

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4442**

BY DELEGATES ELDRIDGE, IAQUINTA, LOVE AND PAYNTER

[Introduced February 6, 2018; Referred  
to the Committee on Finance.]

1 A BILL to amend and reenact §11-6B-2, §11-6B-3, §11-6B-4, and §11-6B-7 of the Code of West  
 2 Virginia, 1931, as amended, relating to exempting the total amount of assessed value of  
 3 a homestead owned and occupied by a disabled veteran who has a 100 percent  
 4 permanent and total service-connected disability; definitions; and required proof of the  
 5 disability.

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

**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  
 3 chapter.

4 (2) "Claimant" means a person who is age 65 or older or who is certified as being  
 5 permanently and totally disabled, and who owns a homestead that is used and occupied by the  
 6 owner thereof exclusively for residential purposes: *Provided, That:* (1) If the property was most  
 7 recently used and occupied by the owner or the owner's spouse thereof exclusively for residential  
 8 purposes; (2) the owner, as a result of illness, accident or infirmity, is residing with a family  
 9 member or is a resident of a nursing home, personal care home, rehabilitation center, or similar  
 10 facility; and (3) the property is retained by the owner for noncommercial purposes, then the owner  
 11 of that property may continue to claim a homestead property tax exemption on the property.

12 (3) "Family member" means a person who is related by common ancestry, adoption, or  
 13 marriage including, but not limited to, persons related by lineal and collateral consanguinity.

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

18 (5) "Owner" means the person who is possessed of the homestead, whether in fee or for

19 life. A person seized or entitled in fee subject to a mortgage or deed of trust shall be considered  
20 the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate  
21 who is in possession before transfer of legal title shall also be considered the owner. Personal  
22 property mortgaged or pledged shall, for the purpose of taxation, be considered the property of  
23 the party in possession.

24 (6) "Permanently and totally disabled" means:

25 (A) A person who is unable to engage in any substantial gainful activity by reason of any  
26 medically determinable physical or mental condition which can be expected to result in death or  
27 which has lasted or can be expected to last for a continuous period of not less than twelve months;  
28 or

29 (B) A disabled veteran who has a 100 percent permanent and total service-connected  
30 disability determination of individual unemployability by the United States Department of Veterans  
31 Affairs.

32 (7) "Sixty-five years of age or older" includes a person who attains the age of 65 on or  
33 before June 30 following the July first assessment day.

34 (8) "Used and occupied exclusively for residential purposes" means that the property is  
35 used as an abode, dwelling, or habitat for more than six consecutive months of the calendar year  
36 prior to the date of application by the owner thereof; and that the property is used only as an  
37 abode, dwelling, or habitat to the exclusion of any commercial use: *Provided*, That failure to satisfy  
38 this six-month period shall not prevent allowance of a homestead exemption to a former resident  
39 in accordance with section three of this article.

40 (9) "Tax year" means the calendar year following the July first assessment day.

41 (10) "Resident of this state" means an individual who is domiciled in this state for more  
42 than six months of the calendar year.

**§11-6B-3. ~~Twenty thousand dollar~~ Homestead exemption allowed.**

1 (a) (1) General. -- An exemption from ad valorem property taxes shall be allowed for the

2 first \$20,000 of assessed value of a homestead that is used and occupied by the owner thereof  
3 exclusively for residential purposes, when such owner is 65 years of age or older or is certified as  
4 being permanently and totally disabled provided the owner has been or will be a resident of the  
5 State of West Virginia for the two consecutive calendar years preceding the tax year to which the  
6 homestead exemption relates: *Provided*, That an owner who receives a similar exemption for a  
7 homestead in another state is ineligible for the exemption provided by this section. The owner's  
8 application for exemption shall be accompanied by a sworn affidavit stating that such owner is  
9 not receiving a similar exemption in another state: *Provided, however*, That when a resident of  
10 West Virginia establishes residency in another state or country and subsequently returns and  
11 reestablishes residency in West Virginia within a period of five years, such resident may be  
12 allowed a homestead exemption without satisfying the requirement of two years consecutive  
13 residency if such person was a resident of this state for two calendar years out of the ten calendar  
14 years immediately preceding the tax year for which the homestead exemption is sought. Proof of  
15 residency includes, but is not limited to, the owner's voter's registration card issued in this state  
16 or a motor vehicle registration card issued in this state. Additionally, when a person is a resident  
17 of this state at the time such person enters upon active duty in the military service of this country  
18 and throughout such service maintains this state as his or her state of residence, and upon  
19 retirement from the military service, or earlier separation due to a permanent and total physical or  
20 mental disability, such person returns to this state and purchases a homestead, such person is  
21 deemed to satisfy the residency test required by this section and shall be allowed a homestead  
22 exemption under this section if such person is otherwise eligible for a homestead exemption under  
23 this article; and the Tax Commissioner may specify, by regulation promulgated under chapter 29-  
24 a of this code, what constitutes acceptable proof of these facts. Only one exemption shall be  
25 allowed for each homestead used and occupied exclusively for residential purposes by the owner  
26 thereof, regardless of the number of qualified owners residing therein.

27 (2) An exemption from ad valorem property taxes shall be allowed for total amount of

28 assessed value of a homestead that is used and occupied by the owner thereof exclusively for  
29 residential purposes, when such owner is a disabled veteran who has a 100 percent permanent  
30 and total service-connected disability determination of individual unemployability by the United  
31 States Department of Veterans Affairs provided the owner has been or will be a resident of the  
32 State of West Virginia for the two consecutive calendar years preceding the tax year to which the  
33 homestead exemption relates: *Provided*, That an owner who receives a similar exemption for a  
34 homestead in another state is ineligible for the exemption provided by this section. The owner's  
35 application for exemption shall be accompanied by a sworn affidavit stating that such owner is  
36 not receiving a similar exemption in another state: *Provided, however*, That when a resident of  
37 West Virginia establishes residency in another state or country and subsequently returns and  
38 reestablishes residency in West Virginia within a period of five years, the resident may be allowed  
39 a homestead exemption without satisfying the requirement of two years consecutive residency if  
40 such person was a resident of this state for two calendar years out of the ten calendar years  
41 immediately preceding the tax year for which the homestead exemption is sought. Proof of  
42 residency includes, but is not limited to, the owner's voter's registration card issued in this state  
43 or a motor vehicle registration card issued in this state; and the Tax Commissioner may specify,  
44 by rule promulgated under §29A-1-1 *et seq.* of this code, what constitutes acceptable proof of  
45 these facts. Only one exemption shall be allowed for each homestead used and occupied  
46 exclusively for residential purposes by the owner thereof, regardless of the number of qualified  
47 owners residing therein.

48 (b) *Attachment of exemption.* -- This exemption shall attach to the homestead occupied  
49 by the qualified owner on the July first assessment date and shall be applicable to taxes for the  
50 following tax year. An exemption shall ~~shall~~ may not be transferred to another homestead until the  
51 following July first. If the homestead of an owner qualified under this article is transferred by deed,  
52 will or otherwise, the \$20,000 exemption shall be removed from the property on the next July first  
53 assessment date unless the new owner qualifies for the exemption.

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

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

1           (a) *General.* -- No exemption ~~shall~~ may be allowed under this article unless a claim of  
2 exemption is filed with the assessor of the county in which the homestead is located, on or before  
3 December 1, following the July first assessment day. In the case of sickness, absence, or other  
4 disability of the claimant, the claim may be filed by the claimant or his or her duly authorized agent.

5           (b) *Claims for disability exemption.* -- Each claim for exemption based on the owner being  
6 permanently and totally disabled shall include one of the following forms of documentation in  
7 support of said claim: (1) A written certification by a doctor of medicine or doctor of osteopathy  
8 licensed to practice their particular profession in this state that the claimant is permanently and  
9 totally disabled; (2) a written certification by the social security administration that the claimant is  
10 currently receiving benefits for permanent and total disability; (3) a copy of the letter from the  
11 social security administration originally awarding benefits to the claimant for permanent and total  
12 disability and a copy of a current check for such benefits, marked void; (4) a current social security  
13 health insurance (Medicare) card in the name of the claimant and a copy of a current check to the  
14 claimant, marked void, for benefits from the social security administration for permanent and total  
15 disability; (5) a written certification signed by the veterans administration certifying that a person  
16 is totally and permanently disabled; (6) any lawfully recognized workers' compensation

17 documentation certifying that a person is totally and permanently disabled; (7) any lawfully  
18 recognized pneumoconiosis documentation certifying that a person is totally and permanently  
19 disabled; ~~or~~ (8) any other lawfully recognized documentation certifying that a person is totally and  
20 permanently disabled; or (9) in the case of a disabled veteran, documentation from the United  
21 States Department of Veterans Affairs that includes the effective date the veteran's disability was  
22 determined to be service-connected, 100 percent (or compensated at the rate of 100 percent),  
23 total, and permanent.

24 (c) *Renewals.* --

25 (1) *Senior citizens.* -- If the claimant is age 65 or older, then after the claimant has filed for  
26 the exemption once with his or her assessor, there shall be no need for that claimant to refile  
27 unless the claimant moves to a new homestead.

28 (2) *Disabled.* -- If the claimant is permanently and totally disabled, then after the claimant  
29 has filed for the exemption once with his or her assessor, and signed a statement certifying that  
30 he or she will notify the assessor if he or she is no longer eligible for an exemption on the basis  
31 of being permanently and totally disabled and that the claimant will notify the assessor within 30  
32 days of the discontinuance of the receipt of benefits for permanent and total disability, if the  
33 claimant originally claimed receipt of said benefits to document his or her claim for exemption,  
34 there shall be no need for that claimant to refile, unless the claimant moves to a new homestead.

35 (3) *Waiver of exemption.* -- Any person not filing his or her claim for exemption on or before  
36 December 1, shall be determined to have waived his or her right to exemption for the next tax  
37 year.

38 (4) *Residential care exception.* -- For purposes of this section, an otherwise qualified  
39 claimant who, as a result of illness, accident or infirmity, resides with a family member or is a  
40 resident at a nursing home, personal care home, rehabilitation center, or similar facility is not  
41 considered to have moved to a new homestead.

**§11-6B-7. Property tax books.**

1           (a) *Property book entry.* -- The exemption of the first \$20,000 of assessed value shall be  
2 shown on the property books as a deduction from the total assessed value of the homestead:  
3 *Provided, That in the case of a disabled veteran, the exemption for the total amount of assessed*  
4 *value shall be shown on the property books.*

5           (b) *Levy; statement to homestead owner.* -- When the \$20,000 exemption is greater than  
6 the total assessed value of the eligible homestead, no taxes shall be levied. The sheriff shall issue  
7 a statement to the owner showing that no taxes are due.

NOTE: The purpose of this bill is to exempt the total amount of assessed value of a homestead owned and occupied by a disabled veteran who has a 100 percent permanent and total service-connected disability.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.