

HB 2397

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

*Com. Sub. for*

HOUSE BILL No. *2397*

(By Delegates *Collins, Williams, & Kuhel*)



Passed ..... *MARCH 11* ..... 1995

In Effect ..... *90 days from* ..... Passage



**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**H. B. 2397**

(BY DELEGATES COLLINS, WILLIAMS AND KUHN)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact section seventeen, article five, chapter twenty-one; and sections one and four, article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to firefighters in emergency situations; expanding the definition of emergency so that voluntary fire department personnel are not fired or otherwise discriminated against for situations not presently included in such definition; expanding situations in which firefighters may enter privately-owned buildings; expanding situations in which persons are guilty of a felony or misdemeanor for interfering with firefighters during an emergency.

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

That section seventeen, article five, chapter twenty-one; and sections one and four, article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**CHAPTER 21. LABOR.**

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

**§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.**

1 No employer may terminate an employee who is a  
2 member of a volunteer fire department who, in the line of  
3 emergency duty as a volunteer fireman, responds to an  
4 emergency call prior to the time he is due to report for  
5 work and which emergency results in a loss of time from  
6 his employment.

7 Any time lost from employment as provided in this  
8 section may be charged against the employee's regular  
9 pay.

10 At the request of an employer, any employee losing  
11 time as provided herein shall supply his employer with a  
12 statement from the chief of the volunteer fire department  
13 stating that the employee responded to an emergency call  
14 and the time thereof.

15 As used in this section, "emergency" shall mean going  
16 to, attending to or coming from (1) a fire call, (2) a haz-  
17 ardous or toxic materials spill and cleanup, or (3) any  
18 other situation to which his or her fire department has  
19 been or later could be dispatched. The term "employer"  
20 includes any individual, partnership, association, corpora-  
21 tion, business trust or any person or group of persons  
22 acting directly or indirectly in the interest of an employer  
23 in relation to any employee.

24 Any employer who willfully and knowingly violates  
25 the provisions of this section shall be required to reinstate  
26 such employee to his former position and shall be re-  
27 quired to pay such employee all lost wages and benefits  
28 for the period between termination and reinstatement.  
29 Any action to enforce the provisions of this section shall  
30 be commenced within a period of one year after the date  
31 of violation and such action shall be commenced in the  
32 circuit court of the county wherein the place of employ-  
33 ment is located.

**CHAPTER 29. MISCELLANEOUS BOARDS  
AND OFFICERS.**

**ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.**

**§29-3A-1. Authority of fire officers in charge of fire, service  
call or other emergency.**

1 While any fire department recognized or approved by  
2 the West Virginia state fire commission is responding to,  
3 operating at or returning from a fire, fire hazard, service  
4 call or other emergency, the fire chief, any other elected  
5 or appointed fire line officer, or any member serving in  
6 the capacity of appointed fire line officer in charge, ex-  
7 cept on industrial property where trained industrial fire  
8 fighting personnel are present, shall have the authority:

9 (1) Of controlling and directing fire fighting and fire  
10 control activities at such scene;

11 (2) To order any person or persons to leave any build-  
12 ing or place in the vicinity of such scene for the purpose  
13 of protecting such persons from injury;

14 (3) To blockade any public highway, street or private  
15 right-of-way temporarily while at such scene;

16 (4) To enter the building, structure, enclosure or other  
17 property of any person or persons at any time of the day  
18 or night, without liability, while operating at such scene;

19 (5) To enter any building, including private dwellings,  
20 or upon any premises where an emergency exists, or  
21 where there is reasonable cause to believe an emergency  
22 exists, for the purpose of eliminating the emergency;

23 (6) To enter any building, including private dwellings,  
24 or premises near the scene of the emergency for the pur-  
25 pose of protecting the building or premises or for the  
26 purpose of eliminating the emergency which is in progress  
27 in another building or premises;

28 (7) To inspect for preplanning, all buildings, structures  
29 or other places in their fire district, excepting, however, the

30 interior of a private dwelling, with the consent of the own-  
31 er or occupant, where any combustible materials, includ-  
32 ing waste paper, rags, shavings, waste, leather, rubber,  
33 crates, boxes, barrels, rubbish or other combustible materi-  
34 al that is or may become dangerous as a fire menace to  
35 such building or buildings, structure or other places has  
36 been allowed to accumulate or where such chief or his  
37 designated representative has reason to believe that such  
38 material of a combustible nature has accumulated or is  
39 liable to be accumulated;

40 (8) To direct the removal or destroying of any fence,  
41 house, motor vehicle or other thing which may reasonably  
42 be determined to be necessary to be pulled down, de-  
43 stroyed, or removed to prevent the further spread of the  
44 fire or hazardous condition;

45 (9) To request and be supplied with additional materi-  
46 als such as sand, treatments, chemicals, etc., and special  
47 equipment when dealing with an accident on a public  
48 highway or railroad right-of-way when it is deemed a  
49 necessity to prevent the further spread of the fire or haz-  
50 ardous condition, the cost of which to be borne by the  
51 owner of the instrumentality which caused the fire or haz-  
52 ardous condition;

53 (10) To order disengagement or discouplement of any  
54 convoy, caravan or train of vehicles, craft or railway cars if  
55 deemed a necessity in the interest of safety of persons or  
56 property; and

57 (11) As used in this article, the term "emergency"  
58 means a situation in which the fire officer in charge knows  
59 or in which a reasonable person would believe that there  
60 exists an imminent threat of serious bodily harm or death  
61 to a person or significant damage to property.

**§29-3A-4. Person attacking or hindering or obstructing  
firefighter or emergency equipment; penalties.**

1 (a) It shall be unlawful, while any fire department or  
2 company or firefighter is lawfully exercising or discharg-

3 ing such department's, company's or firefighter's official  
4 duty during an emergency, for any person to:

5 (1) Attack any firefighter or any of his or her equip-  
6 ment with any deadly weapon as defined in section two,  
7 article seven, chapter sixty-one of this code, or

8 (2) Intentionally hinder, obstruct, oppose, or attempt  
9 to hinder, obstruct or oppose, or counsel, advise or invite  
10 others to hinder, obstruct or oppose, any fire department,  
11 fire company or firefighter.

12 (b) Any person violating the provisions of this section  
13 is guilty of a felony, and, upon conviction thereof, shall be  
14 imprisoned in the penitentiary not less than one nor more  
15 than ten years, or, in the discretion of the court, be con-  
16 fined in the county jail not more than one year or fined  
17 not more than five hundred dollars, or both fined and  
18 imprisoned.

19 (c) Any person willfully violating any of the provi-  
20 sions of section one or three of this article is guilty of a  
21 misdemeanor, and, upon conviction thereof, shall be fined  
22 not less than one hundred dollars nor more than five hun-  
23 dred dollars.

24 (d) Nothing in this article shall be construed to pre-  
25 vent law-enforcement officials from controlling traffic and  
26 otherwise maintaining order at the scene of a fire.

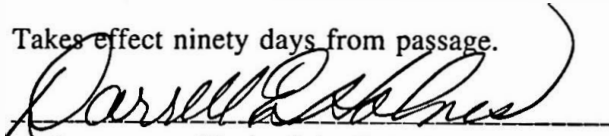
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

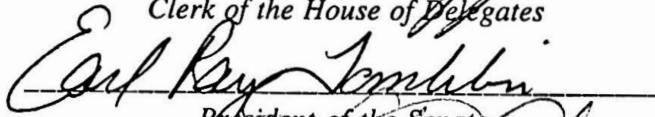
  
Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR/

Date 3/31/95

Time 9:26 pm