WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 670

(By Mr. McDow, Mr. President, etc.)

PASSED
April 11, 1981
In Effect
July 1, 1981
AN ACT to repeal section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter eleven by adding thereto a new article, designated article six-b, all relating generally to the ad valorem property tax homestead exemption; defining terms; providing for allowance of exemption to persons age sixty-five or older or who are permanently and totally disabled; requiring the filing of claim for exemption and annual certification of permanent and total disability; providing for waiver of exemption for failure to timely file; providing procedures for review of claims and for determination and payment of reimbursements; creating the homestead property tax exemption fund; providing for criminal penalties, severability and effective date.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter eleven be amended by adding thereto a new article, designated article six-b, all to read as follows:

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-1. Declaration of purpose.

1 This article is enacted to implement the amendment to
2 article X, section one-b of the constitution increasing the ad
3 valorem property tax homestead exemption, which was
ratified by the people at the general election held on the fourth day of November, one thousand nine hundred eighty.

§11-6B-2. Definitions.

1 For purposes of this article, the term:
2 (1) "Assessed value" means the value of property as determined under article three of this chapter.
3 (2) "Claimant" means a person who is age sixty-five or older or who is certified as being permanently and totally disabled, and who owns a homestead that is used and occupied by the owner thereof exclusively for residential purposes.
4 (3) "Homestead" means a single family residential house, including a modular home, and the land surrounding such structure; or a mobile home regardless of whether the land upon which such mobile home is situated is owned or leased.
5 (4) "Owner" means the person who is possessed of the homestead, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability shall be deemed the owner until the mortgagor or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title shall also be deemed the owner. Personal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the party in possession.
6 (5) "Permanently and totally disabled" means a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.
7 (6) "Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment date.
8 (7) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than one half of the year by the owner and that the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use.
9 (8) "Tax year" means the calendar year following the July first assessment day.
§11-6B-3. Ten thousand dollar homestead exemption allowed.
(a) General.—An exemption from ad valorem property taxes shall be allowed for the first ten thousand dollars of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled. Only one exemption shall be allowed for each homestead used and occupied exclusively for residential purposes by the owner thereof, regardless of the number of qualified owners residing therein.

(b) Attachment of exemption.—This exemption shall attach to the homestead occupied by the qualified owner on the July first assessment date and shall be applicable to taxes for the following tax year. An exemption shall not be transferred to another homestead until the following July first. If the homestead of an owner qualified under this article is transferred by deed, will or otherwise, the ten thousand dollar exemption shall be removed from the property on the next July first assessment date unless the new owner qualifies for the exemption.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.
(a) General.—No exemption shall be allowed under this article unless a claim of exemption is filed with the assessor of the county in which the homestead is located, on or before the first day of October following the July first assessment day. In the case of sickness, absence or other disability of the claimant, the claim may be filed by the claimant or his duly authorized agent.

(b) Certification of disability.—Any doctor of osteopathy or doctor of medicine licensed to practice medicine and surgery is a proper authority to certify that an individual is permanently and totally disabled. A written certification signed by a licensed doctor must accompany each claim for exemption that is based on the permanent and total disability of the claimant.

(c) Renewals.
(1) Senior citizens.—If the claimant is age sixty-five or older, then after the claimant has filed for the exemption once with his assessor, there shall be no need for that claimant to refile unless the claimant moves to a new homestead.

(2) Disabled.—If the claimant is permanently and totally disabled, then after the claimant has filed for the exemption once with his assessor, entitlement to the exemption shall be
maintained by annually filing, between July first and October first of each year, a certification of continued permanent and total disability.

(3) Waiver of exemption.—Any person not filing his claim for exemption or certification of continued permanent and total disability with the assessor of his county on or before the first day of October shall be deemed to have waived his right to exemption for the next tax year.

§11-6B-5. Determination; notice of denial of claim.
1 The assessor shall as soon as practicable after a claim for exemption is filed or a certification of continued permanent and total disability is filed, review that claim or certificate and either approve or deny it. If the exemption is denied, the assessor shall promptly, but not later than the first day of November, serve the claimant with written notice explaining why the exemption was denied, and furnish a form for filing with the county commission should the claimant desire to take an appeal. This notice shall be served on the claimant or his authorized representative either by personal service or by certified mail.

§11-6B-6. Notice of appeal and appeals.
1 (a) Notice of appeal; thirty days.—Any claimant aggrieved by the denial of his claim for exemption, may appeal to the county commission, within thirty days after receipt of written notice explaining why the exemption was denied.
2 (b) Review; determination; appeal.—The county commission shall complete its review and issue its determination within sixty days after receipt of the notice of appeal from the claimant. In conducting its review, the county commission may hold a hearing on the claim. The assessor or the claimant may apply to the circuit court of the county for review of the determination of the county commission in the same manner as is provided for appeals from the county commission in section twenty-five, article three of this chapter.

§11-6B-7. Property tax books.
1 (a) Property book entry.—The exemption of the first ten thousand dollars of assessed value shall be shown on the property books as a deduction from the total assessed value of the homestead.
2 (b) Levy; statement to homestead owner.—When the ten thousand dollar exemption is greater than the total assessed
value of the eligible homestead, no taxes shall be levied. The sheriff shall issue a statement to the owner showing that no taxes are due.

§11-6B-8. Partial reimbursement for cost of homestead exemption increase.
(a) Annual appropriation.—The Legislature shall annually appropriate to the homestead property tax exemption fund, general revenues of sufficient amount to reimburse local levying bodies for the amount of ad valorem property tax revenues lost by reason of the increase in the homestead property tax exemption: Provided, That no reimbursement shall be made for the amount of ad valorem property tax revenues lost by reason of the exemption of the first five thousand dollars of assessed value of real property owned and occupied by a person who is age sixty-five or older.
(b) Report of assessor.—On or before the first day of November following the July first assessment day, the assessor of each county shall forward to the tax commissioner a written report showing the assessed value of property eligible for the homestead exemption, the amount of such assessed value exempt from ad valorem property taxes because of the homestead exemption, the estimated loss in revenue to each levying body in his county because of the homestead exemption, the portion of such estimated loss eligible for reimbursement by the state and such other information as the tax commissioner may require. A copy of this report, or the pertinent portions thereof, shall also be filed with each levying body in his county.
(c) Request for appropriation.—On or before the last day of November following the July first assessment day, the tax commissioner shall submit to the commissioner of finance and administration a request for appropriations to the homestead property tax exemption fund to reimburse local levying bodies for the amount of ad valorem property tax revenues lost due to the increase in the homestead property tax exemption.
(d) Homestead property tax exemption fund.—In order to provide the reimbursement to local levying bodies as required by this article, there is hereby created in the state treasurer's office a special fund to be known as the "homestead property tax exemption fund". The moneys in
such fund shall be paid to the county sheriff as agent for the local levying bodies between the first and thirty-first day of January of each calendar year to reimburse them for the amount of tax revenue lost during the preceding calendar year by reason of the homestead tax exemption increase.

(e) Local levying bodies; account receivable.—Each local levying body shall on the first day of July of each fiscal year establish and show as a revenue receivable the amount of revenue lost by reason of the homestead property tax exemption increase and for which they will be reimbursed by the state in the subsequent calendar year.

(f) Request for payment; sheriff.—The sheriff of each county shall in August of each year send the tax commissioner a request for payment of the amount of ad valorem property tax revenue lost by the local governmental units in his county due to the homestead tax exemption increase. In January of each year and after review and approval by him, the tax commissioner shall issue his requisition for the amount payable and the auditor shall issue his warrant on the treasurer. The treasurer shall pay the warrant out of the “homestead property tax exemption fund”.

§11-6B-9. Forms, instructions and regulations.

The tax commissioner shall prescribe and supply all necessary instructions and forms for administration of this article. Additionally, the tax commissioner may make all necessary rules and regulations for this article as provided in the state administrative procedure act in chapter twenty-nine-a of this code.

§11-6B-10. Criminal penalties.

(a) False or fraudulent claim for exemption.—Any claimant who willfully files a fraudulent claim for exemption, and any person who knowingly assisted in the preparation or filing of such fraudulent claim for exemption or who knowingly supplied information upon which the fraudulent claim was prepared or allowed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred and fifty dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

(b) Fraudulent assessments.—(1) An assessor or employee of a county who, with intent to defraud the state,
assesses the value of the eligible claimant’s homestead for an
amount which is in excess of its true and actual value or is in
excess of the assessed value of similar property in his county,
in order to increase the cost of the homestead exemption to
his county and to thereby secure a larger reimbursement
from the state, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one hundred
dollars nor more than five hundred dollars, or imprisoned in
the county jail for not more than one year, or both fined and
imprisoned. Each violation of this subsection shall constitute
a separate offense.

(2) An assessor or employee of a county who, with intent
to defraud a claimant, assesses the value of the eligible
claimant’s homestead for an amount which is in excess of its
true and actual value or is in excess of the assessed value of
similar property in his county, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than one hundred dollars nor more than five hundred
dollars, or imprisoned in the county jail for not more than one
year, or both fined and imprisoned. Each violation of this
subsection shall constitute a separate offense.

(c) Failure to notify assessor.—A claimant or his legal
representative, who prior to the next first day of July, fails to
notify the assessor of the county wherein property subject to
the homestead property tax exemption is located, that title to
that property or a portion thereof was transferred by deed,
grant, sale, gift, will or by the laws of this state regulating
descent and distribution or that the property is no longer
used and occupied for residential purposes exclusively by the
claimant, shall be guilty of a misdemeanor, and, upon
conviction, shall be fined not more than one thousand dollars
or imprisoned for not more than one year or both.

§11-6B-11. Severability.

If any provision of this article or the application thereof to
any person or circumstance is held unconstitutional or
invalid, such unconstitutionality or invalidity shall not affect,
impair or invalidate other provisions or applications of the
article, and to this end the provisions of this article are
declared to be severable.

§11-6B-12. Effective date.

The provisions of this article shall take effect on the first
day of July, one thousand nine hundred eighty-one.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayle
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1981.

Judd C. Mills
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

President of the Senate

Clay H. Lee, Jr.
Speaker House of Delegates

The within is approved this the 29th day of April, 1981.

John D. Bryson
Governor