

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 602

BY SENATORS TRUMP, WOELFEL, AND UNGER

[Introduced January 23, 2020; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §50-1-3 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; to
 3 amend and reenact §51-2A-6 of said code; and to amend and reenact §51-9-1a and §51-
 4 9-5 of said code, all relating generally to salaries and pensions of magistrate, justices of
 5 the Supreme Court of Appeals, circuit judges, and family court judges; adopting and
 6 codifying the 2019 recommendations of the Judicial Compensation Commission as to
 7 salary increases for magistrates, justices of the Supreme Court of Appeals, circuit judges,
 8 and family court judges; and allowing family court judges to participate in the Judge's
 9 Retirement System as it applies to judges first taking office after July 1, 2005.

Be it enacted by the Legislature of West Virginia:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE I. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

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

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

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

11 (4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less
 12 than 7,300 in population and a second tier for magistrates serving 7,300 or more in population is

13 no longer rational and equitable given current statistical information relating to population and
14 caseload; and

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

16 (b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer
17 than 7,300 in population shall be paid annual salaries of \$51,125 and magistrates who serve
18 7,300 or more in population shall be paid annual salaries of \$57,500.

19 (c) For the purpose of determining the population served by each magistrate, the number
20 of magistrates authorized for each county shall be divided into the population of each county. For
21 the purpose of this article, the population of each county is the population as determined by the
22 last preceding decennial census taken under the authority of the United States government.

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

26 (e) On or before July 1, 2013, the Joint Committee on Government and Finance shall
27 request a study by the National Center for State Courts, working in conjunction with the
28 Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted
29 case loads in each of the magistrate courts in this state, and present recommendations as to how
30 the present resources and personnel in the magistrate court system could be better apportioned
31 to equitably and timely meet the collective needs of the magistrate court system in West Virginia.
32 Based on the findings and data generated by that study, the National Center for State Courts shall
33 make recommendations as to the equitable redistribution of personnel and resources, by
34 temporary or permanent reassignment, to better meet the needs and weighted loads that are
35 demonstrated to exist in the various magistrate courts in this state. This study shall be presented
36 to the Joint Committee on Government and Finance no later than December 1, 2014, and shall
37 include recommendations and proposed legislation resulting from such study and shall also
38 include a plan to continue the efficient delivery of justice by the magistrate court system and the

39 justification for equalization of pay for all magistrates. As a part of the submitted study, the plan
40 shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to
41 include holding court or delivering services to adjacent counties with higher caseloads, as part of
42 their regular duties, or being on call as needed to serve other needs in other adjacent counties or
43 within the same judicial circuit.

44 On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall
45 present its recommendations to the Legislature regarding how to allocate or assign a maximum
46 of 158 magistrates throughout this state to improve the magistrate process, and more equitably
47 distribute the magistrate court resources to efficiently and effectively meet the needs of the
48 citizens of this state.

49 (f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017,
50 all magistrates shall be compensated equally and the annual salary of all magistrates shall be
51 \$57,500.

52 (g) Notwithstanding any provisions of this code to the contrary, consistent with the 2019
53 recommendations of the Judicial Compensation Commission, beginning July 1, 2020, the annual
54 salary of a magistrate shall be \$68,038.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the Supreme Court of Appeals shall be \$95,000 per
2 year: *Provided*, That beginning July, 1, 2005, the salary of each of the justices of the Supreme
3 Court shall be \$121,000: *Provided, however*, That beginning July 1, 2011, the annual salary of a
4 justice of the Supreme Court shall be \$136,000: *Provided further*, That, consistent with the 2019
5 recommendations of the Judicial Compensation Commission, beginning July 1, 2020, the annual
6 salary of a justice of the Supreme Court of Appeals shall be \$160,901.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts shall be paid solely out of the State
2 Treasury. No county, county commission, board of commissioners or other political subdivision
3 shall supplement or add to such salaries.

4 The annual salary of all circuit judges shall be \$90,000 per year: *Provided*, That beginning
5 July 1, 2005, the annual salary of all circuit judges shall be \$116,000 per year: *Provided, however*,
6 That beginning July 1, 2011, the annual salary of a circuit court judge shall be \$126,000: *Provided*
7 *further*, That, consistent with the 2019 recommendation of the Judicial Compensation
8 Commission, beginning July 1, 2020, the annual salary of a circuit judge shall be \$149,070.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

1 (a) A family court judge is entitled to receive as compensation for his or her services an
2 annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled
3 to receive as compensation for his or her services an annual salary of \$82,500: *Provided*,
4 *however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500:
5 *Provided further*, That consistent with the 2019 recommendation of the Judicial Compensation
6 Commission, beginning July 1, 2020, the annual salary of a family court judge shall be \$113,930.

7 (b) The secretary-clerk of the family court judge is appointed by the family court judge and
8 serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to
9 receive an annual salary of \$27,036: *Provided*, That on and after July 1, 2006, the annual salary
10 of the secretary-clerk shall be established by the administrative director of the Supreme Court of
11 Appeals, but may not exceed \$39,000. In addition, any person employed as a secretary-clerk to
12 a family court judge on the effective date of the enactment of this section during the sixth
13 extraordinary session of the Legislature in the year 2001 who is receiving an additional \$500 per

14 year up to ten years of a certain period of prior employment under the provisions of the prior
15 enactment of §51-2A-8 of this code during the second extraordinary session of the Legislature in
16 the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk will
17 receive such percentage or proportional salary increases as may be provided by general law for
18 other public employees and is entitled to receive the annual incremental salary increase as
19 provided in §5-5-1 *et seq.* of this code.

20 (c) The family court judge may employ not more than one family case coordinator who
21 serves at his or her will and pleasure. The annual salary of the family case coordinator of the
22 family court judge shall be established by the Administrative Director of the Supreme Court of
23 Appeals but may not exceed \$36,000: *Provided*, That on and after July 1, 2006, the annual salary
24 of the family case coordinator of the family court judge may not exceed \$51,000. The family case
25 coordinator will receive such percentage or proportional salary increases as may be provided by
26 general law for other public employees and is entitled to receive the annual incremental salary
27 increase as provided in §5-5-1 *et seq.* of this code.

28 (d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court
29 judge. The sheriff of each county shall serve or designate persons to serve so as to assure that
30 a bailiff is available when a family court judge determines the same is necessary for the orderly
31 and efficient conduct of the business of the family court.

32 (e) Disbursement of salaries for family court judges and members of their staffs are made
33 by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of
34 Appeals.

35 (f) Family court judges and members of their staffs are allowed their actual and necessary
36 expenses incurred in the performance of their duties. The expenses and compensation will be
37 determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals
38 under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

39 (g) Notwithstanding any other provision of law, family court judges are not eligible to

40 participate in the retirement system for judges under the provisions of §51-9-1 *et seq.* of this code.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

1 (a) As used in this article, the term “judge”, “judge of any court of record” or “judge of any
2 court of record of this state” means, refers to and includes family court judges, judges of the
3 several circuit courts and justices of the Supreme Court of Appeals. ~~For purposes of this article,~~
4 ~~the terms do not mean, refer to or include family court judges~~

5 (b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value
6 computed upon the basis of the mortality table and interest rates as set and adopted by the
7 retirement board in accordance with the provisions of this article: *Provided*, That when used in
8 the context of compliance with the federal maximum benefit requirements of Section 415 of the
9 Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and
10 interest rates required to comply with those requirements.

11 (c) “Beneficiary” means any person, except a member, who is entitled to an annuity or
12 other benefit payable by the retirement system.

13 (d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-
14 1 *et seq.* of this code.

15 (e) “Final average salary” means the average of the highest 36 consecutive months’
16 compensation received by the member as a judge of any court of record of this state.

17 (f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been
18 amended.

19 (g) “Member” means a judge participating in this system.

20 (h) “Plan year” means the 12-month period commencing on July 1 of any designated year
21 and ending the following June 30.

22 (i) “Required beginning date” means April 1 of the calendar year following the later of: (i)
23 The calendar year in which the member attains age 70 and one-half; or (ii) the calendar year in

24 which the member retires or otherwise separates from covered employment.

25 (j) "Retirement system" or "system" means the Judges' Retirement System created and
 26 established by this article. Notwithstanding any other provision of law to the contrary, the
 27 provisions of this article are applicable only to family court judges, circuit judges and justices of
 28 the Supreme Court of Appeals in the manner specified in this article. ~~No service as a family court
 29 judge may be construed to qualify a person to participate in the Judges' Retirement System or
 30 used in any manner as credit toward eligibility for retirement benefits under the Judges'
 31 Retirement System~~

**§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of
 service credit by a judge; duplicate use of service credit prohibited.**

1 (a) Notwithstanding any provisions of this article, any judge may in writing notify the Auditor
 2 within 30 days after he or she takes office, or, if he or she is in office, on the date this article
 3 becomes effective, then within 30 days from such latter date, that such judge elects not to become
 4 a member or make any payments or contributions to the trust fund, in which event every judge,
 5 so electing, shall not thereafter at any time be entitled to receive any retirement pay or benefits
 6 under provisions of this article, and any deduction that may have theretofore been made from the
 7 salary of such judge and paid into the fund shall be refunded without interest, to him or her by the
 8 Auditor by warrant drawn on the trust fund. Any judge who has so elected not to become a
 9 member or not to contribute, shall nevertheless thereafter be permitted to become such member,
 10 contribute and become eligible for retirement benefits by paying into the Judges' Retirement Fund
 11 all contributions such judge would have been required to pay into the fund, together with interest
 12 thereon at a rate to be determined by the State Auditor as reasonable for such prior periods, as if
 13 such judge had not previously elected not to be a member and not to contribute.

14 (b) There may be transfers of service credit on proper basis between the judges' retirement
 15 system and the Public Employees Retirement System, where such service credit constitutes
 16 qualified and eligible credit under the recipient system's statutes, in order to allow full flexibility of

17 choice of option by a judge or judicial member; but in no case shall benefits be receivable from
18 more than one of such state retirement systems, nor shall any service credit be usable more than
19 once and then only in the finally chosen state retirement system.

20 (c) Notwithstanding any provision of this code to the contrary, a family court judge electing
21 to become a member of the Judge's Retirement System established pursuant to §51-9-1 et seq.
22 of this code who was not a participant in said system prior to July 1, 2005, who elects to become
23 a participant may, upon successful completion of all requirements therefore, become a member
24 of the Judge's Retirement System in effect for persons first participating in the system on and
25 after July 1, 2005.

NOTE: The purpose of this bill is to adopt and codify the 2019 recommendations of the Judicial Compensation Commission as to salary increases for magistrates, justices of the Supreme Court of Appeals, circuit judges, and family court judges, and to allow family court judges to participate in the Judge's Retirement System as it applies to judges first taking office after July 1, 2005.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.