

H. B. 3150

(By Delegates Armstead, Ellem, Pasdon,  
Sobonya, C. Miller, Lane, Householder,  
Savilla, Nelson, O'Neal, Storch)

[Introduced February 15, 2011; referred to the Committee  
on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §51-1B-1, §51-1B-2,  
§51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,  
§51-1B-9 and §51-1B-10, all relating to authorizing a new  
Court to be known as the Intermediate Court of Appeals and  
delineating the structure and duties of that court.

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

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

**ARTICLE 1B. INTERMEDIATE COURTS OF APPEALS.**

**§51-1B-1. Judges; their qualifications; how selected.**

An Intermediate Court of Appeals shall be established; it  
shall operate by one or more panels, each panel consisting of three  
judges, any two of whom shall constitute a quorum for that panel.  
No judge may be permanently assigned to this court, but a judge

1 shall be assigned to a panel to hear cases before each such panel  
2 of the court by designation. Two of the three member judges of a  
3 panel shall be selected from sitting or retired circuit court  
4 judges and one shall be a sitting Justice of the West Virginia  
5 Supreme Court of Appeals. The Supreme Court of Appeals shall  
6 establish a process for determining the members of each panel by  
7 random selection, except in those cases where special expertise is  
8 desirable, shall be. The decision of a majority of the panel shall  
9 constitute the decision of the panel and shall be considered a  
10 final decision of the Intermediate Court of Appeals for all  
11 purposes. When a judgment or order of another court is reversed,  
12 modified or affirmed by the Intermediate Court of Appeals , every  
13 point fairly arising upon the record shall be considered and  
14 decided; the reasons therefor shall be concisely stated in writing  
15 and preserved with the record; and it shall be the duty of the  
16 court to prepare a syllabus of the points adjudicated in each case  
17 in which an opinion is written and in which a majority of the  
18 judges thereof concurred, which shall be prefixed to the published  
19 report of the case.

20 **§51-1B-2. Jurisdiction.**

21 The Intermediate Court of Appeals has no original  
22 jurisdiction. It shall have appellate jurisdiction in civil cases  
23 where the matter in controversy, exclusive of costs, is of greater  
24 value or amount than \$100; in controversies concerning the title or

1 boundaries of land, the probate of wills, the appointment or  
2 qualification of a personal representative, guardian, committee or  
3 curator, or concerning a mill, road, way, ferry or landing, or the  
4 right of a corporation or county to levy tolls or taxes; in cases  
5 of quo warranto, habeas corpus, mandamus, certiorari and  
6 prohibition, and in cases involving freedom or the  
7 Constitutionality of a law. It shall have appellate jurisdiction in  
8 criminal cases where there has been a conviction for felony or  
9 misdemeanor in a circuit court, and where a conviction has been had  
10 in any inferior court and been affirmed in a circuit court, and in  
11 cases relating to the public revenue, the right of appeal shall  
12 belong to the state, as well as the defendant, and such other  
13 appellate jurisdiction, in both civil and criminal cases, as may be  
14 prescribed by law. It shall have appellate jurisdiction in all  
15 cases involving appeals of worker's compensation cases. Appeal to  
16 the Intermediate Court of Appeals shall be an appeal of right upon  
17 an assignment of error in the judgment or proceedings of a circuit  
18 court; it shall have no discretion to reject any appeal.

19 **§51-1B-3. Regulation of pleading, practice and procedure.**

20 The Supreme Court of Appeals may, from time to time, make and  
21 promulgate general rules and regulations governing pleading,  
22 practice and procedure in the Intermediate Court of Appeals as in  
23 all other courts of record of this state.

24 **§51-1B-4. Scheduling of terms.**

1       The Supreme Court of Appeals shall, from time to time,  
2 determine the time and place that the Intermediate Court of Appeals  
3 shall convene and transact its business, which may, depending on  
4 the volume of appeals that need to be heard, consist of one or more  
5 terms, each of which shall continue until the business assigned to  
6 the court is dispatched.

7 **§51-1B-5. Adjournment.**

8       The court may adjourn from day to day or from time to time, as  
9 the judges, or a majority thereof, may order, until it disposes of  
10 all of the cases assigned to it.

11 **§51-1B-6. Salary of Judges.**

12       The salary of each of the judges appointed to serve as members  
13 of an Intermediate Courts of Appeals shall be his or her regular  
14 salary in his or her elected capacity, and each judge so appointed  
15 shall receive no additional compensation for this service.

16 **§51-1B-7. Clerk; deputy, associate and assistant clerks; other**  
17 **clerical assistants; compensation.**

18       The Supreme Court of Appeals system shall appoint one chief  
19 clerk to exclusively serve the Intermediate Court of Appeals and  
20 may also appoint one deputy clerk, one assistant clerk and such  
21 other full-time and part-time clerical assistants as are deemed  
22 necessary and reasonable to properly perform the functions and  
23 duties of the office of the clerk of the Intermediate Court of  
24 Appeals. The annual compensation of the chief clerk and all other

1 employees of the court shall be fixed by the Supreme Court of  
2 Appeals, payable in the same manner and on the same schedule as the  
3 regular employees of the Supreme Court of Appeals, and shall be  
4 payable out of the biennium appropriations made by the Legislature  
5 according to law. All of these officers shall be removable at the  
6 pleasure of the Supreme Court of Appeals or its Justices.  
7 Vacancies in the office of the clerk occurring during vacation may  
8 be filled by appointment, in writing, made by the Justices of the  
9 Supreme Court of Appeals, or by a majority thereof.

10 **§51-1B-8. Duties of clerk.**

11 It shall be the duty of the clerk of the Intermediate Court of  
12 Appeals to attend in person, or by an employee of said clerk's  
13 office deputized for that purpose, all the sessions of the court,  
14 to obey its orders and directions in term time and in vacation, to  
15 take care of and preserve in an office, kept for the purpose, all  
16 records and papers of the court, and to perform such other duties  
17 as may be prescribed by law or required of him or her by the court.

18 **§51-1B-9. Budget of the Intermediate Court of Appeals.**

19 The budget for the payment of the salaries and benefits of the  
20 clerical and secretarial staff of the Intermediate Court of Appeals  
21 shall be included in the appropriation for the Supreme Court of  
22 Appeals.

23 **§51-1B-10. Supreme Court of Appeals review.**

24 Any final decision rendered by the Intermediate Court of

1 Appeals may be appealed by any aggrieved party in interest to the  
2 Supreme Court of Appeals by writ of certiorari pursuant to the  
3 rules promulgated by the Supreme Court of Appeals.

NOTE: The purpose of this bill is to create and provide structures and standards for a new Intermediate Court of Appeals.

This article is new; therefore, it has been completely underscored.