall furnish any records or information which the director may request for any purpose of this article. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or appropriate to secure compliance with this article and the rules and orders thereunder.

§29-6-13.

Repealed.

Acts, 1989 Reg. Sess., Ch. 29.

WV Legislature

§29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this article and the rules, regulations and orders thereunder. The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every six months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

(b) If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in the courts to compel the director to certify such payroll voucher or account.

§29-6-15.

Repealed.

Acts, 1989 Reg. Sess., Ch. 29.

WV Legislature

§29-6-16. Records of division.

The records of the division, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the director.

WV Legislature

§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.

(a) Subject to the approval of the board the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreements shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements. Subject to the approval of the board, the director may enter into an agreement with the state department of health for the inclusion of personnel of local health departments under the classified service system established by this article.

(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this article.

§29-6-17a.

Repealed.

Acts, 1999 Reg. Sess., Ch. 52.

WV Legislature

§29-6-17b.

Repealed.

Acts, 1999 Reg. Sess., Ch. 52.

WV Legislature

§29-6-18.

Repealed.

Acts, 1989 Reg. Sess., Ch. 29.

WV Legislature

§29-6-19. Refusal to testify.

If any employee in the classified or classified-exempt service shall willfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him or shall refuse to accept a grant of immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, he shall forfeit his office or position and shall not be eligible thereafter for appointment to any position in the classified or classified-exempt service.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his or her political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

(d) No employee in the classified service or member of the board or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office other than as a paid poll clerk or worker; or be a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section shall be permitted.

(f) Political participation pertaining to Constitutional amendments, referendums, approval of municipal ordinances or activities, serving as a poll clerk or worker or being a candidate for or serving as a delegate to any state or national political party convention shall not be

deemed to be prohibited by the foregoing provisions of this section.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy.

WV Legislature

§29-6-21. Acts prohibited.

(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other valuable consideration for or on account of any certification, appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the division, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

§29-6-22. Penalties.

(a) Any person who willfully violates any provision of this article or of the rules shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned. Jurisdiction under this section shall be in a court of record exercising criminal jurisdiction within the county wherein the offense is committed.

(b) Any person who is convicted of a misdemeanor under this article shall, for a period of five years, be ineligible for appointment to or employment in a position in the classified or classified-exempt service, and if he is an officer or employee of the state, shall forfeit his present office or position.

§29-6-23. Special fund; appropriations; cost of administering article; acceptance of grants or contribution; disbursements.

For the operation of the division, there is hereby created in the state Treasury a special revolving fund to be known and designated as the "Division of Personnel fund." This fund shall consist of appropriations made by the Legislature, funds transferred in accordance with the provisions of section nine of this article, funds received for personnel services rendered to other agencies, departments, divisions and units of state and local government, and funds received by grant or contribution from the federal government or any other entity which funds the division is hereby authorized to receive: Provided, That for fiscal year one thousand nine hundred ninety all funds remaining in account numbers 5840-00, 5840-35 and 5840-17 shall be transferred to the Division of Personnel fund on the effective date of this article. Each agency, department, division or unit of state or local government served by the Division of Personnel is hereby authorized and directed to transmit to the division for deposit in said special fund the charges made by the Division of Personnel for personnel services rendered, such charges to be those fixed in a schedule or schedules prepared by the director and approved by the secretary of the Department of Administration. Disbursements from the fund shall be made in accordance with an approved expenditure schedule as provided by article two, chapter five-a of this code and shall be made under the direct supervision of the director.

The director shall maintain accurate records reflecting the cost of administering the provisions of this article.

§29-6-24. Posting of job openings.

(a) Whenever a job opening occurs within the classified service, the appointing authority shall, in addition to any other requirement of law or regulation for the posting of job opening notices, at least ten days before making an appointment to fill the job opening, post a notice within the building or facility where the duties of the job will be performed and throughout the agency, which notice states that a job opening has occurred and describes the duties to be performed by a person employed in that position.

(b) If an individual selected for a posted vacancy within the first ten work days of employment: (1) Refuses the offer of employment; (2) fails to report to work; or (3) resigns or otherwise separates from employment, the appointing authority is not required to repost the vacancy prior to another appointment to the position if the appointment is made within thirty days and the selection is made from the pool of eligible applicants from which the first employee was hired.

§29-6-25. Implementation; report to Governor and Legislature.

(a) General implementation is to be completed no later than twelve months following the effective date of this article.

(b) There is hereby created an implementation task force to assist in the general implementation of this article and the establishment of the division. The task force shall consist of twelve members and the director of personnel. Task force members shall be appointed by the Governor.

(c) The director shall provide a report to the secretary of the Department of Administration, who shall then, within one year from the effective date of this article, report to the Governor and Legislature on the progress of the implementation of this article.

§29-6-26. Employee representative organization bulletin boards.

A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. Such bulletin boards will be placed in convenient and generally accessible locations in all workplaces where the members of such organizations are employed. Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of such bulletin boards will be assumed by the requesting employee or the employee's representative organization. Such boards shall be used exclusively by the employee representative organization and for organization purposes only.

§29-6-27. Leave donation program.

The Division of Personnel after consultation with other state agencies shall establish a program under which annual leave accrued or accumulated by an employee of an agency may, if voluntarily agreed to by the employee, be transferred to the annual leave account of another designated employee if the other employee requires additional leave because of a medical emergency. The annual leave program shall be established by legislative rule pursuant to the provisions of chapter twenty-nine-a of this code. The Division of Personnel shall file such legislative rule no later than July 15, 1995. The division shall prepare an annual status report to be presented to the Joint Committee on Government and Finance no later than January 5, each year. A "medical emergency" means a medical condition of an employee or a family member of the employee that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave. As used in this section, "employee" includes employees in the classified and classified-exempt service and employees exempt from coverage who are under this article entitled to annual leave as a benefit of employment: Provided, That none of the leave so transferred may be used to qualify for or add to service for any retirement system administered by the State of West Virginia.

§29-6-28. Leave time for organ donation.

- (a) A full-time state employee shall receive up to one hundred twenty hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of any portion of an adult liver or because of the employee's donation of an adult kidney.
- (b) A full-time state employee shall receive up to fifty-six hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of adult bone marrow.
- (c) An appointing authority shall compensate a full-time state employee who uses leave granted under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from work.
- (d) The Director of Personnel shall provide information about this section to full-time employees.
- (e) The Legislature hereby encourages political subdivisions and private employers in this state to grant their full-time employees paid leave similar to the paid leave granted to full-time state employees under this section.