

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

— ● —

ENROLLED

*Committee Substitute for*  
HOUSE BILL No. 1199

(By Mr. McCuskey & Mr. Stone)

— ● —

PASSED March 9, 1974

In Effect from Passage



FILED IN THE OFFICE  
OF THE SECRETARY OF STATE  
THIS DATE 3-27-74

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**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 1199**

**(By MR. MCCUSKEY and MR. STONE)**

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[Passed March 9, 1974; in effect from passage.]

AN ACT to amend and reenact section one, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact article nineteen of said chapter, relating to fees of justices of the peace in civil cases; creating the office of county magistrate; relating to the number and qualifications of county magistrates; providing for appointment of county magistrates by county courts; providing that county magistrates be commissioned by the governor; providing that certain justices of the peace shall be appointed county magistrates; relating to the power of county courts to determine when a person has been actively engaged in the practice of justice of the peace; providing for magistrate courts; relating to jurisdiction of county magistrates; specifying that the procedure shall be the same as for justices of the peace; prohibiting compensation on a fee basis; relating to fees, costs, fines, forfeitures and penalties and accounting therefor; relating to compensation of county magistrates; classifying counties on basis of population for the purpose of establishing maximum limitations on the compensation of county magistrates; establishing maximum limitations on such compensation; creating a compensation advisory board; relating to the compensation, functions and expenses of such board; authorizing county magistrates to be

reimbursed for all reasonable and necessary expenses, subject to certain limitations; specifying requirements for reimbursement; providing that salaries and expenses of county magistrates shall be paid from the county general fund; providing that constables shall serve county magistrates; relating to fiscal affairs of county magistrates; authorizing the county court to establish administrative requirements as to the discharge of the duties of county magistrates; specifying that county magistrates shall be subject to supervision by the circuit court as to the performance of judicial functions; authorizing a circuit court to censure or suspend a county magistrate; providing for audit of all records and materials of a county magistrate; relating to records to be used by a county magistrate; requiring county magistrates to submit monthly reports to the county courts; relating to the contents of such monthly reports; providing that each county court shall prepare a consolidated report therefrom; requiring a copy of such consolidated report to be forwarded each quarter to the joint committee on government and finance; specifying that other provisions of law shall be applicable to magistrates; providing that in event of conflict, the provisions of article nineteen shall control; providing criminal offenses and penalties; relating to removal from and disqualification for office of county magistrate; and providing for expiration of article.

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

That section one, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article nineteen of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 17. FEES, FINES AND COSTS.**

**§50-17-1. Fees of justices in civil cases.**

1 A justice of the peace shall charge and shall collect in  
2 advance from the party or parties requesting such services the  
3 following fees:

4 (1) For entering and trying any civil suit and the  
5 issuance of all papers including distress war-  
6 rant and attachment orders and the perform-  
7 ance of all other services in connection with

8	any such civil suit whether the suit be con-	
9	tested or uncontested and whether or not the	
10	suit be completed or discontinued but ex-	
11	cepting services in connection with executions	
12	or garnishments and suggestee executions ....	\$5.00
13	(2) For all services in connection with an execution	
14	on judgment, suggestion on judgment, execu-	
15	tion and garnishment whether execution be	
16	without garnishment or there be both execu-	
17	tion and garnishment or suggestee execution....	\$2.50
18	(3) For each bond filed in a case, appeal bond, stay	
19	of execution bond, bail bond, civil order of	
20	arrest, detinue bond, except bond in attach-	
21	ment case and docketing same .....	\$1.00
22	(4) For taking depositions of witnesses if done in an	
23	hour or less .....	\$1.00
24	(5) If not completed in an hour, for additional time	
25	at the rate, per hour of .....	\$1.00
26	(6) For taking an inquest on a dead body, to be	
27	audited and paid from the treasury of the	
28	county .....	\$5.00
29	(7) Order of appraisement, appointing appraisers,	
30	swearing of the same and docketing same, to	
31	be paid by plaintiff .....	\$1.00
32	(8) For taking and certifying acknowledgment of	
33	deed or other instrument of writing .....	.50
34	(9) For mailing each suggestee execution by regis-	
35	tered and/or certified mail and return receipt	
36	requested .....	.55

#### ARTICLE 19. COUNTY MAGISTRATES.

##### §50-19-1. County magistrates created; number; qualifications.

1 There is hereby created the office of county magistrate  
2 which, in each county, shall equal the number of, and shall  
3 correspond to the magisterial district of, justices of the peace  
4 serving on the first day of January, one thousand nine hundred

5 seventy-four, and who were actively engaged in the practice  
6 of justice of the peace during the last six months of the year  
7 one thousand nine hundred seventy-three. County magistrates  
8 shall be residents of the county and district in which they  
9 serve and shall be qualified to vote. Notwithstanding any pro-  
10 vision of law to the contrary, persons serving as justices of  
11 the peace on the first day of January, one thousand nine  
12 hundred seventy-four, and actively engaged in the practice of  
13 justice of the peace, as aforesaid, shall be deemed qualified to  
14 serve as county magistrates in the district of their residence.

**§50-19-2. Appointment of county magistrates; determination by  
county court as to persons actively engaged in the  
practice of justice of the peace; decision final.**

1 The county court of each county shall forthwith appoint  
2 those persons serving as justices of the peace on the first  
3 day of January, one thousand nine hundred seventy-four,  
4 and actively engaged in the practice of justice of the peace, as  
5 aforesaid, to the office of county magistrate for his district,  
6 unless such person is not so serving on the effective date of this  
7 article, in which event the person then serving as justice of the  
8 peace, if any, shall be appointed as county magistrate. In  
9 the event any such person is unwilling or, in the opinion of  
10 the county court, unable, due to physical or mental debility,  
11 to serve or in the event no person is entitled to appointment  
12 by virtue of service as a justice of the peace or in the event of  
13 a vacancy in the office of county magistrate, the county court  
14 may, but notwithstanding any other provision of law to the  
15 contrary shall not be required to, appoint a qualified person  
16 to serve as county magistrate. The oath of office for county  
17 magistrates shall be administered by the county court.

18 The question of whether a person has been actively engaged  
19 in the practice of justice of the peace so as to be entitled to  
20 appointment as a county magistrate shall be determined by  
21 the county court, and its decision with respect to this issue shall  
22 be final and conclusive subject to review by the circuit court  
23 upon application therefor made by such person within thirty  
24 days after the decision of the county court has been entered  
25 upon the order book of such county court.

**§50-19-3. Magistrate courts; county magistrates; jurisdiction; procedure; appeal.**

1 Each county magistrate shall hold and preside over a  
2 magistrate court. Such magistrate court shall not be a court of  
3 record for any purpose. County magistrates shall be com-  
4 missioned by the governor and shall have the same jurisdiction  
5 over all matters, both civil and criminal, which is now or may  
6 hereafter be conferred upon justices of the peace, in addition to  
7 jurisdiction which may otherwise be conferred by law upon  
8 county magistrates.

9 Except as they may be clearly in conflict with the provisions  
10 of this article, all provisions of law relating to justices of the  
11 peace in regard to all aspects of procedure, trial of causes and  
12 appeals shall apply to county magistrates.

**§50-19-4. Fees and costs; limitation on justices of the peace; disposition.**

1 Notwithstanding any provision of article seventeen of this  
2 chapter or any other provision of law to the contrary, no  
3 justice of the peace, after the thirtieth day of June, one thou-  
4 sand nine hundred seventy-four, or county magistrate, at any  
5 time, except as provided in section five of this article, shall  
6 collect or receive any sum of money or other emolument by  
7 virtue of his office for his own use or benefit. Notwithstanding  
8 any provision of article seventeen of this chapter or any other  
9 provision of law to the contrary, no justice of the peace shall  
10 collect or receive any sum of money or other emolument by  
11 virtue of his office as justice of the peace while he serves as a  
12 county magistrate.

13 Each county magistrate shall collect all fees and costs, both  
14 civil and criminal, which a justice of the peace may by law  
15 collect in the same manner and subject to the prohibitions  
16 as prescribed by law for justices of the peace. All such fees  
17 and costs, together with an accounting of their source and the  
18 services for which rendered, shall be paid over to the sheriff of  
19 the county by the fifteenth day of the month following the  
20 month of their collection. Such fees and costs shall be de-  
21 posited into the general fund of the county. Each county  
22 magistrate shall pay over all fines, costs, forfeitures and penal-

23 ties which accrue to the state in the same manner and subject  
24 to the same provisions of law as apply to justice of the peace.

**§50-19-5. Compensation; advisory board.**

1 For the purpose of establishing maximum limitations on  
2 the compensation for county magistrates, the counties shall be  
3 classified according to population, as ascertained in the last  
4 preceding census taken under the authority of the United States,  
5 as follows: Counties with a population of two hundred thousand  
6 or more shall be designated Class I counties; counties with a  
7 population of one hundred thousand or more but less than two  
8 hundred thousand shall be designated Class II counties;  
9 counties with a population of seventy thousand or more but  
10 less than one hundred thousand shall be designated Class III  
11 counties; counties with a population of thirty thousand or more  
12 but less than seventy thousand shall be designated Class IV  
13 counties; counties with a population of twenty thousand or  
14 more but less than thirty thousand shall be designated Class  
15 V counties; counties with a population of ten thousand or  
16 more but less than twenty thousand shall be designated Class  
17 VI counties; and counties with a population of less than ten  
18 thousand shall be designated Class VII counties.

19 Salaries for county magistrates shall be fixed by the county  
20 courts within the following maximum limits: In Class I  
21 counties, not more than seventeen thousand five hundred  
22 dollars per year; in Class II counties, not more than fifteen  
23 thousand dollars per year; in Class III counties, not more  
24 than twelve thousand five hundred dollars per year; in Class  
25 IV counties, not more than ten thousand dollars per year; in  
26 Class V counties, not more than seven thousand five hundred  
27 dollars per year; in Class VI counties, not more than six  
28 thousand two hundred fifty dollars per year; and in Class  
29 VII counties, not more than five thousand dollars per year.

30 Within the maximum limitations above prescribed, the  
31 county court may fix the same salary for all county magistrates  
32 within such county or it may establish a different salary for  
33 one or more of such county magistrates. In fixing the salaries  
34 within the maximum limitations above prescribed, the county  
35 court shall consider the advice of the advisory board herein  
36 created and shall take into account the amount of time each

37 county magistrate shall be available to perform the duties  
38 of his office.

39 For the purpose of advising the county court in the fixing of  
40 salaries of county magistrates within the maximum limitations  
41 above prescribed, there is hereby created in each county  
42 the county magistrates advisory board which shall be com-  
43 posed of the county clerk, the clerk of the circuit court and  
44 three members to be appointed by the county court. Justices of  
45 the peace, county magistrates or members of their immediate  
46 families shall be ineligible to serve as members of the board  
47 unless their service is by virtue of their office as county clerk or  
48 clerk of the circuit court. The advisory board shall elect from  
49 its membership a chairman. The advisory board shall meet at  
50 such times and places as shall be directed by the chairman or  
51 by the county court. It shall be the duty of the advisory board  
52 to advise the county court on the fixing of salaries of county  
53 magistrates within the maximum limitations above prescribed.  
54 No member of the county magistrates advisory board shall be  
55 entitled to any pay or reimbursement for expenses incurred in  
56 the performance of his duties.

57 In addition to his salary, as specified by the county court,  
58 each magistrate shall be entitled to be reimbursed for all rea-  
59 sonable and necessary expenses actually incurred by him in  
60 providing office space, furnishing necessary clerical help and  
61 providing stationery and supplies and for all other incidental  
62 operating expenses, but the total of all such reimbursed ex-  
63 penses in any fiscal year may not exceed seventy-five percent  
64 of the salary of such county magistrate for such fiscal year.  
65 Requisition for such reimbursement shall be accompanied by  
66 a sworn statement, detailed vouchers and documentation per-  
67 taining to such expenses.

68 The salary of each county magistrate and all payments made  
69 to reimburse him for all reasonable and necessary expenses  
70 actually incurred in the performance of his duties as a county  
71 magistrate shall be paid by the county court from the county  
72 general fund. The salary shall be paid in equal monthly in-  
73 stallments.

#### **§50-19-6. Constables.**

1 All constables as provided for in this chapter shall perform



2 the functions and duties for county magistrates as may be pre-  
3 scribed by law in regard to justices of the peace.

**§50-19-7. Administration; rules and regulations; supervision as to  
judicial functions by circuit court; inspection; reports  
to county court; quarterly reports to joint committee  
on government and finance.**

1 Except as may be modified by the provisions of this article  
2 and except as may be clearly conflicting with the provisions of  
3 this article, all county magistrates are hereby imposed with  
4 the duty to conduct their fiscal affairs in the same manner as  
5 prescribed for justices of the peace.

6 Each county court may by order entered of record adopt  
7 rules and regulations establishing administrative requirements  
8 as to the discharge of the duties of county magistrates, includ-  
9 ing, but not limited to, the specification of a reasonable  
10 schedule of hours for each county magistrate, requirements  
11 that the office of a county magistrate be located in a place  
12 readily accessible to the public and requirements that each  
13 county magistrate maintain regular telephone service if such  
14 service is available.

15 Each county magistrate shall be subject to supervision by  
16 the circuit court of his county as to the performance of his  
17 judicial functions, and, without any limitation of all other power  
18 and authority vested in the circuit court, such court, upon  
19 receipt of a complaint against a county magistrate, shall have  
20 plenary power and authority, after hearing, to censure or  
21 suspend such county magistrate.

22 Each county magistrate shall be subject to audit of his  
23 records, both civil and criminal, and all materials relating to  
24 such records, by the chief inspector of public offices. For the  
25 purpose of uniformity, the chief inspector of public offices  
26 shall designate the form of records to be used by county mag-  
27 istrates.

28 Each county magistrate shall furnish to the county court of  
29 his county monthly reports indicating the volume of judicial  
30 business handled by him, both civil and criminal, the total  
31 amount of moneys received, whether in the form of fees, costs,

32 fines, forfeitures or penalties, the total amount of moneys re-  
 33 mitted by him as required by law, the total amount of ex-  
 34 penses incurred by such county magistrate during such month  
 35 for which reimbursement is claimed, and all such other de-  
 36 tailed information as the county court shall require. The county  
 37 court shall consolidate all such monthly reports and each  
 38 quarter forward a copy of the consolidated report to the  
 39 joint committee on government and finance.

**§50-19-8. Application of chapter; conflict of provisions.**

1 Except as may be clearly in conflict with the provisions of  
 2 this article, all provisions of this code relating to justice of  
 3 the peace, including those provisions specifying and prohibiting  
 4 unlawful or improper conduct, and including the requirement to  
 5 post bond as provided in section ten, article two, chapter six of  
 6 this code, shall apply to county magistrates. To the extent such  
 7 provisions are clearly in conflict, the provisions of this article  
 8 shall control.

**§50-19-9. Violations; penalties; removal from office.**

1 Any county magistrate who shall violate any provision of  
 2 this article or any provision of this code which by virtue of  
 3 this article is made applicable to county magistrates shall be  
 4 guilty of a misdemeanor, and, upon conviction thereof, shall  
 5 be fined not more than one thousand dollars, or imprisoned  
 6 in the county jail not more than one year, or both fined and im-  
 7 prisoned. A conviction hereunder shall effect the removal of a  
 8 county magistrate from office and shall disqualify him from  
 9 further service as a county magistrate.

**§50-19-10. Expiration of provisions.**

1 The provisions of this article shall expire on the thirtieth day  
 2 of June, one thousand nine hundred seventy-five. Such expira-  
 3 tion, however, shall not affect any act or decision of a county  
 4 magistrate.

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

H. Daniel Darty  
Chairman Senate Committee

Clarence C. Christian J.  
Chairman House Committee

Originated in the House.

Takes effect from passage.

Harold W. Carson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

H. T. Brotherton, Jr.  
President of the Senate

Levin R. McNamee  
Speaker House of Delegates

The within approved this the 26th  
day of March, 1974.

Arthur A. Shaver, Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/15/74

Time 2:50 p.m.