WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Comm. Sub. for

HOUSE BILL No. 2397

(By Delegates

(Continued)

Passed ........................................... March 11, 1995

In Effect ........................................... 90 days from Passage

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(Continued)
AN ACT to amend and reenact section seventeen, article five, chapter twenty-one; and sections one and four, article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to firefighters in emergency situations; expanding the definition of emergency so that voluntary fire department personnel are not fired or otherwise discriminated against for situations not presently included in such definition; expanding situations in which firefighters may enter privately-owned buildings; expanding situations in which persons are guilty of a felony or misdemeanor for interfering with firefighters during an emergency.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, chapter twenty-one; and sections one and four, article three-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR.
ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a member of a volunteer fire department who, in the line of emergency duty as a volunteer fireman, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.

2 Any time lost from employment as provided in this section may be charged against the employee's regular pay.

3 At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the chief of the volunteer fire department stating that the employee responded to an emergency call and the time thereof.

4 As used in this section, "emergency" shall mean going to, attending to or coming from (1) a fire call, (2) a hazardous or toxic materials spill and cleanup, or (3) any other situation to which his or her fire department has been or later could be dispatched. The term "employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

5 Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.
ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency.

While any fire department recognized or approved by the West Virginia state fire commission is responding to, operating at or returning from a fire, fire hazard, service call or other emergency, the fire chief, any other elected or appointed fire line officer, or any member serving in the capacity of appointed fire line officer in charge, except on industrial property where trained industrial fire fighting personnel are present, shall have the authority:

1. Of controlling and directing fire fighting and fire control activities at such scene;

2. To order any person or persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury;

3. To blockade any public highway, street or private right-of-way temporarily while at such scene;

4. To enter the building, structure, enclosure or other property of any person or persons at any time of the day or night, without liability, while operating at such scene;

5. To enter any building, including private dwellings, or upon any premises where an emergency exists, or where there is reasonable cause to believe an emergency exists, for the purpose of eliminating the emergency;

6. To enter any building, including private dwellings, or premises near the scene of the emergency for the purpose of protecting the building or premises or for the purpose of eliminating the emergency which is in progress in another building or premises;

7. To inspect for preplanning, all buildings, structures or other places in their fire district, excepting, however, the
interior of a private dwelling, with the consent of the owner or occupant, where any combustible materials, including waste paper, rags, shavings, waste, leather, rubber, crates, boxes, barrels, rubbish or other combustible material that is or may become dangerous as a fire menace to such building or buildings, structure or other places has been allowed to accumulate or where such chief or his designated representative has reason to believe that such material of a combustible nature has accumulated or is liable to be accumulated;

(8) To direct the removal or destroying of any fence, house, motor vehicle or other thing which may reasonably be determined to be necessary to be pulled down, destroyed, or removed to prevent the further spread of the fire or hazardous condition;

(9) To request and be supplied with additional materials such as sand, treatments, chemicals, etc., and special equipment when dealing with an accident on a public highway or railroad right-of-way when it is deemed a necessity to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by the owner of the instrumentality which caused the fire or hazardous condition;

(10) To order disengagement or discouplement of any convoy, caravan or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property; and

(11) As used in this article, the term "emergency" means a situation in which the fire officer in charge knows or in which a reasonable person would believe that there exists an imminent threat of serious bodily harm or death to a person or significant damage to property.

§29-3A-4. Person attacking or hindering or obstructing firefighter or emergency equipment; penalties.

(a) It shall be unlawful, while any fire department or company or firefighter is lawfully exercising or discharg-
(Enr. Com. Sub. for H. B. 2397)

3 ing such department's, company's or firefighter's official
duty during an emergency, for any person to:

5 (1) Attack any firefighter, or any of his or her equip-
6 ment with any deadly weapon as defined in section two,
7 article seven, chapter sixty-one of this code, or

8 (2) Intentionally hinder, obstruct, oppose, or attempt
to hinder, obstruct or oppose, or counsel, advise or invite
others to hinder, obstruct or oppose, any fire department,
fire company or firefighter.

(b) Any person violating the provisions of this section
is guilty of a felony, and, upon conviction thereof, shall be
imprisoned in the penitentiary not less than one nor more
than ten years, or, in the discretion of the court, be con-
finied in the county jail not more than one year or fined
not more than five hundred dollars, or both fined and
imprisoned.

(c) Any person willfully violating any of the provi-
sions of section one or three of this article is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than one hundred dollars nor more than five hun-
dred dollars.

(d) Nothing in this article shall be construed to pre-
vent law-enforcement officials from controlling traffic and
otherwise maintaining order at the scene of a fire.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ___________ this the ___________
day of ________________, 1995.

Governor