

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 240

(By Mr. Danall)

PASSED March 10th 1939

In Effect Thirty days after Passage



ENROLLED
Senate Bill No. 240

(BY MR. PAULL)

[Passed March 10, 1939 ; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two and eleven, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fees of justices and constables in civil and criminal cases.

Be it enacted by the Legislature of West Virginia:

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

Section 1. *Fees of Justices in Civil Cases.* Every justice of
2 the peace shall be entitled to charge and receive the following
3 fees in civil cases, and no other fees shall be charged by any

4	justice in civil cases and proceedings before him :	
5	For entering suit and issuing summons or summonses,	
6	not to exceed two, issuing subpoena or subpoenas for	
7	not to exceed two witnesses, and making all neces-	
8	sary copies of said summonses and subpoenas, swear-	
9	ing not to exceed four persons, docketing the case,	
10	indexing and filing papers, receiving confession of	
11	judgment or rendering judgment by default and en-	
12	tering same together with satisfaction on docket, in-	
13	cluding the taxing of justice's and constable's costs....	\$3.00
14	For each summons or subpoena in excess of two.....	.20
15	For swearing each witness in excess of two, arbitrators	
16	or party.....	.10
17	For appointing special constables at request of either	
18	party25
19	For trying case (defense interposed), and entering	
20	judgment and satisfaction.....	1.00
21	For issuing order of attachment and necessary copies	
22	thereof, and taking bond.....	.75
23	For each additional attachment to recover on original	

24	judgment, and taking bond.....	.75
25	For issuing second summons together with copies there-	
26	of for nonresidents as provided by section ten, article	
27	nine of this chapter.....	.60
28	For issuing order of arrest or order of commitment.....	.50
29	For trial and judgment of any case of contempt.....	1.00
30	For taking and certifying any affidavit in writing, ex-	
31	cept to commence suit.....	.40
32	For every continuance.....	.20
33	For appointing a guardian for the suit of an infant	
34	plaintiff or defendant.....	.25
35	For settling and allowing interrogatories.....	.40
36	For entering agreement for arbitration.....	.40
37	For summons of arbitrators.....	.30
38	For every bond filed in a case and docketing of same,	
39	except bond in attachment case.....	.25
40	For ordering a jury, including the drawing for same.....	.50
41	For abstract of judgment for docketing in the office of	
42	the clerk of the county court.....	.25
43	For issuing execution and entering return thereof on	
44	docket50

45	For entering stay of execution.....	.25
46	For trying right of property levied on or attached.....	1.00
47	For transcript from docket.....	.50
48	For transmitting or delivering papers to the clerk of the	
49	circuit court in case of an appeal.....	.50
50	For taking and certifying acknowledgment of deed or	
51	other instrument of writing.....	.50
52	For taking depositions of witnesses if done in an hour	
53	or less.....	.75
54	If not done in an hour, for additional time at the rate,	
55	per hour, of.....	.75
56	For taking an inquest on a dead body, to be audited	
57	and paid from the treasury of the county.....	5.00
58	<i>Provided, however, That in an action brought before a</i>	
59	justice to recover a sum of money where an attachment,	
60	garnishment or suggestion order is issued against the wages	
61	of a defendant and the claim is not contested, the maximum	
62	total fee covering all costs, to be charged by the justice in	
63	such case, shall not exceed four dollars and fifty cents; and	
64	if the claim is contested, the maximum total fee, covering	

all costs, to be charged by the justice, shall not exceed five dollars.

Sec. 2. *Fees of Constables in Civil Cases.* Every constable

shall be entitled to charge and receive the following fees in civil cases:

For removing a person by virtue of a warrant issued under section fifteen, article one, chapter nine of this Code, to be charged to the county court of the county for each mile of necessary travel, going and returning \$0.05

For service and return of summons to commence a suit and for every additional summons..... .75

For serving and returning order of attachment, for each garnishee summoned..... .50

For taking property under order of attachment, including inventory and appraisal, besides the reasonable expenses of removing, securing and keeping the property attached..... 1.00

For subpoenas, for each person served therewith..... .25

For summoning and returning a jury..... 1.50

For levying an execution or distress warrant on per-

20	sonal property and return.....	1.00
21	For posting notices of sale.....	.40
22	For money collected, after levy, under execution or at-	
23	tachment and paid to the justice.....	5%
24	For making sale of personal property under distress	
25	warrant, after levy, upon the proceeds of such sale....	5%
26	If the claim under distress warrant be satisfied prior to	
27	sale the constable or other officer to whom the warrant to	
28	distrain was issued or the officer levying such warrant shall be	
29	entitled to receive and collect only such fees as are provided	
30	for in this section for making levy and also for posting	
31	notice of sale, if such notice was posted.	
32	For serving and returning other writs and notices not	
33	specified in this section, each.....	.75
34	For executing a writ of possession under section ten,	
35	article one of this chapter.....	2.00
36	For summoning the jury and witnesses for inquest on a	
37	dead body, to be audited and paid from the treasury	
38	of the county.....	3.00
39	For services not otherwise provided for, the same fees	
40	as for a sheriff for similar cases.	

41 *Provided, however,* That in an action brought before a
42 justice to recover a sum of money where an attachment,
43 garnishment or suggestion order is issued against the wages
44 of a defendant, the maximum total fee to be charged by the
45 constable in such case shall not exceed one dollar and fifty
46 cents.

Sec. 11. *Fees of Justices in Criminal Cases.* Every justice
2 shall be entitled to a fee of three dollars in each criminal
3 case and proceeding before him, which fee shall constitute
4 his compensation for all official services performed by him
5 in connection with any single case, including affidavit for
6 warrant, warrant of arrest, trial, examination, recognizance,
7 issuing subpoenas and copies thereof, warrants summoning
8 and swearing a jury when required, swearing and certifying
9 attendance of witnesses, entering judgment and taxing costs,
10 issuing execution and any return thereon, granting an appeal,
11 including the taking of bond or recognizance, and all other
12 acts in connection therewith. Except, that he shall be allowed
13 an additional fee of fifty cents for making and certifying a
14 transcript of his docket in any particular case and trans-
15 mitting the same to the clerk of the circuit court, the state

16 road commission, or any other office to which he may be by
17 law required to certify such transcript. And no other fees
18 shall be taxed or charged by any justice in such cases and
19 proceedings. *Provided, however,* That the provisions of this
20 section shall not apply to the fees of justices earned by them
21 prior to the seventeenth day of January, one thousand nine
22 hundred thirty-five, but the justices shall be entitled to such
23 fees theretofore earned as were authorized by law at the
24 time said fees were earned, and the prosecuting attorneys,
25 county courts and sheriffs may approve and pay such accrued
26 costs in the same manner as was provided by the code of West
27 Virginia, one thousand nine hundred thirty-one, prior to the
28 enactment of chapters thirty-one and thirty-two, acts of the
29 Legislature of West Virginia, regular session, one thousand
30 nine hundred thirty-five.

31 For the purposes of this section, the fees herein provided
32 shall cover any particular case and all proceedings therein,
33 and all misdemeanors growing out of the same act or series
34 of acts covering the same subject matter and occurring at
35 or about the same time shall be construed as one case, regard-
36 less of the number of warrants issued in connection there-

37 with and regardless of the number of persons charged there-
 38 with, whether such person be charged jointly or severally,
 39 unless separate trials by jury be demanded by one or more of
 40 said defendants and such separate trials be conducted, or un-
 41 less separate trials be necessarily conducted by reason of un-
 42 avoidable delays incident to the apprehension of one or more
 43 defendants, the attendance of material witnesses, or other legal
 44 cause. The above provisions, when applicable, shall likewise
 45 apply to preliminary hearings in felony cases. But the justice
 46 shall be entitled to the fees provided in this section only after
 47 he shall have conducted a trial of the case upon its merits, or
 48 shall have completed the usual and ordinary steps for a pre-
 49 liminary hearing upon a felony charge.

I certify that the foregoing bill
 having been presented to the Governor for
 his approval, and not having been returned
 by him to the House of the Legislature
 which it originated within the time pre-
 scribed by the constitution of the State,
 become a law without his approval.

This the _____ day of _____ 19____

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

E. O. Wiseman

Chairman Senate Committee

Ree B. Walter

Chairman House Committee

Originated in the

Senate

Takes effect

Ninety days for

passage

Robert H. Wiley

Clerk of the Senate

Mo S. Stace

Clerk of the House of Delegates

Wm. M. ...

President of the Senate

James L. ...

Speaker House of Delegates

I certify that the foregoing act, this the _____ day of _____, 1939, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

Governor

This the *17th* day of *March*,

19*39*

Wm. S. O'Brien

SECRETARY OF STATE