WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1990

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ENROLLED

Com. Sub. for

HOUSE BILL No. 201

(By Mr. Speaker, Mr. Chambers, and Del. B. Bush)

[By request of the Executive]

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Passed ................... June 27, 1990

In Effect .................. From Passage
AN ACT to amend and reenact sections two, three and twelve, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the homestead property tax exemption allowable to senior citizens and to persons who are permanently and totally disabled; definitions; amending the requirements, limitations and conditions for the homestead exemption; and specifying that such changes shall apply when determining the measure against which property taxes are levied for the current tax year.

Be it enacted by the Legislature of West Virginia:

That sections two, three and twelve, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§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.

(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.

(3) "Homestead" means a single family residential house, including a mobile or manufactured or modular home, and the land surrounding such structure; or a mobile or manufactured or modular home regardless of whether the land upon which such mobile or manufactured or modular home is situated is owned or leased.

(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 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.

(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.

(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 day.

(7) "Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the calendar year prior to the date of application by the owner thereof; and that the property is used only as an abode, dwelling or habitat to the
exclusion of any commercial use: Provided, That failure

to satisfy this six-month period shall not prevent

allowance of a homestead exemption to a former

resident in accordance with section three of this article.

(8) "Tax year" means the calendar year following the

July first assessment day.

(9) "Resident of this state" means an individual who

is domiciled in this state for more than six months of

the calendar year.

§11-6B-3. Twenty thousand dollar homestead exemption

allowed.

(a) General.—An exemption from ad valorem prop-

erty taxes shall be allowed for the first twenty 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 provided the owner has been or will be a

resident of the state of West Virginia for the two

consecutive calendar years preceding the tax year to

which the homestead exemption relates: Provided, That

an owner who receives a similar exemption for a

homestead in another state is ineligible for the exemp-

tion provided by this section. The owner's application for

exemption shall be accompanied by a sworn affidavit

stating that such owner is not receiving a similar

exemption in another state: Provided, however, That

when a resident of West Virginia establishes residency

in another state or country and subsequently returns

and reestablishes residency in West Virginia within a

period of five years, such resident may be allowed a

homestead exemption without satisfying the require-

ment of two years consecutive residency if such person

was a resident of this state for two calendar years out

of the ten calendar years immediately preceding the tax

year for which the homestead exemption is sought. Proof

of residency includes, but is not limited to, the owner's

voter's registration card issued in this state or a motor

vehicle registration card issued in this state. Addition-

ally, when a person is a resident of this state at the time
such person enters upon active duty in the military service of this country and throughout such service maintains this state as his or her state of residence, and upon retirement from the military service, or earlier separation due to a permanent and total physical or mental disability, such person returns to this state and purchases a homestead, such person is deemed to satisfy the residency test required by this section and shall be allowed a homestead exemption under this section if such person is otherwise eligible for a homestead exemption under this article; and the tax commissioner may specify, by regulation promulgated under chapter twenty-nine-a of this code, what constitutes acceptable proof of these facts. 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 twenty thousand dollar exemption shall be removed from the property on the next July first assessment date unless the new owner qualifies for the exemption.

(c) Construction.—The residency requirement specified in subsection (a) is enacted pursuant to the Legislature's authority to prescribe by general law requirements, limitations and conditions for the homestead exemption, as set forth in section one-b, article ten of the constitution of this state. Should the supreme court of appeals or a federal court of competent jurisdiction determine that this residency requirement violates federal law in a decision that becomes final, this section shall then be construed and applied, beginning with the July first assessment day immediately following the date the decision became final, as if the residency requirement had not been enacted, thereby
preserving the availability of the homestead exemption and the fiscal integrity of local government levying bodies.

§11-6B-12. Effective date.

(a) The provisions of this article enacted in the year one thousand nine hundred eighty-one took effect on the first day of July, one thousand nine hundred eighty-one.

(b) Amendments to this article enacted in the year one thousand nine hundred ninety shall, regardless of the effective date of this act, be used to determine the assessed value of property on which ad valorem property taxes are levied for tax years beginning on or after the first day of January, one thousand nine hundred ninety. Assessors and county commissioners are hereby authorized and directed to review the claims for homestead exemption for the current tax year filed in their counties prior to the second day of October, one thousand nine hundred eighty-nine, and to make such changes in their books for the current tax year as may be needed to give these amendments their intended effect, regardless of any other provision in this chapter that may prohibit such action. Any person who has already paid property taxes for tax year one thousand nine hundred ninety, and who is considered eligible for homestead exemption under this article, may apply pursuant to section twenty-seven, article three of this chapter for a refund for property taxes erroneously paid.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

**Chairman Senate Committee**

**Chairman House Committee**

 Originating in the House.

 Takes effect from passage.

 **Clerk of the Senate**

 **Clerk of the House of Delegates**

 **President of the Senate**

 **Speaker of the House of Delegates**

 The within is approved this the day of July, 1990.

 **Governor**