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COMMITTEE SUBSTITUTE

FOR

## H. B. 2477

(BY DELEGATES PERRY, WILLIAMS,  
MEZZATESTA, TRUMP AND PINO)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, four, five and six, article six-b of said chapter, all relating to property tax designations and homestead exemptions from property taxes, and permitting certain homeowners to retain a homestead exemption and class two property designation for certain property while they are residing with family members or resident of a nursing home or other facility as a result of illness, accident or infirmity and changing due dates and response deadlines to exemption requests.

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

That section three, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, four, five and six, article six-b of said chapter, be amended and reenacted, all to read as follows:

**ARTICLE 4. ASSESSMENT OF REAL PROPERTY.**

**§11-4-3. Definitions.**

1 For the purpose of giving effect to the “Tax Limitations  
2 Amendment,” this chapter shall be interpreted in accordance  
3 with the following definitions, unless the context clearly  
4 requires a different meaning:

5 “Owner” means the person, as defined in section ten, article  
6 two, chapter two of this code, who is possessed of the freehold,  
7 whether in fee or for life. A person seized or entitled in fee  
8 subject to a mortgage or deed of trust securing a debt or liability  
9 is considered the owner until the mortgagee or trustee takes  
10 possession, after which the mortgagee or trustee shall be  
11 considered the owner. A person who has an equitable estate of  
12 freehold, or is a purchaser of a freehold estate who is in  
13 possession before transfer of legal title is also considered the  
14 owner.

15 “Used and occupied by the owner thereof exclusively for  
16 residential purpose” means actual habitation by the owner or  
17 the owner’s spouse of all or a portion of a parcel of real  
18 property as a primary place of abode to the exclusion of any  
19 commercial use: *Provided*, That if the parcel of real property  
20 was unoccupied at the time of assessment and either (a) was  
21 used and occupied by the owner thereof exclusively for  
22 residential purposes on the first day of July of the previous year  
23 assessment date, (b) was unimproved on the first of July of the  
24 previous year but a building improvement for residential  
25 purposes was subsequently constructed thereon between that

26 date and the time of assessment, or, (c) is retained by the  
27 property owner for non-commercial purposes and was most  
28 recently used and occupied by the owner or the owner's spouse  
29 as a residence, and the owner, as a result of illness, accident or  
30 infirmity, is residing with a family member or is a resident in a  
31 nursing home, personal care home, rehabilitation center or  
32 similar facility, then the property shall be considered "used and  
33 occupied by the owner thereof exclusively for residential  
34 purpose": *Provided, however*, That nothing herein contained  
35 shall permit an unoccupied or unimproved property to be  
36 considered "used and occupied by the owner thereof exclu-  
37 sively for residential purposes" for more than one year unless  
38 the owner, as a result of illness, accident or infirmity, is  
39 residing with a family member or is a resident of a nursing  
40 home, personal care home, rehabilitation center or similar  
41 facility. If a license is required for an activity on the premises  
42 or if an activity is conducted thereon which involves the use of  
43 equipment of a character not commonly employed solely for  
44 domestic as distinguished from commercial purposes, the use  
45 may not be considered to be exclusively residential.

46 "Family member" means a person who is related by  
47 common ancestry, adoption or marriage, including but not  
48 limited to persons related by lineal and collateral consanguinity.

49 "Farm" means a tract or contiguous tracts of land used for  
50 agriculture, horticulture or grazing and includes all real  
51 property designated as "wetlands" by the United States army  
52 corps of engineers or the United States fish and wildlife service.

53 "Occupied and cultivated" means subjected as a unit to  
54 farm purposes, whether used for habitation or not, and although  
55 parts may be lying fallow, in timber or in wastelands.

#### **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  
3 determined under article three of this chapter.

4 (2) “Claimant” means a person who is age sixty-five or  
5 older or who is certified as being permanently and totally  
6 disabled, and who owns a homestead that is used and occupied  
7 by the owner thereof exclusively for residential purposes:  
8 *Provided*, That (1) if the property was most recently used and  
9 occupied by the owner or the owner’s spouse thereof exclu-  
10 sively for residential purposes, (2)the owner, as a result of  
11 illness, accident or infirmity, is residing with a family member  
12 or is a resident of a nursing home, personal care home, rehabili-  
13 tation center or similar facility, and (3) the property is retained  
14 by the owner for noncommercial purposes, then the owner of  
15 that property may continue to claim a homestead property tax  
16 exemption on the property.

17 (3)“Family member” means a person who is related by  
18 common ancestry, adoption or marriage, including but not  
19 limited to persons related by lineal and collateral consanguinity.

20 (4) “Homestead” means a single family residential house,  
21 including a mobile or manufactured or modular home, and the  
22 land surrounding such structure; or a mobile or manufactured  
23 or modular home regardless of whether the land upon which  
24 such mobile or manufactured or modular home is situated is  
25 owned or leased.

26 (5) “Owner” means the person who is possessed of the  
27 homestead, whether in fee or for life. A person seized or  
28 entitled in fee subject to a mortgage or deed of trust shall be  
29 considered the owner. A person who has an equitable estate of  
30 freehold, or is a purchaser of a freehold estate who is in  
31 possession before transfer of legal title shall also be considered  
32 the owner. Personal property mortgaged or pledged shall, for

33 the purpose of taxation, be considered the property of the party  
34 in possession.

35 (6) “Permanently and totally disabled” means a person who  
36 is unable to engage in any substantial gainful activity by reason  
37 of any medically determinable physical or mental condition  
38 which can be expected to result in death or which has lasted or  
39 can be expected to last for a continuous period of not less than  
40 twelve months.

41 (7) “Sixty-five years of age or older” includes a person who  
42 attains the age of sixty-five on or before the thirtieth day of  
43 June following the July first assessment day.

44 (8) “Used and occupied exclusively for residential pur-  
45 poses” means that the property is used as an abode, dwelling or  
46 habitat for more than six consecutive months of the calendar  
47 year prior to the date of application by the owner thereof; and  
48 that the property is used only as an abode, dwelling or habitat  
49 to the exclusion of any commercial use: *Provided*, That failure  
50 to satisfy this six-month period shall not prevent allowance of  
51 a homestead exemption to a former resident in accordance with  
52 section three of this article.

53 (9) “Tax year” means the calendar year following the July  
54 first assessment day.

55 (10) “Resident of this state” means an individual who is  
56 domiciled in this state for more than six months of the calendar  
57 year.

**§11-6B-4. Claim for exemption; renewals; waiver of exemption.**

1 (a) *General.* — No exemption shall be allowed under this  
2 article unless a claim of exemption is filed with the assessor of  
3 the county in which the homestead is located, on or before the  
4 first day of December following the July first assessment day.

5 In the case of sickness, absence or other disability of the  
6 claimant, the claim may be filed by the claimant or his or her  
7 duly authorized agent.

8 (b) *Claims for disability exemption.* — Each claim for  
9 exemption based on the owner being permanently and totally  
10 disabled shall include one of the following forms of documenta-  
11 tion in support of said claim: (1) A written certification by a  
12 doctor of medicine or doctor of osteopathy licensed to practice  
13 their particular profession in this state that the claimant is  
14 permanently and totally disabled; (2) a written certification by  
15 the social security administration that the claimant is currently  
16 receiving benefits for permanent and total disability; (3) a copy  
17 of the letter from the social security administration originally  
18 awarding benefits to the claimant for permanent and total  
19 disability and a copy of a current check for such benefits,  
20 marked void; (4) a current social security health insurance  
21 (medicare) card in the name of the claimant and a copy of a  
22 current check to the claimant, marked void, for benefits from  
23 the social security administration for permanent and total  
24 disability; (5) a written certification signed by the veterans  
25 administration certifying that a person is totally and perma-  
26 nently disabled; (6) any lawfully recognized workers' compen-  
27 sation documentation certifying that a person is totally and  
28 permanently disabled; (7) any lawfully recognized pneumoconi-  
29 osis documentation certifying that a person is totally and  
30 permanently disabled; or (8) any other lawfully recognized  
31 documentation certifying that a person is totally and perma-  
32 nently disabled.

33 (c) *Renewals.* —

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

38       (2) *Disabled.* — If the claimant is permanently and totally  
39 disabled, then after the claimant has filed for the exemption  
40 once with his or her assessor, and signed a statement certifying  
41 that he or she will notify the assessor if he or she is no longer  
42 eligible for an exemption on the basis of being permanently and  
43 totally disabled and that the claimant will notify the assessor  
44 within thirty days of the discontinuance of the receipt of  
45 benefits for permanent and total disability, if the claimant  
46 originally claimed receipt of said benefits to document his or  
47 her claim for exemption, there shall be no need for that claim-  
48 ant to refile, unless the claimant moves to a new homestead.

49       (3) *Waiver of exemption.* — Any person not filing his or her  
50 claim for exemption on or before the first day of December  
51 shall be determined to have waived his or her right to exemp-  
52 tion for the next tax year.

53       (4) *Residential care exception.* — For purposes of this  
54 section, an otherwise qualified claimant who, as a result of  
55 illness, accident or infirmity, resides with a family member or  
56 is a resident at a nursing home, personal care home, rehabilita-  
57 tion center or similar facility is not considered to have moved  
58 to a new homestead.

**§11-6B-5. Determination; notice of denial of claim or exemption.**

1       (a) The assessor shall, as soon as practicable after a claim  
2 for exemption is filed, review that claim and either approve or  
3 deny it. If the exemption is denied, the assessor shall promptly,  
4 but not later than the first day of January, serve the claimant  
5 with written notice explaining why the exemption was denied  
6 and furnish a form for filing with the county commission should  
7 the claimant desire to take an appeal. The notice required or  
8 authorized by this section shall be served on the claimant or his  
9 or her authorized representative either by personal service or by  
10 certified mail.

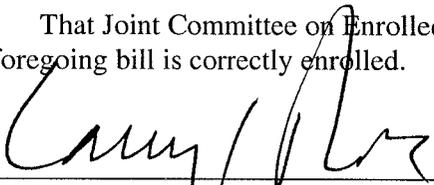
11 (b) In the event that the assessor shall have information  
12 sufficient to form a reasonable belief that a claimant, after  
13 having been originally granted an exemption, is not eligible for  
14 said exemption, he or she shall deny the exemption on the next  
15 assessment date and shall promptly, but no later than the first  
16 day of January, serve the claimant with written notice explain-  
17 ing the reasons for the denial and furnish a form for filing with  
18 the county commission should the claimant desire to take an  
19 appeal.

**§11-6B-6. Appeals procedure.**

1 (a) *Notice of appeal; thirty days.* — Any claimant ag-  
2 grieved by the denial of his or her claim for exemption or the  
3 subsequent denial of his or her exemption may appeal to the  
4 county commission within thirty days after receipt of written  
5 notice explaining why the exemption was denied.

6 (b) *Review; determination; appeal.* — The county commis-  
7 sion shall complete its review and issue its determination as  
8 soon as practicable after receipt of the notice of appeal, but in  
9 no event later than the twenty-eighth day of February of the tax  
10 year for which the exemption is first applied. In conducting its  
11 review, the county commission may hold a hearing on the  
12 claim. The assessor or the claimant may apply to the circuit  
13 court of the county for review of the determination of the  
14 county commission in the same manner as is provided for  
15 appeals from the county commission in section twenty-five,  
16 article three of this chapter.

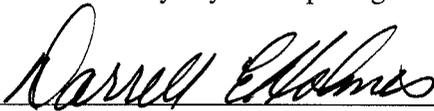
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

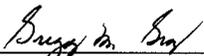
  
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Chairman Senate Committee

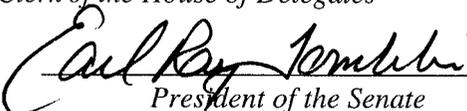
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage

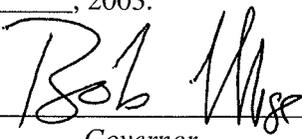
  
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Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 1<sup>st</sup>  
day of April, 2003.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/03

Time 9:35 am