WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1941

ENROLLED

SENATE BILL No. 35

(By the Committee on the Judiciary)

PASSED
March 6, 1941

In Effect 90 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 of the national guard of this state is in active federal service, the governor is hereby authorized to organize and maintain within this state during such period, under such regulations as the secretary of war of the United States may prescribe for discipline in training, such military forces as the governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the reserve militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the national guard and shall be known as the West Virginia State Guard. Such forces shall be uniformed.
Sec. 2. *Organization; Rules and Regulations.* The governor is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this act governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such forces: *Provided,* such rules and regulations, in so far as he deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces or by any member of such forces from any individual, firm, association, or corporation by reason of such membership.

Sec. 3. *Pay and Allowances.* The pay for officers and enlisted men of the West Virginia State Guard for service at camps of instruction, rifle practice, practice marches and maneuvers, or other duties ordered by the governor, shall be such as are provided in the national defense act or amendments thereto. Officers and enlisted men, when employed in the actual service of the state, as defined and provided in this article, beginning on the day they
assembled at their armories or other designated places, until the day they have returned thereto and been properly relieved, inclusive, fractional parts of a day counting as a full day, shall receive the same pay and allowances as provided for officers and enlisted men in the West Virginia national guard.

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

Sec. 5. Use Without this State. Such forces shall not be required to serve outside the boundaries of this state. Except that any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended
or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or apprehend or capture such persons: Provided, such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state by an organization, unit or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

Sec. 6. Permission to Forces of Other States. Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to
apprehend or capture such persons and are hereby au-

thorized to arrest or capture such persons within this

state while in fresh pursuit. Any such person who shall

be captured or arrested by the military forces of such

other state while in this state shall without unnecessary

delay be surrendered to the military or police forces of

this state to be dealt with according to law. This section

shall not be construed so as to make unlawful any arrest

in this state which would otherwise be lawful, and nothing

contained in this section shall be deemed to repeal any

of the provisions of the uniform act on the fresh pursuit

of criminals.

Sec. 7. Federal Service. Nothing in this act shall be

 construed as authorizing such forces, or any part thereof

to be called, ordered or in any manner drafted, as such

into the military service of the United States, but no

person shall by reason of his enlistment or commission in

any such forces be exempted from military service under

any law of the United States.

Sec. 8. Civil Groups. No civil organization, society,

club, post, order, fraternity, association, brotherhood,
body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

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

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

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

Sec. 12. Articles of War; Freedom from Arrest; Jury Duty. (a) Whenever such forces or any part there-
of shall be ordered out for active service the articles of
war of the United States applicable to members of the
national guard of this state in relation to courts martial,
their jurisdiction and the limits of punishment and the
rules and regulations prescribed thereunder shall be in
full force and effect with respect to the West Virginia
State Guard.

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

Sec. 13. Severability. If any provision of this act or
the application thereof to any person or circumstances
is held invalid, such invalidity shall not affect other pro-
visions or applications of the act which can be given effect
without the invalid provision or application, and to this
end the provisions of this act are declared to be severable.
Sec. 14. **Repeal.** All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 15. **Short Title.** This act may be cited as the West Virginia State Guard Act.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect 90 days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 14th
day of March, 1941.

Governor.

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

Wm. S. O'Brien,
Secretary of State