

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 307**

4 (By Senators Kessler (Acting President), Hall, Unger, Jenkins,
5 Plymale, Foster, Minard, Prezioso, McCabe, Stollings, Browning,
6 Palumbo, Green, Beach, Boley, Nohe, K. Facemyer, Sypolt, Barnes,
7 Wells and Klempa)

8 _____
9 [Originating in the Committee on the Judiciary;
10 reported February 23, 2011.]

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13
14 A BILL to amend the Code of West Virginia, 1931, as amended, by
15 adding thereto a new article, designated §51-1B-1, §51-1B-2,
16 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,
17 §51-1B-9, §51-1B-10, §51-1B-11, §51-1B-12, §51-1B-13 and
18 §51-1B-14, all relating to authorizing a new court to be known
19 as the Intermediate Court of Appeals; requiring the court to
20 be operational by January 1, 2013; establishing northern and
21 southern districts; providing three judges for each district;
22 establishing qualifications for judges; establishing
23 jurisdiction of the court; providing that all appeals will be
24 reviewed and a written decision on the merits issued;
25 providing that all appeals will be filed with Supreme Court of
26 Appeals; providing that Supreme Court will either keep the
27 appeal or send it to the Intermediate Court; providing that
28 appeals in certain administrative cases are discretionary;

1 authorizing appeals from Intermediate Court to the Supreme
2 Court; authorizing Governor to make initial appointments by
3 July 1, 2012; creating staggered terms; providing for
4 elections for ten-year terms after initial appointments;
5 authorizing a Chief Judge of the Intermediate Court;
6 authorizing staff for the court and the judges; providing for
7 compensation and expenses of judges and staff; providing for
8 temporary assignment of circuit court judges; providing that
9 the Supreme Court will govern the pleading, practice and
10 procedure of the Intermediate Court through rules; authorizing
11 the Supreme Court to provide the facilities, furniture,
12 fixtures and equipment for the Intermediate Court; providing
13 for electronic filing of all documents with the Intermediate
14 Court; and providing that the budget of the Intermediate Court
15 will be part of the Supreme Court budget.

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

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new article, designated §51-1B-1, §51-1B-2,
19 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,
20 §51-1B-9, §51-1B-10, §51-1B-11, §51-1B-12, §51-1B-13 and §51-1B-14,
21 all to read as follows:

22 **ARTICLE 1B. INTERMEDIATE COURT OF APPEALS.**

23 **§51-1B-1. Intermediate Court of Appeals established; location.**

24 (a) In accordance with article VIII, section one of the West
25 Virginia Constitution, the "West Virginia Intermediate Court of
26 Appeals" is created. The court shall be established and operable
27 on or before January 1, 2013. The Intermediate Court shall be
28 divided into two districts. The two intermediate courts of appeals

1 shall be designated as "The West Virginia Intermediate Court of
2 Appeals, Northern District" or "Northern District" and "The West
3 Virginia Intermediate Court of Appeals, Southern District" or
4 "Southern District." Each court shall be located in the district
5 it serves. The Intermediate Court of Appeals is a court of record
6 and shall issue, as appropriate in each appeal, written opinions,
7 orders and decisions.

8 (b) The Northern District shall be comprised of the following
9 judicial circuits: first, second, third, fourth, fifth, fifteenth,
10 sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-
11 first, twenty-second, twenty-third, and twenty-sixth.

12 (c) The Southern District shall be comprised of the following
13 judicial circuits: sixth, seventh, eighth, ninth, tenth, eleventh,
14 twelfth, thirteenth, fourteenth, twenty-fourth, twenty-fifth,
15 twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, and thirty-
16 first.

17 (d) The Intermediate Court may be located in the seat of state
18 government, any county seat for the purpose of hearing oral
19 argument, or may be located in a fixed location.

20 **§51-1B-2 Judges; Qualifications.**

21 (a) The Intermediate Court of Appeals shall consist of six
22 judges, three judges in each district, initially appointed by the
23 Governor in accordance with section four of the article.

24 (b) An Intermediate Court of Appeals judge must be a resident
25 of the district where he or she will preside, a member in good
26 standing of the West Virginia State Bar, and admitted to practice
27 law in this state for at least ten years prior to appointment or
28 election.

1 (c) An Intermediate Court of Appeals judge may not engage in
2 any other business, occupation or employment inconsistent with the
3 expeditious, proper and impartial performance of his or her duties
4 as a judicial officer. An Intermediate Court of Appeals justice is
5 not permitted to engage in the outside practice of law and shall
6 devote full time to his or her duties as a judicial officer.

7 **§51-1B-3 Jurisdiction; Deflective Rights of Supreme Court;**

8 **Discretionary Appeals.**

9 (a) The Intermediate Court of Appeals shall not have original
10 jurisdiction.

11 (b) Petitions for appeal shall be filed with the Supreme Court
12 of Appeals. Those cases for which the Supreme Court elects not to
13 grant petitions for appeal shall be transferred to the Intermediate
14 Court of Appeals.

15 (c) The Intermediate Court of Appeals has jurisdiction to hear
16 appeals from final judgments or orders entered by a circuit court
17 in any civil or criminal case, appeals from the Workers
18 Compensation Board of Review, and the Public Service Commission.

19 (d) All appeals shall be reviewed and a written decision on
20 the merits issued by either the Supreme Court of Appeals or
21 Intermediate Court of Appeals as a matter of right except for the
22 following appeals, which shall be discretionary with the Courts:

23 (1) Appeals from the Workers' Compensation Board of Review
24 established by section eleven, article five, chapter twenty-four of
25 this Code;

26 (2) Appeals from orders of the Public Service Commission
27 established by article one, chapter twenty-four of this Code;

1 (3) Appeals from decisions of circuit courts of administrative
2 appeals of an agency as defined in article one, chapter twenty-nine
3 A of this Code; and

4 (4) Appeals of misdemeanor convictions.

5 (e) Within thirty days after a decision by the Intermediate
6 Court, any aggrieved party may petition the Supreme Court of
7 Appeals by petition for writ of certiorari as provided by the West
8 Virginia Rules of Appellate Procedure.

9 **§51-1B-4. Number of Intermediate Court Judges; initial appointment;
10 election; term of office; vacancy; chief judge.**

11 (a) There shall be three judges for each district of the
12 Intermediate Court of Appeals. The Governor shall, on or before
13 July 1, 2012, appoint the initial judges from names submitted by
14 the Judicial Vacancy Advisory Committee established pursuant to
15 section 3a, article ten, chapter 3 of the West Virginia Code. The
16 committee shall recommend three qualified nominees for each
17 position for Intermediate Court of Appeals judge. If the Governor
18 does not select a nominee for the position of judge from the names
19 provided by the committee, he or she shall notify the committee of
20 that circumstance and the committee shall provide additional names
21 for consideration by the Governor.

22 (b) The committee is responsible for reviewing and evaluating
23 candidates for possible appointment to the Intermediate Court of
24 Appeals by the Governor. In reviewing candidates, the committee
25 may accept applications from any attorney who believes himself or
26 herself qualified for the judgeships. The committee may accept
27 comments from and request information from any person or source.

28 (c) Of the initial appointments for each district, one judge

1 shell be appointed for a term of four years, one judge shall be
2 appointed for a term of six years and one judge shall be appointed
3 for a term of eight years. Upon the expiration of each term, the
4 judge's position shall be filled by election, for a ten year term,
5 in the same manner as with the Supreme Court of Appeals.

6 (d) After the initial appointments are made, vacancies in
7 office shall be filled in the same manner as vacancies on the
8 Supreme Court of Appeals.

9 (e) One judge of the Intermediate Court of Appeals shall be
10 chosen chief judge of the Intermediate Court. The manner of
11 choosing the chief judge and providing for periodic rotation of the
12 position of chief judge shall be determined by rules to be
13 established by the Supreme Court of Appeals.

14 **§51-1B-5. Compensation and expenses of Intermediate Court Judges**
15 **and staffs.**

16 (a) The annual salary of an Intermediate Court of Appeals
17 judge shall be \$118,000. Reimbursement for expenses shall be at a
18 rate established by the Supreme Court of Appeals.

19 (b) Each judge of the Intermediate Court of Appeals may
20 employ two law clerks and one secretary. The Intermediate Court of
21 Appeals may employ a clerk and the necessary staff to carry out the
22 administrative duties of the court or, with the permission of the
23 Supreme Court of Appeals, the administrative and other support
24 staff of the Supreme Court of Appeals may carry out the
25 administrative duties of both courts. The compensation of the
26 staff of the Intermediate Court of Appeals shall be established by
27 the judges of the Intermediate Court of Appeals with the approval

1 of the Supreme Court of Appeals.

2 **§51-1B-6 Temporary assignment of circuit court judges**

3 Upon the occurrence of a vacancy in the office of Intermediate
4 Court of Appeals judge, the disqualification of an Intermediate
5 Court of Appeals judge or the inability of an Intermediate Court of
6 Appeals judge to attend to his or her duties because of illness,
7 temporary absence, or any other reason, the Chief Justice of the
8 Supreme Court of Appeals may assign any senior status circuit judge
9 or circuit judge of any judicial circuit that is not from the same
10 circuit as the appeal before the Intermediate Court to hear and
11 determine any and all matters then or thereafter pending in the
12 Intermediate Court to which the absent Intermediate Court judge is
13 assigned.

14 **§51-1B-7. Rules of practice and procedure.**

15 Pleading, practice and procedure in matters before the
16 Intermediate Court of Appeals shall be governed by rules
17 promulgated by the Supreme Court of Appeals.

18 **§51-1B-8. Facilities.**

19 (a) The Administrative Director of the Supreme Court of
20 Appeals shall provide the necessary physical facilities, furniture,
21 fixtures and equipment necessary for the efficient operation of the
22 Intermediate Court of Appeals.

23 (b) In order to minimize costs, the director may (1) contract
24 with the Department of Administration, county commissions and
25 private parties to provide for space that is suitable for the
26 Intermediate Court of Appeals, and (2) shall make existing
27 courtrooms throughout the state available for use by the

1 Intermediate Court of Appeals at times convenient both to the
2 Intermediate Court of Appeals and the local court.

3 **§51-1B-9. Electronic filing of all documents and orders.**

4 All documents filed in connection with an appeal to the
5 Intermediate Court of Appeals shall be filed electronically. The
6 court shall electronically file and publish its orders and
7 decisions which shall, unless stated by the court to be per curiam
8 or unpublished, have precedential effect.

9 **§51-1B-10. Budget.**

10 The budget for the payment of the salaries and benefits for
11 the Intermediate Court of Appeals judges and staff, facilities,
12 furniture, fixtures and equipment shall be included in the
13 appropriation for the Supreme Court of Appeals. To the extent
14 possible, the Supreme Court shall designate existing facilities and
15 existing staff members for use by the Intermediate Court of Appeals
16 to minimize costs for establishing and operating the Intermediate
17 Court of Appeals.

1 NOTE: The purpose of this bill is to create the Intermediate Court
2 of Appeals.

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4 This article is new; therefore, strike-throughs and underscoring
5 have been omitted.

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