

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974



ENROLLED

HOUSE BILL No. 841

(By Mr. Speaker, Mr. McManus)



PASSED March 9, 1974

In Effect July 1, 1974 Passage



178  
841

FILED IN THE OFFICE  
EDGAR F. WEISKELL III  
SECRETARY OF STATE  
MAY 21 1974

**ENROLLED**

**H. B. 841**

(By MR. SPEAKER, MR. MCMANUS)

[Passed March 9, 1974; in effect July 1, 1974.]

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  
2 of the department of public safety are hereby authorized and  
3 empowered as follows:

4 (a) To make arrests anywhere within the confines of the  
5 state of any and all persons charged with the violation of  
6 any law of this state, or of the United States, and when a  
7 witness to the perpetration of any offense or crime, or to  
8 the violation of any law of this state, or of the United  
9 States, may arrest without warrant; to arrest and detain any  
10 and all persons suspected of the commission of any felony or  
11 misdemeanor whenever complaint is made and a warrant is  
12 issued thereon for such arrest, and any and all persons so  
13 arrested shall be forthwith brought before the proper tribunal  
14 for examination and trial in the county where the offense  
15 for which any such arrest has been made was committed;

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

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

29 (d) Members of the department of public safety shall be  
30 and are hereby created forest patrolmen and game and fish  
31 wardens through the state to do and perform any and all  
32 duties and exercise any and all powers of such officers, and  
33 may apprehend and bring before any court or justice of the  
34 peace having jurisdiction of such matters, anyone violating  
35 any of the provisions of chapters twenty, sixty and sixty-one of  
36 this code, and any and all amendments thereto; and the de-  
37 partment of public safety shall at any time be subject to the  
38 call of the West Virginia alcohol beverage control com-  
39 mission to aid in apprehending any person violating any  
40 of the provisions of said chapter sixty. They shall serve and  
41 execute warrants for the arrest of any person and warrants  
42 for the search of any premises issued by any properly con-

43 stituted authority, and shall exercise all of the powers con-  
44 ferred by law upon a sheriff, constable or any other peace of-  
45 ficer of this state, except that they shall not serve any civil  
46 process or exercise any of the powers of such officers in mat-  
47 ters of a civil nature;

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

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

77 For official services rendered in any criminal case, a mem-  
78 ber of the department of public safety shall be entitled to re-  
79 ceive the same fees as a constable is entitled to receive for  
80 the same services pursuant to section twelve, article seven-  
81 teen, chapter fifty of this code, when such fees are actually

82 paid by or for the defendant in such criminal case, pur-  
83 suant to the order made and entered therein, to the justice  
84 of the peace, the clerk of the court or other officer for the  
85 services of such member: *Provided*, That under no circum-  
86 stances shall any member of the department of public safety  
87 be entitled to any mileage fees for services rendered in crim-  
88 inal cases and under no circumstances shall any county court  
89 or municipal corporation be required to pay any fees or  
90 costs which the county court would be required to pay were  
91 the services rendered by a constable.

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

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

1 There shall be continued the death, disability and retire-  
2 ment fund heretofore created for the benefit of members of  
3 the department of public safety, and any dependent of a  
4 retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of each  
6 member of the department of public safety and paid into  
7 such fund six percent of the amount of his salary, and an  
8 additional twelve percent of the monthly salary of each  
9 member of said department shall be paid by the state of West  
10 Virginia monthly into such fund out of the biennial appro-  
11 priation for said department. All moneys payable into such  
12 fund shall be deposited in the state treasury, and the  
13 treasurer and auditor shall keep a separate account thereof  
14 on their respective books.

15     The moneys in this fund, and the right of a member to a  
16 retirement allowance, to the return of contributions, or to  
17 any benefit under the provisions of this article, are hereby  
18 exempt from any state or municipal tax; shall not be subject  
19 to execution, garnishment, attachment or any other process  
20 whatsoever; and shall be unassignable except as is provided  
21 in this article.

22     The death, disability and retirement fund shall be ad-  
23 ministered by a retirement board which shall consist of the  
24 attorney general, state treasurer, the superintendent and two  
25 members in active service of the department of public safety:  
26 *Provided*, That members of said retirement board shall not  
27 be entitled to receive any compensation in addition to the  
28 salary of their respective offices for any service rendered  
29 as a member of said retirement board: *Provided, however*,  
30 That the superintendent may pay out of funds appropriated  
31 for operation of said department the reasonable expenses of  
32 members of said board necessarily incurred in connection with  
33 dispatch of any business properly before such board. The  
34 two members of said department shall be elected to membership  
35 on the retirement board by vote of the members of the depart-  
36 ment of public safety; such election to be held on the first  
37 Tuesday in June next following the passage of this act and  
38 on the first Tuesday in June each two years thereafter. The  
39 attorney general, state treasurer and the superintendent of  
40 the department of public safety shall promulgate any and all  
41 necessary rules and regulatitons for holding in a fair and  
42 impartial manner the election on the first Tuesday in June  
43 next following the passage of this act and thereafter the retire-  
44 ment board consisting of the attorney general, state treasurer,  
45 superintendent and the two duly elected members of said  
46 department shall have authority to promulgate and, from  
47 time to time, revise rules and regulations for holding all  
48 subsequent elections in a fair and impartial manner. All elec-  
49 tions shall be held under the direction of the superintendent of  
50 said department in accordance with said rules and regula-  
51 tions. The members of the department chosen to serve on  
52 said retirement board shall hold office for a period of two  
53 years commencing on the first day of July next following the  
54 date of such election. When any member elected to the re-

55 tirement board shall die, resign from the board, resign or be  
56 discharged from service in the department, make application  
57 for retirement, be retired, or become disabled, the office of  
58 such member of the retirement board shall be declared vacant  
59 by the superintendent of said department, and said superin-  
60 tendent, to fill such vacancy, shall appoint the member in ac-  
61 tive service of said department who as an unsuccessful can-  
62 didate at the preceding election of members to said retirement  
63 board received the greatest number of votes. No member of  
64 the retirement board shall participate in any hearing at which  
65 his own petition for retirement or the petition of any member  
66 of said department who is related to him by blood or mar-  
67 riage shall be presented for consideration.

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

82 It shall be the duty of the retirement board on or before  
83 the first day of July of each year to cause all future awards  
84 from such fund to be valued and, to the extent that moneys  
85 shall be available, reserves based on sound actuarial prin-  
86 ciples for payment thereof to be carried on the funds ac-  
87 count as a liability against the reserve fund. The board shall  
88 have the authority to employ an actuary for such purpose. The  
89 board shall cause a system of accounting to be installed and  
90 maintained to reflect currently and truly all transactions or  
91 developments pertaining to age of members and eligible de-  
92 pendants surviving deceased members, periods of service and  
93 aggregate earnings of all members eligible to participate in  
94 said fund and any other matter relating to maintenance of

95 said fund or administration thereof, and each year to cause to  
96 be made and submitted to each member of said department a  
97 statement of the condition of said fund. Costs and expenses in-  
98 curred in making actuarial studies, audits and installations and  
99 maintenance of such accounting system shall be paid by the su-  
100 perintendent from funds appropriated for operation of the de-  
101 partment of public safety.

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

## **CHAPTER 50. JUSTICES AND CONSTABLES.**

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

#### **§50-17-14. Recovery of fees not paid by parties.**

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

8 The justice may issue executions for all fines and costs  
9 imposed by him in criminal proceedings which are not  
10 paid by the parties, and shall deliver such executions to a  
11 constable of his district of the county and such constable  
12 shall collect the same by levy or otherwise if the same can  
13 be collected, and shall return such executions to the justice  
14 issuing the same, showing how he has executed the same,  
15 and the justice shall note such returns of his docket. All  
16 costs collected by the justice by executions or otherwise shall  
17 be paid by him to the sheriff in like manner as the justice  
18 is required by section fifteen of this article to pay to the  
19 sheriff all fines collected by him: *Provided*, That the justice



20 need not pay to the sheriff but may pay direct to any  
21 constable, and to any witness such lawful fees as he may  
22 have collected on their behalf and which they are lawfully  
23 entitled to receive.

25 No payment of fees or costs shall be made to any justice as  
26 provided herein until the claim shall have been submitted  
27 to the prosecuting attorney and the approval or disapproval  
28 of the prosecuting attorney shall have been noted thereof.

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

H. Darrel Darby  
Chairman Senate Committee

Clarence C. Johnston, Jr.  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Howard Watson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

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

Lewis N. M. Mann  
Speaker House of Delegates

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

Arch A. Phares, Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/19/74

Time 2:35 p.m.