

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972



ENROLLED

HOUSE BILL No. 751

(By Mr. Speaker, Mr. McManus
and Mr. Seibert)



PASSED March 11, 1972

In Effect July 1, 1972 Passage

751

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

MAR 29 11 37 PM '72



FILED IN THE OFFICE
JOHN B. DOCKRILLER, IV
SECRETARY OF STATE

THIS DATE 3-29-72

ENROLLED

House Bill No. 751

(By Mr Speaker, MR. McMANUS, and MR. SEIBERT)

[Passed March 11, 1972; in effect July 1, 1972.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, providing, as a public purpose, general relief for low income citizens who are sixty-five years of age or over to aid them in providing or maintaining a homestead, by authorizing a claim for relief to be filed with the state tax commissioner and payment thereof from state funds, the amount of relief to be measured in part by the real property taxes or that portion of rent attributable to real property taxes paid by any such citizen; providing a rule of construction; defining terms; providing for computation of the amount of such claims for relief; providing limitations with respect thereto; authorizing tables for such claims for relief; relating to forms and instructions in connection with such claims for relief; relating to maximum participation under said article twenty-five; relating to proof of claims for relief; requiring cooperation of landlord; providing there may only be one claimant for a homestead for a particular calendar year; establishing filing date for any such claim for relief; providing for waiver of claims in the event of late claims therefor; authorizing extension of filing date and amended claims for relief; providing for disbursement from state funds to pay claims for relief; providing that any such claim for relief is personal; relating to payment of any claim for relief to legal guardian, committee,

executor or administrator or other persons or the escheat thereof to the state; providing for offsets against any such claim for relief; relating to the denial of any such claim for relief and the grounds therefor; providing for criminal offenses; providing criminal penalties; authorizing disallowance of portion of any such claim which is excessive; relating to recovery of improper payments and interest thereon; relating to hearings and appeals; incorporating certain provisions of article thirteen of said chapter eleven; providing a severability clause; and providing effective date of said article twenty-five.

Be it enacted by the Legislature of West Virginia:

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.

§11-25-1. Declaration of purpose; rule of construction.

1 This article is enacted to provide general relief for low
2 income citizens who are sixty-five years of age or over
3 to aid them in providing or maintaining a homestead, by
4 authorizing a claim for relief to be filed with the state tax
5 commissioner and payment thereof from state funds, the
6 amount of relief to be measured in part by the real prop-
7 erty taxes or that portion of rent attributable to real
8 property taxes paid by any such citizen, and the provid-
9 ing of such general relief is hereby declared to be a public
10 purpose. This article shall, therefore, be liberally con-
11 strued.

§11-25-2. Definitions.

1 When used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Claimant" means a person sixty-five years of
4 age or older who was domiciled in this state during any
5 portion of the calendar year preceding the year in which
6 the claimant is eligible to file a claim for relief under

7 this article and who had a gross household income of
8 not more than five thousand dollars during the calendar
9 year preceding the year in which he is eligible to file a
10 claim for relief under this article. If two or more in-
11 dividuals, who otherwise qualify as claimants under this
12 article, occupy a single homestead, such individuals may
13 determine between themselves as to which individual
14 shall be the claimant; however, if such individuals are
15 unable to agree, the matters shall be referred to the state
16 tax commissioner for determination and his decision shall
17 be final.

18 (2) "Claimant's spouse" means the spouse of the claim-
19 ant if such spouse resides in the homestead during any
20 portion of the calendar year preceding the year in
21 which the claimant is eligible to file a claim for relief
22 under this article.

23 (3) "Gross household income" means all actual income
24 received by a claimant and the claimant's spouse during
25 the calendar year preceding the year in which he is
26 eligible to file a claim for relief under this article and
27 such actual income shall be computed by adding to the
28 West Virginia adjusted gross income (as that term is
29 defined in section twelve, article twenty-one of this
30 chapter) of such claimant and the claimant's spouse all
31 of the following actually received by the claimant and
32 claimant's spouse during such calendar year:

33 (a) Amount of capital gains excluded from West
34 Virginia adjusted gross income;

35 (b) Support money;

36 (c) Nontaxable strike benefits;

37 (d) Cash public assistance, welfare and relief but
38 not any relief under this article;

39 (e) Gross amount of any pension or annuity, including
40 railroad retirement benefits;

41 (f) Social security benefits;

42 (g) Unemployment compensation benefits;

43 (h) Veterans disability pensions;

44 (i) Workmen's compensation benefits; and

45 (j) Private disability insurance benefits.

46 Gross household income does not include gifts from non-
47 governmental sources, or surplus foods or other relief in
48 kind supplied by a governmental agency.

49 (4) "Gross rent" means the total amount of money
50 or its equivalent actually paid by a claimant during a
51 particular calendar year to his landlord in a bona fide
52 manner solely for the right of occupancy of a homestead,
53 exclusive of any charges for utilities, services, furniture,
54 furnishings or electrical or other appliances furnished
55 by such landlord to such claimant; and if the state tax
56 commissioner determines that the rent charged was ex-
57 cessive for the purposes of this article, he may adjust the
58 same, for the purposes of this article, to a reasonable
59 amount.

60 (5) "Homestead" means a single family residential
61 house and the land surrounding such structure; or a part
62 of a multi-dwelling, multi-purpose building or apartment
63 house; or a mobile home which is used as a permanent
64 residence and the land upon which such mobile home is
65 situate; and it is immaterial for the purposes of this
66 article whether the foregoing are being purchased, are
67 owned or are rented.

68 (6) "Household" means a claimant, a claimant and the
69 claimant's spouse or a claimant and any other person or
70 persons, who resides or reside in a homestead.

71 (7) "Property taxes" means the amount of the real
72 property taxes, exclusive of any interest or charges for
73 delinquency thereof, paid by a claimant on his homestead
74 beginning with the calendar year one thousand nine hun-
75 dred seventy-two, and for any particular calendar year
76 thereafter: *Provided*, That if a homestead is owned by
77 a claimant and a persons or persons (other than the
78 claimant's spouse) as joint tenants or as tenants in com-
79 mon, and such person or persons owning such interest
80 in such homestead do not reside in such homestead, then
81 for the purposes of this article, the property taxes paid
82 by the claimant shall be prorated according to such
83 claimant's percentage of ownership of such homestead:
84 *Provided, however*, That if the claimant's homestead is
85 a single unit within any multi-dwelling building, multi-

86 purpose building or apartment house, and such claimant
87 owns the entirety of any such structure, the property
88 taxes paid by the claimant, for the purposes of this article
89 shall be prorated so as to reflect the percentage of value
90 which the claimant's homestead is to the value of the
91 entire structure which is assessed in a single assessment
92 based upon the entire property.

93 (8) "Rent constituting property taxes" means twelve
94 percent of the gross rent paid by a claimant for the right
95 of occupancy of his homestead beginning with the
96 calendar year one thousand nine hundred seventy-two,
97 and for any particular calendar year thereafter.

§11-25-3. Computation of relief; limits and tables.

1 (a) The amount of any claim for relief pursuant to
2 this article shall be limited as follows:

3 (1) If the gross household income of the claimant or
4 of the claimant and the claimant's spouse was five hun-
5 dred dollars or less during the calendar year to which
6 the claim relates, the claim shall be limited to seventy
7 five percent of the amount of the property taxes, or rent
8 constituting property taxes, or both, in such year on or
9 with respect to the claimant's homestead.

10 (2) If the gross household income of the claimant or
11 of the claimant and the claimant's spouse was more than
12 five hundred dollars but not in excess of one thousand
13 dollars during the calendar year to which the claim re-
14 lates, the claim shall be limited to seventy-five percent
15 of the amount by which the property taxes, or rent consti-
16 tuting property taxes, or both, in such year on or with
17 respect to the claimant's homestead are in excess of one
18 half of one percent of that portion of gross household
19 income in excess of five hundred dollars but not in excess
20 of one thousand dollars.

21 (3) If the gross household income of the claimant or
22 of the claimant and the claimant's spouse was more than
23 one thousand dollars but not in excess of two thousand
24 dollars during the calendar year to which the claim re-
25 lates, the claim shall be limited to sixty percent of the
26 amount by which the property taxes, or rent constituting

27 property taxes, or both, in such year on or with respect
28 to the claimant's homestead are in excess of (i) one half
29 of one percent of that portion of gross household income
30 in excess of five hundred dollars but not in excess of one
31 thousand dollars, (ii) one percent of that portion of gross
32 household income in excess of one thousand dollars but
33 not in excess of one thousand five hundred dollars and
34 (iii) one and one-half percent of that portion of gross
35 household income in excess of one thousand five hundred
36 dollars but not in excess of two thousand dollars.

37 (4) If the gross household income of the claimant or
38 of the claimant and the claimant's spouse was more than
39 two thousand dollars but not in excess of three thousand
40 dollars during the calendar year to which the claim re-
41 lates, the claim shall be limited to forty-five percent of
42 the amount by which the property taxes, or rent consti-
43 tuting property taxes, or both, in such year on or with
44 respect to the claimant's homestead are in excess of
45 (i) one half of one percent of that portion of gross house-
46 hold income in excess of five hundred dollars but not in
47 excess of one thousand dollars, (ii) one percent of that
48 portion of gross household income in excess of one thou-
49 sand dollars but not in excess of one thousand five hun-
50 dred dollars, (iii) one and one-half percent of that portion
51 of gross household income in excess of one thousand five
52 hundred dollars but not in excess of two thousand dollars,
53 (iv) two percent of that portion of gross household in-
54 come in excess of two thousand dollars but not in excess
55 of two thousand five hundred dollars and (v) two and one-
56 half percent of that portion of gross household income in
57 excess of two thousand five hundred dollars but not in
58 excess of three thousand dollars.

59 (5) If the gross household income of the claimant or
60 of the claimant and the claimant's spouse was more than
61 three thousand dollars but not in excess of four thousand
62 dollars during the calendar year to which the claim
63 relates, the claim shall be limited to thirty percent of the
64 amount by which the property taxes, or rent constituting
65 property taxes, or both, in such year on or with respect
66 to the claimant's homestead are in excess of (i) one half

67 of one percent of that portion of gross household income
68 in excess of five hundred dollars but not in excess of one
69 thousand dollars, (ii) one percent of that portion of gross
70 household income in excess of one thousand dollars but
71 not in excess of one thousand five hundred dollars, (iii)
72 one and one-half percent of that portion of gross house-
73 hold income in excess of one thousand five hundred dol-
74 lars but not in excess of two thousand dollars, (iv) two
75 percent of that portion of gross household income in
76 excess of two thousand dollars but not in excess of two
77 thousand five hundred dollars, (v) two and one-half per-
78 cent of that portion of gross household income in excess
79 of two thousand five hundred dollars but not in excess
80 of three thousand dollars, (vi) three percent of that
81 portion of gross household income in excess of three
82 thousand dollars but not in excess of three thousand five
83 hundred dollars and (vii) three and one-half percent of
84 that portion of gross household income in excess of three
85 thousand five hundred dollars but not in excess of four
86 thousand dollars.

87 (6) If the gross household income of the claimant or
88 of the claimant and the claimant's spouse was more than
89 four thousand dollars but not in excess of five thousand
90 dollars during the calendar year to which the claim
91 relates, the claim shall be limited to thirty percent of the
92 amount by which the property taxes, or rent constituting
93 property taxes, or both, in such year on or with respect
94 to the claimant's homestead are in excess of (i) one half
95 of one percent of that portion of gross household income
96 in excess of five hundred dollars but not in excess of one
97 thousand dollars, (ii) one percent of that portion of gross
98 household income in excess of one thousand dollars but
99 not in excess of one thousand five hundred dollars, (iii)
100 one and one-half percent of that portion of gross house-
101 hold income in excess of one thousand five hundred
102 dollars but not in excess of two thousand dollars, (iv) two
103 percent of that portion of gross household income in
104 excess of two thousand dollars but not in excess of two
105 thousand five hundred dollars, (v) two and one-half per-
106 cent of that portion of gross household income in excess

107 of two thousand five hundred dollars but not in excess
108 of three thousand dollars, (vi) three percent of that
109 portion of gross household income in excess of three
110 thousand dollars but not in excess of three thousand five
111 hundred dollars, (vii) three and one-half percent of that
112 portion of gross household income in excess of three
113 thousand five hundred dollars but not in excess of four
114 thousand dollars, (viii) four percent of that portion of
115 gross household income in excess of four thousand dollars
116 but not in excess of four thousand five hundred dollars
117 and (ix) four and one-half percent of that portion of
118 gross household income in excess of four thousand five
119 hundred dollars but not in excess of five thousand dollars.

120 (b) In any case in which the property taxes, or rent
121 constituting property taxes, or both, during any one
122 calendar year on or with respect to any homestead exceed
123 one hundred twenty-five dollars, the amount thereof shall,
124 for purposes of this article, be deemed to have been one
125 hundred twenty-five dollars.

126 (c) The state tax commissioner shall prepare a table
127 under which claims under this article shall be determined.
128 The table shall be published in the department's official
129 rules and regulations and shall be printed on the appro-
130 priate claim forms. The amount of relief as shown in the
131 table for each bracket shall be computed only to the
132 nearest ten cents.

§11-25-4. Forms and instructions; maximum participation.

1 The state tax commissioner shall prescribe and make
2 available claim forms with instructions for claimants,
3 and every assessor and sheriff shall comply with all
4 reasonable requests and rules and regulations of the
5 state tax commissioner in order to encourage maximum
6 participation of claimants eligible for relief under the
7 provisions of this article.

§11-25-5. Proof of claim; landlord's cooperation required; limitations.

1 Every claimant who is a homestead owner shall supply
2 to the state tax commissioner, in support of his claim,
3 reasonable proof of property taxes paid, information as

4 to the size and nature of the property claimed as the
5 homestead and a statement that the real property taxes
6 thereon have been paid by him and that there are no
7 delinquent real property taxes on the homestead.

8 Every claimant who is a homestead renter shall supply
9 to the state tax commissioner, in support of his claim,
10 reasonable proof, as required by the state tax commis-
11 sioner, of rent paid and the name and address of the
12 owner or managing agent of the property rented. The
13 claimant's landlord shall at the claimant's request sign
14 a statement setting forth the gross rent paid by the
15 claimant for the particular calendar year. Any landlord
16 who willfully furnishes a false or fraudulent statement,
17 or who willfully fails to furnish a statement in the man-
18 ner, at the time, and showing the information required
19 by the claimant in order to file a timely claim, shall for
20 each such violation be guilty of a misdemeanor, and,
21 upon conviction thereof, shall be fined an amount not
22 exceeding fifty dollars.

23 Only one claimant for a homestead for a calendar year
24 shall be entitled to relief under this article.

§11-25-6. Filing date.

1 No claim for relief shall be paid or allowed unless such
2 claim for relief is actually filed with and in the possession
3 of the state tax commissioner between and including the
4 respective dates of July one and September thirty fol-
5 lowing the calendar year with respect to which the claim
6 for relief under the provisions of this article is based.
7 Persons not filing claims for relief as provided by this
8 article within the appropriate ninety-day filing period
9 are deemed to have waived all claims for relief for that
10 particular calendar year. A claimant filing a timely claim
11 for relief may submit an amended claim for relief within
12 two years following the close of the appropriate filing
13 period.

14 In case of sickness, absence or other disability of the
15 claimant or if, in the state tax commissioner's judgment
16 good cause exists, the state tax commissioner may extend
17 the time for filing a claim for relief for a period not to
18 exceed six months.

§11-25-7. Claim as disbursement from state funds; claim is personal; offset.

1 Upon the state tax commissioner's determination that
2 a claimant is entitled to relief under the provisions of this
3 article, and after audit and certification of his claim for
4 relief, such relief shall be paid upon a state warrant
5 drawn upon the state treasury from balances retained for
6 general purposes. The right to file a claim for relief under
7 this article is personal to the claimant and shall not sur-
8 vive his death except that the spouse of such decedent
9 shall be entitled to file such claim if decedent had not
10 filed the same. In the event the claimant is incompetent
11 or insane, his claim may be filed by his duly appointed
12 and qualified legal guardian or committee. If a claimant
13 dies after having filed a timely claim for relief under the
14 provisions of this article, and the state tax commissioner
15 determines that such relief or any portion thereof is
16 proper, then such relief or portion thereof shall be paid
17 to such claimant's executor or administrator: *Provided,*
18 That if an executor or administrator has not been ap-
19 pointed and qualified within a reasonable time after the
20 claimant's death, the state tax commissioner may in his
21 discretion pay such relief to any person residing in
22 the claimant's homestead if there be such person and if
23 there be no such other person residing in such home-
24 stead, the amount of such relief shall escheat to the state.
25 The amount of any claim for relief otherwise payable
26 under this article may be applied by the state tax com-
27 missioner against any liability outstanding on the books
28 of the commissioner against the claimant.

§11-25-8. Denial of claim; violation and penalties.

1 If it is determined that a claim for relief was filed by
2 a claimant who was the recipient of public fund for the
3 payment of his real property taxes or rent during the
4 period for which the claim for relief was filed, or that
5 such claimant received title to his homestead primarily
6 for the purpose of receiving relief under this article, or
7 that a claim for relief was filed with fraudulent intent,
8 such claim for relief shall be disallowed in full, and, if

9 any such claim for relief has been paid, the amount paid
10 may be recovered by assessment in the same manner as
11 taxes are assessed under article thirteen of this chapter
12 and the assessment shall bear interest from the date of
13 payment of the claim for relief, until refunded to the state
14 tax commissioner, at the rate of one percent per month.
15 Any claimant willfully and knowingly filing a fraudulent
16 claim for relief, and any person who assisted in the prep-
17 aration or filing of such fraudulent claim for relief or
18 supplied information upon which such fraudulent claim
19 for relief was prepared, with knowledge of such fraudu-
20 lent intent of the claimant, shall be guilty of a misde-
21 meanor, and, upon conviction thereof, shall be fined not
22 less than fifty nor more than one hundred dollars, or im-
23 prisoned in the county jail not more than six months, or
24 both fined and imprisoned. If it is determined that a
25 claim for relief is excessive and was through negligence
26 incorrectly prepared, ten percent of the corrected claim
27 for relief shall be disallowed, and if the claim for relief
28 has been paid, the excessive portion of any amount paid
29 and the ten percent disallowed shall be similarly recov-
30 ered by assessment in the same manner as taxes are as-
31 sessed under article thirteen of this chapter and the assess-
32 ment shall bear interest from the date of payment of
33 the claim for relief until refunded to the state tax com-
34 missioner at the rate of one percent per month.

§11-25-9. Hearings and appeals.

1 Any claimant aggrieved by the denial in whole or in
2 part of his claim for relief, except when the denial is
3 based upon the late filing of a claim for relief, may de-
4 mand a hearing within thirty days after such denial by
5 filing with the state tax commissioner a verified petition
6 for hearing, which petition shall set forth with definite-
7 ness and particularity the reasons for objecting to such
8 denial. In every case where a petition is filed, the state
9 tax commissioner shall assign a time and place for a
10 hearing upon the same and shall proceed in accordance
11 with the provisions of article thirteen of this chapter and
12 all of the applicable provisions of said article thirteen shall
13 be applicable with like effect as if the petition were a

14 petition for reassessment as provided in said article thir-
15 teen. In connection with holding any such hearing, the
16 state tax commissioner shall have all of the relevant
17 powers and authority set forth in said article thirteen.
18 An appeal from a final decision of the state tax commis-
19 sioner made after any such hearing may be taken by the
20 claimant in accordance with the provisions of said article
21 thirteen of this chapter, and such appeal shall be pro-
22 cesses and determined with like effect as if said claimant
23 were a "taxpayer" as that term is used in said article
24 thirteen.

§11-25-10. Severability.

1 If any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or
3 invalid, such unconstitutionality or invalidity shall not
4 affect, impair or invalidate other provisions or applica-
5 tions of the article, and to this end the provisions of this
6 article are declared to be severable.

§11-25-11. Effective date.

1 The provisions of this article shall take effect on the
2 first day of January, one thousand nine hundred seventy-
3 two.

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

Russell G. Brall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the House.

In Effect July 1, 1972.

Howard W. Carson
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

E. H. McCourt
President of the Senate

Louis R. Williams
Speaker House of Delegates

The within approved this the 27th
March day of _____, 1972.

Archie A. Moore Jr.
Governor



PRESENTED TO THE
COMMISSION

DATE 3/20/72

TIME 10:17a.m.