

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. 35

(By Mr. Committee on the Judiciary)

PASSED March 6 1941

In Effect 90 days from Passage



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ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 35

(Originating in the Senate Committee on the Judiciary.)

[Passed March 6, 1941; in effect ninety days from passage.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article four, providing for the establishment of a West Virginia State Guard and providing for organization, administration, maintenance, training and discipline thereof by executive rule and regulation and providing for pay allowances, use of state property, jurisdiction, court martial, exemptions from arrests and oath to be administered.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended by the addition of a new article designated article four to read as follows:

Article 4. Organization for State Guard, etc.

Section 1. *Authority and Name.* Whenever any part
2 of the national guard of this state is in active federal
3 service, the governor is hereby authorized to organize and
4 maintain within this state during such period, under such
5 regulations as the secretary of war of the United States
6 may prescribe for discipline in training, such military
7 forces as the governor may deem necessary to defend this
8 state. Such forces shall be composed of officers commis-
9 sioned or assigned, and such able-bodied male citizens of
10 the state as shall volunteer for service therein, supple-
11 mented, if necessary, by men of the reserve militia en-
12 rolled by draft or otherwise as provided by law. Such
13 forces shall be additional to and distinct from the national
14 guard and shall be known as the West Virginia State
15 Guard. Such forces shall be uniformed.

Sec. 2. *Organization; Rules and Regulations.* The
2 governor is hereby authorized to prescribe rules and
3 regulations not inconsistent with the provisions of this act
4 governing the enlistment, organization, administration,
5 equipment, maintenance, training and discipline of such
6 forces: *Provided*, such rules and regulations, in so far
7 as he deems practicable and desirable, shall conform to
8 existing law governing and pertaining to the national
9 guard and the rules and regulations promulgated there-
10 under and shall prohibit the acceptance of gifts, dona-
11 tions, gratuities or anything of value by such forces or by
12 any member of such forces from any individual, firm, asso-
13 ciation, or corporation by reason of such membership.

Sec. 3. *Pay and Allowances.* The pay for officers and
2 enlisted men of the West Virginia State Guard for service
3 at camps of instruction, rifle practice, practice marches
4 and maneuvers, or other duties ordered by the governor,
5 shall be such as are provided in the national defense act
6 or amendments thereto. Officers and enlisted men, when
7 employed in the actual service of the state, as defined and
8 provided in this article, beginning on the day they

9 assembled at their armories or other designated places,
10 until the day they have returned thereto and been prop-
11 erly relieved, inclusive, fractional parts of a day counting
12 as a full day, shall receive the same pay and allowances
13 as provided for officers and enlisted men in the West
14 Virginia national guard.

Sec. 4. *Requisitions; Armories; Other Buildings.* For
2 use of such forces, the governor is hereby authorized to
3 requisition from the secretary of war such arms and
4 equipment as may be in possession of and can be spared
5 by the war department; and to make available to such
6 forces the facilities of state armories and their equipment
7 and such other state premises and property as may be
8 available.

Sec. 5. *Use Without this State.* Such forces shall not
2 be required to serve outside the boundaries of this state.
3 Except that any organization, unit or detachment of such
4 forces, upon order of the officer in immediate command
5 thereof, may continue in fresh pursuit of insurrectionists,
6 saboteurs, enemies or enemy forces beyond the borders of
7 this state into another state until they are apprehended

8 or captured by such organization, unit or detachment or
9 until the military or police forces of the other state or
10 the forces of the United States have had a reasonable
11 opportunity to take up the pursuit or apprehend or
12 capture such persons: *Provided*, such other state shall
13 have given authority by law for such pursuit by such
14 forces of this state. Any such person who shall be ap-
15 prehended or captured in such other state by an organiza-
16 tion, unit or detachment of the forces of this state shall
17 without unnecessary delay be surrendered to the military
18 or police forces of the state in which he is taken or to the
19 United States, but such surrender shall not constitute a
20 waiver by this state of its right to extradite or prosecute
21 such person for any crime committed in this state.

Sec. 6. *Permission to Forces of Other States.* Any
22 military forces or organization, unit or detachment there-
23 of, of another state who are in fresh pursuit of insurrec-
24 tionists, saboteurs, enemies or enemy forces may continue
25 such pursuit into this state until the military or police
26 forces of this state or the forces of the United States have
27 had a reasonable opportunity to take up the pursuit or to

8 apprehend or capture such persons and are hereby au-
9 thorized to arrest or capture such persons within this
10 state while in fresh pursuit. Any such person who shall
11 be captured or arrested by the military forces of such
12 other state while in this state shall without unnecessary
13 delay be surrendered to the military or police forces of
14 this state to be dealt with according to law. This section
15 shall not be construed so as to make unlawful any arrest
16 in this state which would otherwise be lawful, and nothing
17 contained in this section shall be deemed to repeal any
18 of the provisions of the uniform act on the fresh pursuit
19 of criminals.

Sec. 7. *Federal Service.* Nothing in this act shall be
2 construed as authorizing such forces, or any part thereof
3 to be called, ordered or in any manner drafted, as such
4 into the military service of the United States, but no
5 person shall by reason of his enlistment or commission in
6 any such forces be exempted from military service under
7 any law of the United States.

Sec. 8. *Civil Groups.* No civil organization, society,
2 club, post, order, fraternity, association, brotherhood,

3 body, union, league, or other combination of persons or
4 civil group shall be enlisted in such forces as an organiza-
5 tion or unit.

Sec. 9. *Disqualifications.* No person shall be commis-
2 sioned or enlisted in such forces who is not a citizen of the
3 United States or who has been expelled or dishonorably
4 discharged from any military or naval organization of
5 this state, or of another state, or of the United States.

Sec. 10. *Oath of Officers.* The oath to be taken by
2 officers commissioned in such forces shall be substantially
3 in the form prescribed for officers of the national guard,
4 substituting the words West Virginia State Guard where
5 necessary.

Sec. 11. *Enlisted Men.* No person shall be enlisted for
2 more than one year but such enlistment may be renewed.
3 The oath to be taken upon enlistment in such forces shall
4 be substantially in the form prescribed for enlisted men of
5 the national guard, substituting the words West Virginia
6 State Guard where necessary.

Sec. 12. *Articles of War; Freedom from Arrest; Jury*
2 *Duty.* (a) Whenever such forces or any part there-

3 of shall be ordered out for active service the articles of
4 war of the United States applicable to members of the
5 national guard of this state in relation to courts martial,
6 their jurisdiction and the limits of punishment and the
7 rules and regulations prescribed thereunder shall be in
8 full force and effect with respect to the West Virginia
9 State Guard.

10 (b) No officer or enlisted man of such forces shall be
11 arrested on any warrant, except for treason or felony,
12 while going to, remaining at, or returning from a place
13 where he is ordered to attend for military duty. Every
14 officer and enlisted man of such forces shall, during his
15 service therein, be exempt from service upon any posse
16 comitatus and from jury duty.

Sec. 13. *Severability.* If any provision of this act or
2 the application thereof to any person or circumstances
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the act which can be given effect
5 without the invalid provision or application, and to this
6 end the provisions of this act are declared to be severable.

Sec. 14. *Repeal.* All acts and parts of acts inconsistent
2 with the provisions of this act are hereby repealed.

Sec. 15. *Short Title.* This act may be cited as the West
2 Virginia State Guard Act.

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

E. H. McKown

Chairman Senate Committee

Leon Rice

Chairman House Committee

Originated in the *Senate*

Takes effect *90 days from* passage

W. J. Watkins

Clerk of the Senate

J. H. Jeff

Clerk of the House of Delegates

Byron B. Randolph

President of the Senate

Malcolm R. Arnold

Speaker House of Delegates

The within *approved* this the *14*

day of *March*, 1941.

Matthew M. Reely
Governor.

Filed in the office of the Secretary of State
of West Virginia. *MAR 17 1941*

Wm. S. O'BRIEN,
Secretary of State

MAR 17 1941