WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 841

(By Mr. Speaker, Mr. Majority)

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PASSED March 9, 1974

In Effect July 1, 1974

Passage

C 641

FILED IN THE OFFICE
EDGAR F. NEISKELL III
SECRETARY OF STATE
AN ACT to amend and reenact sections eleven and twenty-seven, article two, chapter fifteen; and section fourteen, article seventeen, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety; arrest, seizure, mileage and other fees to be paid into the state general revenue fund; justices may not make payment directly to any member of the department of public safety any fee collected on account of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twenty-seven, article two, chapter fifteen; and section fourteen, 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:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-11. Powers of superintendent, officers and members; fee to which members entitled.

1 The superintendent and each of the officers and members of the department of public safety are hereby authorized and empowered as follows:
(a) To make arrests anywhere within the confines of the state of any and all persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, may arrest without warrant; to arrest and detain any and all persons suspected of the commission of any felony or misdemeanor whenever complaint is made and a warrant is issued thereon for such arrest, and any and all persons so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

(b) To serve criminal process issued by any court or justice of the peace anywhere within this state, except that they shall not serve civil process;

(c) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the state road commission, department of motor vehicles and department of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government;

(d) Members of the department of public safety shall be and are hereby created forest patrolmen and game and fish wardens through the state to do and perform any and all duties and exercise any and all powers of such officers, and may apprehend and bring before any court or justice of the peace having jurisdiction of such matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code, and any and all amendments thereto; and the department of public safety shall at any time be subject to the call of the West Virginia alcohol beverage control commission to aid in apprehending any person violating any of the provisions of said chapter sixty. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly con-
tituted authority, and shall exercise all of the powers con-
ferred by law upon a sheriff, constable or any other peace of-
icer of this state, except that they shall not serve any civil
process or exercise any of the powers of such officers in mat-
ters of a civil nature;

(e) Any member of the department of public safety know-
ing or having reason to believe that anyone has violated the
law may make complaint in writing before any court or offi-
cer having jurisdiction and procure a warrant for such offen-
der, execute the same and bring such person before the proper
tribunal having jurisdiction. He shall make return on all
such warrants to such tribunals and his official title shall be
“member of the department of public safety.” Members of
the department of public safety may execute any summons or
process issued by any tribunal having jurisdiction requiring
the attendance of any person as a witness before such tribunal
and make return thereon as provided by law, and any return
by a member of the department of public safety showing the
manner of executing such warrant of process shall have the
same force and effect as if made by a sheriff;

(f) Each member of the department of public safety, when
called by the sheriff of any county, or when the governor
by proclamation so directs, shall have full power and author-
ity within such county, or within the territory defined by the
governor, to direct and command absolutely the assistance of
any sheriff, deputy sheriff, constable, chief of police, police-
man, town marshal, game and fish warden, and any and every
peace officer of the state, or of any county or municipality
therein, or of any able-bodied citizen of the United States, to
assist and aid in accomplishing the purposes expressed in this
article. When so called, any officer or person shall, during the
time his assistance is required, be and be considered to be, for
all purposes, a member of the department of public safety force
and subject to all the provisions of this article.

For official services rendered in any criminal case, a mem-
ber of the department of public safety shall be entitled to re-
ceive the same fees as a constable is entitled to receive for
the same services pursuant to section twelve, article seven-
teen, chapter fifty of this code, when such fees are actually
paid by or for the defendant in such criminal case, pursuant to the order made and entered therein, to the justice of the peace, the clerk of the court or other officer for the services of such member: Provided, That under no circumstances shall any member of the department of public safety be entitled to any mileage fees for services rendered in criminal cases and under no circumstances shall any county court or municipal corporation be required to pay any fees or costs which the county court would be required to pay were the services rendered by a constable.

All such fees shall be collected by the justice of the peace, who shall quarterly, on the first day of January, April, July and October, certify and submit to the state tax commissioner a list of all such collection, along with the amount so collected. Such certification shall be submitted on forms prescribed by and furnished by the state tax commissioner. Upon receipt of such collections the state tax commissioner shall pay the same to the state treasurer which shall be deposited by him to the credit of the general revenue of the state. The Legislature shall then appropriate annually to the department of public safety, death, disability and retirement fund an amount equal to the total funds deposited into the state treasury by the state tax commissioner as set forth in this article.

§15-2-27. Death, disability and retirement fund; retirement board.

There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the department of public safety, and any dependent of a retired or deceased member thereof.

There shall be deducted from the monthly payroll of each member of the department of public safety and paid into such fund six percent of the amount of his salary, and an additional twelve percent of the monthly salary of each member of said department shall be paid by the state of West Virginia monthly into such fund out of the biennial appropriation for said department. All moneys payable into such fund shall be deposited in the state treasury, and the treasurer and auditor shall keep a separate account thereof on their respective books.
The moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever; and shall be unassignable except as is provided in this article.

The death, disability and retirement fund shall be administered by a retirement board which shall consist of the attorney general, state treasurer, the superintendent and two members in active service of the department of public safety: Provided, That members of said retirement board shall not be entitled to receive any compensation in addition to the salary of their respective offices for any service rendered as a member of said retirement board: Provided, however, that the superintendent may pay out of funds appropriated for operation of said department the reasonable expenses of members of said board necessarily incurred in connection with dispatch of any business properly before such board. The two members of said department shall be elected to membership on the retirement board by vote of the members of the department of public safety; such election to be held on the first Tuesday in June next following the passage of this act and on the first Tuesday in June each two years thereafter. The attorney general, state treasurer and the superintendent of the department of public safety shall promulgate any and all necessary rules and regulations for holding in a fair and impartial manner the election on the first Tuesday in June next following the passage of this act and thereafter the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the re-
tirement board shall die, resign from the board, resign or be
discharged from service in the department, make application
for retirement, be retired, or become disabled, the office of
such member of the retirement board shall be declared vacant
by the superintendent of said department, and said superin-
tendent, to fill such vacancy, shall appoint the member in ac-
tive service of said department who as an unsuccessful can-
didate at the preceding election of members to said retirement
board received the greatest number of votes. No member of
the retirement board shall participate in any hearing at which
his own petition for retirement or the petition of any member
of said department who is related to him by blood or mar-
riage shall be presented for consideration.

At its first meeting following each election of members to
the retirement board said board shall elect one of its mem-
ers to serve as chairman and a second member to serve as
secretary thereof. The retirement board shall have the power
to make rules and regulations, not inconsistent with the pro-
visions hereof, governing procedure and order and man-
er of business by and before such board. The retirement
board shall have the power to make awards and to revise and
terminate awards previously made for such times and under
such terms and conditions as are hereinafter provided. The
votes of a majority of the five members of the board shall be
necessary to decision of any matter by the board. Decisions
made by the board shall be supreme and final and there shall
be no appeal therefrom.

It shall be the duty of the retirement board on or before
the first day of July of each year to cause all future awards
from such fund to be valued and, to the extent that moneys
shall be available, reserves based on sound actuarial prin-
ciples for payment thereof to be carried on the funds ac-
count as a liability against the reserve fund. The board shall
have the authority to employ an actuary for such purpose. The
board shall cause a system of accounting to be installed and
maintained to reflect currently and truly all transactions or
developments pertaining to age of members and eligible de-
pendents surviving deceased members, periods of service and
aggregate earnings of all members eligible to participate in
said fund and any other matter relating to maintenance of
said fund or administration thereof, and each year to cause to
be made and submitted to each member of said department a
statement of the condition of said fund. Costs and expenses in-
curred in making actuarial studies, audits and installations and
maintenance of such accounting system shall be paid by the su-
perintendent from funds appropriated for operation of the de-
partment of public safety.

All moneys paid into and accumulated in said death, disabil-
ity and retirement fund, except such amounts as shall be des-
ignated or set aside by the retirement board for payments of
depth, disability and retirement benefits and awards, shall
be invested by the state board of public works in bonds of the
government of the United States, the state of West Virginia,
or any political subdivision thereof selected or approved by
the retirement board.

CHAPTER 50. JUSTICES AND CONSTABLES.

ARTICLE 17. FEES, FINES AND COSTS.


In all cases and proceedings before a justice in relation to
both felonies and misdemeanors, not triable on the merits
of the case, the fees provided by section eleven shall be
audited and paid by the county court as other claims against
the county. Fees in misdemeanor cases, triable on the merits
thereof, may be paid as provided by section fifteen, article
five, chapter seven of the code.

The justice may issue executions for all fines and costs
imposed by him in criminal proceedings which are not
paid by the parties, and shall deliver such executions to a
constable of his district of the county and such constable
shall collect the same by levy or otherwise if the same can
be collected, and shall return such executions to the justice
issuing the same, showing how he has executed the same,
and the justice shall note such returns of his docket. All
costs collected by the justice by executions or otherwise shall
be paid by him to the sheriff in like manner as the justice
is required by section fifteen of this article to pay to the
sheriff all fines collected by him: Provided, That the justice
need not pay to the sheriff but may pay direct to any
constable, and to any witness such lawful fees as he may
have collected on their behalf and which they are lawfully
titled to receive.

No payment of fees or costs shall be made to any justice as
provided herein until the claim shall have been submitted
to the prosecuting attorney and the approval or disapproval
of the prosecuting attorney shall have been noted thereof.
The Joint Committee on Enrolled Bills hereby certifies that the
foregoing bill is correctly enrolled.

D. Darrel Day
Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect July 1, 1974.

Howard Wesson
Clerk of the Senate

Clyde H. Crumlish
Clerk of the House of Delegates

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

Lewis H. M. Mann
Speaker House of Delegates

The within _______________________________ this the 26th
day of _______________________________, 1974.

A. W. Moore, Jr.
Governor
PRESENTED TO THE GOVERNOR

Date 3/19/74

Time 2:35 p.m.