

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



40  
E N R O L L E D

HOUSE BILL No... 40.....

(By Mr. Poindexter <sup>and</sup> Mr. Giffin)



PASSED March 6, 1961

In Effect from Passage

Filed in Office of the Secretary of State  
of West Virginia

MAR 17 1961

JOE F. BURDETT  
SECRETARY OF STATE

**ENROLLED**

**House Bill No. 40**

(By MR. POINDEXTER and MR. GIFFIN)

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[Passed March 6, 1961; in effect from passage.]

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AN ACT to amend and reenact sections two, four, four-a, and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article four by adding thereto a new section, to be designated section two-a, all relating to dentists, dental hygienists, and dental laboratories.

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

That sections two, four, four-a, and seven, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article four be further amended by adding thereto a new section, to be designated section two-a, all to read as follows:

Section 2. *Who Deemed Practitioner of Dentistry; Limitations of Article.*—Any person shall be regarded as

3 practicing dentistry within the meaning of this article,  
4 who shall diagnose or profess to diagnose or treat or pro-  
5 fess to treat, any of the diseases or malformations or  
6 lesions of the oral cavity, teeth, gums, or maxillary bones,  
7 or shall prepare or fill cavities in human teeth, correct  
8 malposition of teeth or jaws or supply artificial teeth  
9 as substitutes for natural teeth, or administer anaes-  
10 thetics, general or local, in connection with any of said  
11 work, or shall make, produce, reproduce, construct, re-  
12 pair, alter, or restore any prosthetic denture, crown,  
13 bridge, or other prosthetic appliance to be used in, upon,  
14 in connection with, or as a substitute for, any human  
15 tooth, or in, upon, or in connection with the human jaw  
16 or associated structure or tissue of the human mouth,  
17 or to be used in the treatment of any condition thereof,  
18 or perform any other work included in the curricula of  
19 recognized dental colleges. To open an office for the prac-  
20 tice of dentistry, or to announce to the public in any way  
21 a readiness to do any act defined herein as the practice of  
22 dentistry, shall be construed as engaging in the practice  
23 of dentistry, within the meaning of this article: *Provided,*  
24 *however,* That this section:

25     (1) Shall not apply to a duly licensed physician or  
26 surgeon in the practice of his profession when rendering  
27 dental relief in emergency cases, unless he undertakes  
28 to reproduce or reproduces lost parts of the human teeth,  
29 or to restore or replace lost or missing teeth in the human  
30 mouth.

31     (2) Shall not apply to a dental laboratory in the per-  
32 formance of dental technological work as that term is  
33 defined in section two-a of this article so long as the  
34 dental laboratory, in the performance of such work, con-  
35 forms in all respects to the requirements of section two-a  
36 of this article, and further shall not apply to persons  
37 performing dental technological work, as so defined,  
38 under the direct and personal supervision of a licensed  
39 dentist or under the direct and personal supervision of  
40 a person authorized under the authority of this article  
41 to perform any of the acts in this article defined to con-  
42 stitute the practice of dentistry so long as such work is  
43 performed in connection with, and as a part of, the dental  
44 practice of such licensed dentist or other authorized per-  
45 son and for his dental patients.

46     (3) Shall not apply to students enrolled in and reg-  
47 ularly attending any dental college recognized by the  
48 state board of dental examiners, provided their acts are  
49 done in said dental college and under the direct and per-  
50 sonal supervision of their instructor.

51     (4) Shall not apply to licensed or registered dentists  
52 of another state temporarily operating a clinic under the  
53 auspices of a duly organized and reputable dental col-  
54 lege or reputable dental society, or to one lecturing be-  
55 fore a reputable society composed exclusively of den-  
56 tists.

57     (5) Shall not apply to licensed dental hygienists in  
58 the performance of their duties as otherwise provided by  
59 law.

60     (6) Shall not apply to the practice of dentistry by  
61 dentists whose practice is confined exclusively to the  
62 service of the United States army, the United States  
63 navy, the United States public health service, or the  
64 United States veteran's bureau, or any other authorized  
65 United States government agency or bureau.

*Sec. 2-a. Dental Technological Work.—A. Words and*

2 Phrases Defined.—The following words and phrases when  
3 used in this section shall, for the purpose of this section  
4 have the meanings respectively ascribed to them in this  
5 subsection:

6 “Dental laboratory” shall mean a person, association of  
7 persons, partnership, or corporation performing dental  
8 technological work as herein defined or any phase thereof:  
9 *Provided*, That there is excluded from such definition  
10 licensed dentists and other dental practitioners perform-  
11 ing dental technological work, or any phase thereof, and  
12 persons performing such work under the direct and per-  
13 sonal supervision of a licensed dentist or other dental  
14 practitioner, in cases where such dental technological  
15 work is performed in connection with, and as a part of,  
16 the dental practice of such licensed dentist or other  
17 dental practitioner and for his own dental patients;

18 “Dental prosthesis” shall mean any prosthetic denture,  
19 crown, bridge, or other prosthetic appliance to be used  
20 in, upon, in connection with, or as a substitute for, any  
21 human tooth, or in, upon, or in connection with, the

22 human jaw or associated structure or tissue of the human  
23 mouth, or in the treatment of any condition thereof;

24 "Dental technological work" or "dental technological  
25 service" shall mean the making, production, reproduction,  
26 construction, repair, alteration, or restoration of any den-  
27 tal prosthesis as herein defined;

28 "Other dental practitioner" shall mean and include  
29 those persons excluded from the definition of the practice  
30 of dentistry under the provisions of subsections three,  
31 four, and six of section two of this article and also those  
32 persons who hold temporary permits to practice den-  
33 tistry or teaching permits which have been issued to them  
34 under the provisions of section five of this article; and

35 "Work authorization" shall mean a written order for  
36 dental technological work, as herein defined, which has  
37 been issued by a licensed dentist of this state or other  
38 dental practitioner and contains the items of informa-  
39 tion specified in, and otherwise conforms to the require-  
40 ments of, subsection "F" of this section.

41 B. Duty to Issue Work Authorization.—It shall be the  
42 duty of every licensed dentist of this state and every

43 other dental practitioner of this state, in ordering the  
44 performance by any dental laboratory of any dental tech-  
45 nological work, to issue therefor a work authorization in  
46 accordance with the requirements of this section.

47 C. Work Authorization Required; Compliance With  
48 Section.—It shall be unlawful for any person, associa-  
49 tion of persons, partnership, or corporation to perform  
50 dental technological work, or any phase thereof, unless  
51 such work be performed in pursuance of, and in con-  
52 formity with, a work authorization as herein defined spe-  
53 cifically ordering the same and otherwise be performed  
54 in accordance with the requirements of this section, and  
55 unless, at the time of such performance, such person,  
56 association of persons, partnership, or corporation, have  
57 such work authorization in its place of business where  
58 such work is performed: *Provided*, That the requirements  
59 of this subsection shall not apply to licensed dentists or  
60 other dental practitioners, or to their employees work-  
61 ing under their direct and personal supervision, in cases  
62 where such licensed dentists or other dental practitioners  
63 are performing dental technological work in connection



64 with, and as a part of, their own dental practice and for  
65 their own dental patients.

66 D. Advertising of Dental Technological Work Prohibited.

67 —It shall be unlawful for any person, association of per-  
68 sons, partnership, or corporation, directly or indirectly,  
69 by means of newspapers, magazines, publications, direc-  
70 tories, pamphlets, radio or television broadcasts or tele-  
71 casts, loud speaking devices, displays, outside or inside  
72 signs, window signs or markings, letters or other ma-  
73 terials sent by United States mail, or other commercial  
74 method, whether or not herein specifically enumerated,  
75 (1) to advertise or announce that he is engaged in the  
76 business of the performance of dental technological work,  
77 or any phase thereof; (2) to advertise or announce his  
78 ability or willingness to perform for members of the  
79 public dental technological work, or any phase thereof;  
80 (3) to quote any price for the performance of dental  
81 technological work, or any phase thereof; or (4) to ad-  
82 vertise or announce any services rendered, or techniques  
83 or materials employed, by him in the performance of  
84 dental technological work, or any phase thereof: *Pro-*

85 *vided*, That this subsection shall not prevent dental lab-  
86 oratories from advertising in dental journals or in other  
87 professional dental publications or by means of communi-  
88 cations directed and sent solely to dentists and other  
89 dental practitioners, or from announcing their business  
90 in business and telephone directories so long as such  
91 business and telephone directory announcements are  
92 limited to name and address and telephone number and  
93 do not occupy more than the number of lines necessary  
94 to disclose such information, or from displaying the trade  
95 name and address of such dental laboratory on the door  
96 of its place of business or on name plates or door plates  
97 exhibited on the interior or exterior of such place of  
98 business, but the lettering on such door, name plates, or  
99 door plates shall not exceed seven inches in height.

100 E. Sale or Furnishing of Dental Prosthesis by Person  
101 Other Than Licensed Dentist or Other Dental Practi-  
102 tioner Prohibited.—It shall be unlawful for any person,  
103 association of persons, partnership, or corporation, other  
104 than a licensed dentist or other dental practitioner, to  
105 sell, offer for sale, or furnish any dental prosthesis or

106 other dental technological service to any person who is not  
107 a licensed dentist or other dental practitioner.

108 F. Contents of Work Authorization.—Each work au-  
109 thorization issued under the provisions of this section  
110 shall contain the following information: (1) The name  
111 and address of the dental laboratory to which it is di-  
112 rected; (2) the case identification; (3) a specification of  
113 the materials to be used; (4) a description of the work  
114 to be done, and, if necessary, diagrams thereof; (5) the  
115 date of its issuance; and (6) the signature and address  
116 of the licensed dentist or other dental practitioner by  
117 whom the work authorization is issued. A separate work  
118 authorization shall be issued for each patient of the is-  
119 suing licensed dentist or other dental practitioner for  
120 whom dental technological work is to be performed.

121 G. Retention of Work Authorization.—Every work au-  
122 thorization issued under this section shall be made in  
123 duplicate. The original thereof shall be delivered to  
124 the dental laboratory to which it is directed and shall be  
125 retained by it in its office or place of business for the  
126 period of two years from its date. The copy thereof shall

127 be retained in the office of the licensed dentist or other  
128 dental practitioner by whom it was issued for the period  
129 of two years from its date.

130 H. Inspection of Work Authorization.—During the two-  
131 year retention period provided in subsection “G” of this  
132 section, the dental laboratory by which the original of  
133 any work authorization is retained and the licensed den-  
134 tist or other dental practitioner by whom the copy thereof  
135 is retained, shall at any time during customary office  
136 hours, permit any member, employee, or agent of the  
137 West Virginia board of dental examiners to have access  
138 to, and to make inspection of, any work authorization so  
139 retained, and shall provide to such member, employee, or  
140 agent of the West Virginia board of dental examiners any  
141 information relating to such work authorization and the  
142 work performed thereunder which shall be requested  
143 by him.

144 I. Inspection of Dental Technological Work.—Every  
145 dental laboratory and every person employed by any  
146 dental laboratory shall, upon request from any member,  
147 employee, or agent of the West Virginia board of dental

148 examiners, display to such member, employee, or agent,  
149 and permit the inspection by him of, any items of den-  
150 tal technological work then in the course of performance  
151 by such dental laboratory or person employed by it and  
152 any dental prosthesis then in the place of business of,  
153 or upon the premises occupied by, such dental laboratory  
154 for making, production, reproduction, construction, re-  
155 pair, alteration, or restoration, regardless of whether  
156 such making, production, reproduction, construction, re-  
157 pair, alteration, or restoration has been commenced, is  
158 in the course of performance, or has been completed, and  
159 shall, upon such request, provide to such member, em-  
160 ployee, or agent of the West Virginia board of dental  
161 examiners all pertinent information relating to any such  
162 dental technological work and any such dental prosthesis,  
163 and shall, upon such request, permit any such member,  
164 employee, or agent of the West Virginia board of dental  
165 examiners to have access to, and to make inspection of,  
166 the work authorization covering any such dental pros-  
167 thesis.

168 J. Offenses; Penalties.—Each act done by any person

169 in violation of any provision of this section shall be  
170 deemed, and shall constitute, a separate offense here-  
171 under, and each day that any person shall continue in  
172 violation of any provision hereof shall likewise be deemed,  
173 and shall constitute, a separate offense hereunder. Any  
174 person who shall, within this state, violate any provision  
175 of this section shall be guilty of a misdemeanor, and  
176 upon conviction thereof, shall be punished as provided in  
177 section eighteen of this article.

178 K. Injunction.—Notwithstanding the existence of any  
179 other remedy, the West Virginia board of dental examin-  
180 ers may, in its name as such and without giving bond,  
181 institute and prosecute a suit for an injunction against any  
182 person, association of persons, partnership, or corpora-  
183 tion who has violated any provision of this section to  
184 restrain and prohibit the further violation by such per-  
185 son, association of persons, partnership, or corporation of  
186 the provisions of this section.

Sec. 4. *Board of Dental Examiners.*—There shall be a  
2 state board of dental examiners, known as the “West Vir-  
3 ginia Board of Dental Examiners,” which shall consist of

4 five practicing dentists, who shall be appointed by the  
5 governor, by and with the advice and consent of the  
6 senate. Each member of the board at the time of his  
7 appointment, and during his term as such member, shall  
8 be both a resident and licensed dentist of this state, and  
9 shall have been both such resident and licensed dentist  
10 for a period of not less than five years immediately pre-  
11 ceding his appointment: *Provided, however,* That no per-  
12 son shall be eligible for appointment to said board who  
13 is in any way connected with or interested in any dental  
14 college or dental department of any institution of learning  
15 or in a dental supply business.

16 The members of the board in office on the date this sec-  
17 tion takes effect shall, unless sooner removed, continue  
18 to serve until their respective terms expire and until their  
19 successors have been appointed and have qualified. On  
20 or before the first day of July, after this section takes  
21 effect, and on or before the first day of July in each year  
22 thereafter, the governor shall appoint one member to  
23 serve a term of five years commencing on the said first  
24 day of July: *Provided,* That during the five-year period

25 immediately following the effective date of this section,  
26 the governor shall make appointments to the board at  
27 such times as shall be necessary to replace members  
28 whose terms expire during such period: *And provided*  
29 *further*, That during such five-year period, the governor  
30 shall appoint members to the board for terms of such  
31 respective lengths as shall thereafter permit the term  
32 of one member to expire at midnight on the thirtieth  
33 day of June of each year. Any member shall be eligi-  
34 ble for reappointment for one additional consecutive  
35 term.

36 Each appointment under this section, whether for a full  
37 term or to fill a vacancy, shall be made by the governor  
38 from among three nominees therefor selected by the West  
39 Virginia dental society. In the case of an appointment for  
40 a full term such nominations shall be submitted to the  
41 governor not later than eight months prior to the date  
42 on which the appointment shall become effective. In the  
43 case of an appointment to fill a vacancy, such nominations  
44 shall be submitted to the governor within thirty days  
45 after a request for such nominations shall have been made



46 by the governor to the president of such society. In the  
47 event of the failure of the society to submit to the gov-  
48 ernor nominations for an appointment in accordance with  
49 the requirements of this section, the governor may make  
50 the appointment without such nominations.

Sec. 4-a. *Powers and Duties.*—The West Virginia board  
2 of dental examiners shall examine all qualified applicants  
3 for license to practice dentistry or dental hygiene, and it  
4 shall license all such applicants who are qualified under  
5 applicable statutes and who pass the examinations that  
6 may be required by statute or by any legally adopted rule  
7 or regulation.

8 The said board shall have the power to make such ex-  
9 amination of all applicants appearing before it for any  
10 type of license as may be necessary to determine that the  
11 applicant is qualified. The said board shall also have the  
12 power to revoke or suspend any license issued by it, for  
13 cause, after having given the person whose license is  
14 sought to be revoked or suspended, an opportunity to  
15 be heard in the manner provided by section eight, ar-  
16 ticle one, chapter thirty of this code. It shall have the

17 power to reinstate any license revoked or suspended  
18 by it.

19 The said board is authorized and empowered to hold  
20 and conduct hearings and investigations on the issuance,  
21 suspension, revocation, or reinstatement of licenses and  
22 on charges of <sup>un</sup>authorized practice of dentistry or dental  
23 hygiene.

24 The board, acting by and through its members, em-  
25 ployees, and agents, is further authorized and empowered,  
26 at any time during customary office hours, to enter into  
27 the office or place of business of any dental laboratory,  
28 licensed dentist or other dental practitioner, of this state,  
29 and to obtain access to, make inspection of, and request  
30 information regarding, any work authorization which  
31 such dental laboratory, licensed dentist, or other dental  
32 practitioner is required under the provisions of section  
33 two-a of this article, to retain therein, and is further  
34 authorized and empowered to inspect any items of dental  
35 technological work then in the course of performance  
36 by such dental laboratory or person employed by it, and  
37 to inspect any dental prosthesis then in the place of busi-

38 ness of, or upon the premises occupied by, such dental  
39 laboratory for making, production, reproduction, con-  
40 struction, repair, alteration, or restoration, and to request  
41 any information which it, its members, employees, or  
42 agents deem to be pertinent relating to any such dental  
43 technological work and any such dental prosthesis. For  
44 the purpose of this paragraph the definition of terms con-  
45 tained in subsection A of section two-a of this article is  
46 made expressly applicable.

47 The said board shall have the power to hire, fix the  
48 compensation of, and discharge such employees as are  
49 necessary for the performance of the powers and duties  
50 vested in the said board by law and to expend such sums  
51 as said board may deem necessary to maintain an office  
52 and to carry out and enforce the provisions of this article.

Sec. 7. *Refusal to Issue, Suspension or Revocation of*  
2 *License; Grounds.*—The state board of dental examiners  
3 may refuse to issue a license to practice dentistry or  
4 dental hygiene in this state, or after issuance may sus-  
5 pend or revoke the same, for any of the following causes:  
6 (1) The presentation to the board of any diploma,

7 license or certificate illegally or fraudulently obtained, or  
8 one obtained from an institution which is not reputable,  
9 or one obtained from an unrecognized or irregular insti-  
10 tution or state board.

11 (2) Be guilty of gross ignorance or gross inefficiency  
12 in his profession.

13 (3) Conviction of a felony; and a certified copy of the  
14 record of the court of conviction shall be sufficient proof  
15 of such conviction.

16 (4) Announcing or otherwise holding himself out to  
17 the public as a specialist or as being specially qualified  
18 in any particular branch of dentistry or as giving special  
19 attention to any branch of dentistry or as limiting his  
20 practice to any branch of dentistry without first comply-  
21 ing with the requirements established by the board of  
22 dental examiners for such specialty and having been  
23 issued a certificate of qualification in such specialty by  
24 the board.

25 (5) Be guilty of unprofessional conduct. The following  
26 acts or any of them shall be conclusively presumed to be  
27 unprofessional conduct:

28 (a) Be guilty of any fraud or deception.

29 (b) The commission of a criminal operation or convic-  
30 tion of a crime involving moral turpitude.

31 (c) Chronic or persistent inebriety or addiction to nar-  
32 cotics or drugs.

33 (d) Be guilty of the violation of any professional con-  
34 fidence or be guilty of disclosing any professional secret.

35 (e) Be grossly immoral.

36 (f) Be guilty of employing what are known as "cap-  
37 pers" or "steerers" to obtain business.

38 (g) The obtaining of any fee by fraud or misrepresen-  
39 tation.

40 (h) Employ directly or indirectly, or direct or permit  
41 any suspended or unlicensed person so employed, to per-  
42 form operations of any kind or to treat lesions of the  
43 human teeth or jaws or correct malimposed formations  
44 thereof.

45 (i) Practice, or offer or undertake to practice, dentistry  
46 under any firm name or trade name or under any name  
47 other than his own true name: *Provided*, That any licensee  
48 may practice under a firm name or partnership name con-

49 taining nothing but the surname of every member of such  
50 firm or partnership.

51 (j) Professional connection or association with, or lend-  
52 ing his name to another, for the illegal practice of den-  
53 tistry, or professional connection or association with any  
54 person, firm, or corporation holding himself, themselves,  
55 or itself out in any manner contrary to this article.

56 (k) Make use of any advertising relating to the use  
57 of any drug or medicine of unknown formula.

58 (l) Advertise to practice dentistry or perform any op-  
59 eration thereunder without causing pain.

60 (m) Advertise professional superiority or the perform-  
61 ance of professional services in a superior manner.

62 (n) Advertise prices charged for professional service.

63 (o) Advertise by means of large display, flickering, or  
64 glaring light signs, or contain as a part thereof the repre-  
65 sentation of a tooth, teeth, or bridge work, or any portion  
66 of the human head.

67 (p) Employ or make use of advertising solicitors or free  
68 publicity press agents.

69 (q) Advertise to guarantee any dental service.

70 (r) Advertise in any manner calculated to, or tending  
71 to, deceive or mislead the public: *Provided*, That such  
72 licensee may announce, by way of a professional card  
73 containing not more than his name, title, degree, office  
74 location, office hours, business telephone number, and resi-  
75 dence address and telephone number, if desired, and if he  
76 limits his practice to a specialty he may announce it, but  
77 such card shall not be greater in any case than five inches  
78 by six inches in size, and such information may be inserted  
79 in public print when not more than two newspaper col-  
80 umns in width and two inches in depth; and he may an-  
81 nounce his change of place of business, absence from, or  
82 return to, business in the same manner, and issue appoint-  
83 ment cards to his patients, when the information thereon  
84 is limited to matter pertaining to the time and place of  
85 appointment and that permitted on the professional card,  
86 and he may display his name, title, and degree upon the  
87 windows or doors of his office and by a door plate or name  
88 plate or office directory when the information is limited  
89 to not more than that contained on the professional card,  
90 but the name, title and degree of the licensee shall not

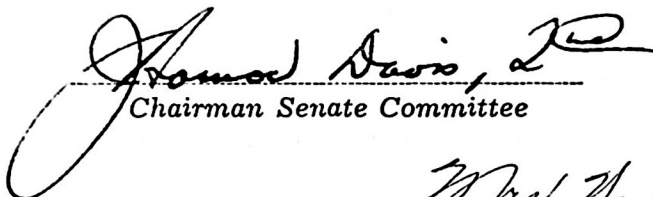
91 be displayed on said doors, windows, door plates, and  
92 name plates or office directory in lettering greater in  
93 height than seven inches.

94 The term advertising, as used in this section, shall be  
95 construed to include the use of radio or any loud speaking  
96 device or any other similar method or agency.

97 This entire section is passed in the interest of the public  
98 health, safety and welfare, and its provisions shall be lib-  
99 erally construed to carry out its object and purpose. Each  
100 and every provision of this section is hereby declared to  
101 be independent and severable, and should any portion or  
102 provision or provisions of this section be held unconstitu-  
103 tional or for any other reason invalid, the remaining por-  
104 tion or portions, or provision or provisions shall not be  
105 thereby affected.



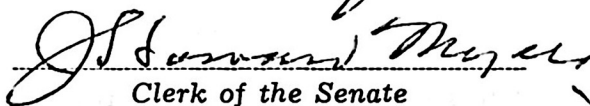
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

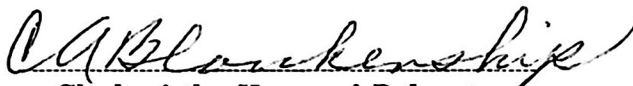
  
Chairman Senate Committee

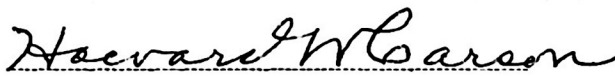
  
Chairman House Committee

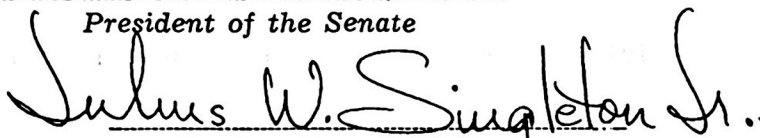
Originated in the House.

Takes effect 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 17<sup>th</sup>  
day of March, 1961.

  
Governor

Filed in Office of the Secretary of State  
of West Virginia **MAR 17 1961**  
JOE F. BURDETT  
SECRETARY OF STATE