

1 **ENROLLED**

2 **Senate Bill No. 1003**

3 (BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,

4 BY REQUEST OF THE EXECUTIVE)

5 _____
6 [Passed April 18, 2013; in effect ninety days from passage.]
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9
10 AN ACT to amend and reenact §50-1-3, §50-1-8, §50-1-9 and §50-1-9a
11 of the Code of West Virginia, 1931, as amended, all relating
12 generally to the magistrate court system; making legislative
13 findings; adjusting the population line upon which salaries
14 for magistrates and certain magistrate employees are
15 calculated; providing that the Joint Committee on Government
16 and Finance shall request a study from the National Center for
17 State Courts on the weighted case loads, salaries,
18 jurisdiction and apportionment of resources within the
19 magistrate court system; requiring presentation of report and
20 recommendations regarding redistribution of magistrate court
21 personnel and resources by December 1, 2014; requiring the
22 Supreme Court of Appeals of West Virginia to present

1 recommendations to the Legislature regarding allocation and
2 assignment of resources; adjusting certain salaries for
3 certain magistrates and magistrate court employees effective
4 January 1, 2013; equalizing the pay for all magistrates and
5 certain magistrate employees on January 1, 2017; providing for
6 an effective date; and providing that the amendments are
7 retroactive to January 1, 2013.

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

9 That §50-1-3, §50-1-8, §50-1-9 and §50-1-9a of the Code of
10 West Virginia, 1931, as amended, be amended and reenacted, all to
11 read as follows:

12 **ARTICLE 1. COURTS AND OFFICERS.**

13 **§50-1-3. Salaries of magistrates.**

14 (a) The Legislature finds and declares that:

15 (1) The West Virginia Supreme Court of Appeals has held that
16 a salary system for magistrates which is based upon the population
17 that each magistrate serves does not violate the equal protection
18 clause of the Constitution of the United States;

19 (2) The West Virginia Supreme Court of Appeals has held that
20 a salary system for magistrates which is based upon the population
21 that each magistrate serves does not violate section thirty-nine,
22 article VI of the Constitution of West Virginia;

1 (3) The Administrative Office of the Supreme Court of Appeals
2 of West Virginia has stated that the utilization of a two-tiered
3 salary schedule for magistrates is no longer an equitable and
4 rational manner by which magistrates should be compensated for work
5 performed;

6 (4) Organizing the two tiers of the salary schedule into one
7 tier for magistrates serving less than seven thousand three hundred
8 in population and a second tier for magistrates serving seven
9 thousand three hundred or more in population is no longer rational
10 and equitable given current statistical information relating to
11 population and caseload; and

12 (5) That, by January 1, 2017, all magistrates should be
13 compensated equally.

14 (b) The salary of each magistrate shall be paid by the state.
15 Magistrates who serve fewer than seven thousand three hundred in
16 population shall be paid annual salaries of \$51,125 and magistrates
17 who serve seven thousand three hundred or more in population shall
18 be paid annual salaries of \$57,500.

19 (c) For the purpose of determining the population served by
20 each magistrate, the number of magistrates authorized for each
21 county shall be divided into the population of each county. For
22 the purpose of this article, the population of each county is the

1 population as determined by the last preceding decennial census
2 taken under the authority of the United States government.

3 (d) Notwithstanding any provision of this code to the
4 contrary, the amendments made to this section during the 2013 First
5 Extraordinary Session are effective upon passage and are
6 retroactive to January 1, 2013.

7 (e) On or before July 1, 2013, the Joint Committee on
8 Government and Finance shall request a study by the National Center
9 for State Courts, working in conjunction with the Administrative
10 Office of the Supreme Court of Appeals of West Virginia, to review
11 the weighted case loads in each of the magistrate courts in this
12 state, and present recommendations as to how the present resources
13 and personnel in the magistrate court system could be better
14 apportioned to equitably and timely meet the collective needs of
15 the magistrate court system in West Virginia. Based on the
16 findings and data generated by that study, the National Center for
17 State Courts shall make recommendations as to the equitable
18 redistribution of personnel and resources, by temporary or
19 permanent reassignment, to better meet the needs and weighted loads
20 that are demonstrated to exist in the various magistrate courts in
21 this state. This study shall be presented to the Joint Committee
22 on Government and Finance no later than December 1, 2014, and shall

1 include recommendations and proposed legislation resulting from
2 such study and shall also include a plan to continue the efficient
3 delivery of justice by the magistrate court system and the
4 justification for equalization of pay for all magistrates. As a
5 part of the submitted study, the plan shall consider the
6 reassignment of magistrates or the extension of their duties and
7 jurisdiction to include holding court or delivering services to
8 adjacent counties with higher caseloads, as part of their regular
9 duties, or being on call as needed to serve other needs in other
10 adjacent counties or within the same judicial circuit.

11 On or before January 15, 2015, the Supreme Court of Appeals of
12 West Virginia shall present its recommendations to the Legislature
13 regarding how to allocate or assign a maximum of one hundred fifty-
14 eight magistrates throughout this state to improve the magistrate
15 process, and more equitably distribute the magistrate court
16 resources to efficiently and effectively meet the needs of the
17 citizens of this state.

18 (f) Notwithstanding any provision of this code to the
19 contrary, beginning January 1, 2017, all magistrates shall be
20 compensated equally and the annual salary of all magistrates shall
21 be \$57,500.

22 **§50-1-8. Magistrate court clerks; salaries; duties; duties of**

1 **circuit clerk.**

2 (a) In each county having three or more magistrates the judge
3 of the circuit court or the chief judge of the circuit court, if
4 there is more than one judge of the circuit court, shall appoint a
5 magistrate court clerk. In all other counties the judge may
6 appoint a magistrate court clerk or may by rule require the duties
7 of the magistrate court clerk to be performed by the clerk of the
8 circuit court, in which event the circuit court clerk is entitled
9 to additional compensation in the amount of \$2,500 per year. The
10 magistrate court clerk serves at the will and pleasure of the
11 circuit judge.

12 (b) Magistrate court clerks shall be paid a monthly salary by
13 the state. Magistrate court clerks serving magistrates who serve
14 less than seven thousand three hundred in population shall be paid
15 up to \$39,552 per year and magistrate court clerks serving
16 magistrates who serve seven thousand three hundred or more in
17 population shall be paid up to \$44,712 per year: *Provided*, That
18 after the effective date of this section, any general salary
19 increase granted to all state employees, whose salaries are not set
20 by statute, expressed as a percentage increase or an
21 across-the-board increase, may also be granted to magistrate court
22 clerks. For the purpose of determining the population served by

1 each magistrate, the number of magistrates authorized for each
2 county shall be divided into the population of each county. The
3 salary of the magistrate court clerk shall be established by the
4 judge of the circuit court, or the chief judge of the circuit court
5 if there is more than one judge of the circuit court, within the
6 limits set forth in this section.

7 (c) In addition to other duties that may be imposed by the
8 provisions of this chapter or by the rules of the Supreme Court of
9 Appeals or the judge of the circuit court or the chief judge of the
10 circuit court if there is more than one judge of the circuit court,
11 it is the duty of the magistrate court clerk to establish and
12 maintain appropriate dockets and records in a centralized system
13 for the magistrate court, to assist in the preparation of the
14 reports required of the court and to carry out on behalf of the
15 magistrates or chief magistrate if a chief magistrate is appointed,
16 the administrative duties of the court.

17 (d) The magistrate court clerk, or if there is no magistrate
18 court clerk in the county, the clerk of the circuit court, may
19 issue all manner of civil process and require the enforcement of
20 subpoenas and subpoenas duces tecum in magistrate court.

21 (e) Notwithstanding any provision of this code to the
22 contrary, the amendments made to this section during the 2013 First

1 Extraordinary Session are effective upon passage and are
2 retroactive to January 1, 2013.

3 (f) Beginning January 1, 2017, the annual salary of all
4 magistrate court clerks is \$44,720. After the effective date of
5 this section, a general salary increase granted to state employees,
6 whose salaries are not set by statute, expressed as a percentage
7 increase or an across-the-board increase, may also be granted to
8 magistrate court clerks.

9 **§50-1-9. Magistrate assistants; salary; duties.**

10 (a) In each county there shall be one magistrate assistant for
11 each magistrate. Each magistrate assistant shall be appointed by
12 the magistrate under whose authority and supervision and at whose
13 will and pleasure he or she shall serve. The assistant shall not
14 be a member of the immediate family of any magistrate and shall not
15 have been convicted of a felony or any misdemeanor involving moral
16 turpitude and shall reside in the State of West Virginia. For the
17 purpose of this section, "immediate family" means the relationships
18 of mother, father, sister, brother, child or spouse.

19 (b) A magistrate assistant shall have the duties, clerical or
20 otherwise, assigned by the magistrate and prescribed by the rules
21 of the Supreme Court of Appeals or the judge of the circuit court
22 or the chief judge of the circuit court if there is more than one

1 judge of the circuit court. In addition to these duties,
2 magistrate assistants shall perform and are accountable to the
3 magistrate court clerks with respect to the following duties:

4 (1) The preparation of summons in civil actions;

5 (2) The assignment of civil actions to the various
6 magistrates;

7 (3) The collection of all costs, fees, fines, forfeitures and
8 penalties which are payable to the court;

9 (4) The submission of moneys, along with an accounting of the
10 moneys, to appropriate authorities as provided by law;

11 (5) The daily disposition of closed files which are to be
12 located in the magistrate clerk's office;

13 (6) All duties related to the gathering of information and
14 documents necessary for the preparation of administrative reports
15 and documents required by the rules of the Supreme Court of Appeals
16 or the judge of the circuit court or the chief judge of the circuit
17 court if there is more than one judge of the circuit court;

18 (7) All duties relating to the notification, certification and
19 payment of jurors serving pursuant to the terms of this chapter;
20 and

21 (8) All other duties or responsibilities whereby the
22 magistrate assistant is accountable to the magistrate court clerk

1 as determined by the magistrate.

2 (c) Magistrate assistants shall be paid a monthly salary by
3 the state. Magistrate assistants serving magistrates who serve
4 less than seven thousand three hundred in population shall be paid
5 up to \$36,048 per year and magistrate assistants serving
6 magistrates who serve seven thousand three hundred or more in
7 population shall be paid up to \$39,348 per year: *Provided, That*
8 after the effective date of this section, any general salary
9 increase granted to all state employees, whose salaries are not set
10 by statute, expressed as a percentage increase or an
11 across-the-board increase, may also be granted to magistrate
12 assistants. For the purpose of determining the population served
13 by each magistrate, the number of magistrates authorized for each
14 county shall be divided into the population of each county. The
15 salary of the magistrate assistant shall be established by the
16 magistrate within the limits set forth in this section.

17 (d) Notwithstanding any provision of this code to the
18 contrary, the amendments made to this section during the 2013 First
19 Extraordinary Session are effective upon passage and are
20 retroactive to January 1, 2013.

21 (e) Beginning January 1, 2017, the annual salary of all
22 magistrate assistants is \$39,348. After the effective date of this

1 section, a general salary increase granted to state employees,
2 whose salaries are not set by statute, expressed as a percentage
3 increase or an across-the-board increase, may also be granted to
4 magistrate assistants.

5 **§50-1-9a. Magistrate court deputy clerks; duties; salary.**

6 (a) Whenever required by workload and upon the recommendation
7 of the judge of the circuit court, or the chief judge of the
8 circuit court if there is more than one judge of the circuit court,
9 the Supreme Court of Appeals may, by rule, provide for the
10 appointment of magistrate court deputy clerks, not to exceed
11 seventy-two in number. The magistrate court deputy clerks shall be
12 appointed by the judge of the circuit court, or the chief judge if
13 there is more than one judge of the circuit court, to serve at his
14 or her will and pleasure under the immediate supervision of the
15 magistrate court clerk.

16 (b) Magistrate court deputy clerks shall have the duties,
17 clerical or otherwise, as may be assigned by the magistrate court
18 clerk and as may be prescribed by the rules of the Supreme Court of
19 Appeals or the judge of the circuit court or the chief judge if
20 there is more than one judge of the circuit court. Magistrate
21 court deputy clerks may also exercise the power and perform the
22 duties of the magistrate court clerk as may be delegated or

1 assigned by the magistrate court clerk.

2 (c) A magistrate court deputy clerk may not be an immediate
3 family member of any magistrate, magistrate court clerk, magistrate
4 assistant or judge of the circuit court within the same county, may
5 not have been convicted of a felony or any misdemeanor involving
6 moral turpitude and must reside in this state. For purposes of
7 this subsection, "immediate family member" means a mother, father,
8 sister, brother, child or spouse.

9 (d) Magistrate court deputy clerks shall be paid an annual
10 salary by the state on the same basis and in the same amounts
11 established for magistrate assistants in each county, as provided
12 in section nine of this article.

13 (e) Notwithstanding any provision of this code to the
14 contrary, the amendments made to section nine of this article
15 during the 2013 First Extraordinary Session, and the effects of
16 those amendments on subsection (d) of this section, are effective
17 upon passage and are retroactive to January 1, 2013.

18 (f) Beginning January 1, 2017, the annual salary of all
19 magistrate court deputy clerks is \$39,348. After the effective
20 date of this section, a general salary increase granted to state
21 employees, whose salaries are not set by statute, expressed as a
22 percentage increase or an across-the-board increase, may also be

1 granted to magistrate court deputy clerks.