

1 **H. B. 4462**

2  
3 (By Delegates Ellem, Ambler, Andes, Cooper,  
4 D. Evans, Ferns, Hamrick, McCuskey, Miller,  
5 Pasdon and Storch)

6 [Introduced February 11, 2014; referred to the  
7 Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

8  
9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §51-1B-1, §51-1B-2,  
12 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,  
13 §51-1B-9 and §51-1B-10, all relating to authorizing a new  
14 court to be known as the Intermediate Court of Appeals;  
15 setting forth the structure and duties of that court; setting  
16 forth how judges are selected; establishing jurisdiction;  
17 setting forth pleading, practice and procedure; providing for  
18 terms and adjournment; providing for other officers of the  
19 court; setting forth the duties of the clerk; setting forth  
20 the court's budget; and providing for review by the Supreme  
21 Court of Appeals.

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

23 That the Code of West Virginia, 1931, as amended, be amended  
24 by adding thereto a new article, designated §51-1B-1, §51-1B-2,  
25 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,

1 §51-1B-9 and §51-1B-10, all to read as follows:

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

3 **§51-1B-1. Court created; judges; their qualifications; how**  
4 **selected.**

5 An Intermediate Court of Appeals shall be established. It  
6 shall operate by one or more panels, each panel consisting of three  
7 judges, any two of whom shall constitute a quorum for that panel.  
8 No judge may be permanently assigned to this court, but a judge  
9 shall be assigned to a panel to hear cases before each such panel  
10 of the court by designation. Two of the three member judges of a  
11 panel shall be selected from sitting or retired circuit court  
12 judges and one shall be a sitting Justice of the West Virginia  
13 Supreme Court of Appeals. The Supreme Court of Appeals shall  
14 establish a process for determining the members of each panel by  
15 random selection, except in those cases where special expertise is  
16 desirable, shall be. The decision of a majority of the panel shall  
17 constitute the decision of the panel and shall be considered a  
18 final decision of the Intermediate Court of Appeals for all  
19 purposes. When a judgment or order of another court is reversed,  
20 modified or affirmed by the Intermediate Court of Appeals, every  
21 point fairly arising upon the record shall be considered and  
22 decided, its reasoning shall be concisely stated in writing and  
23 preserved with the record and the court shall prepare a syllabus  
24 of the points adjudicated in each case in which an opinion is

1 written and in which a majority of the judges concurred, which  
2 shall be prefixed to the published report of the case.

3 **§51-1B-2. Jurisdiction.**

4 The Intermediate Court of Appeals has no original  
5 jurisdiction. It shall have appellate jurisdiction in civil cases  
6 where the matter in controversy, exclusive of costs, is of greater  
7 value or amount than \$100, in controversies concerning the title or  
8 boundaries of land, the probate of wills, the appointment or  
9 qualification of a personal representative, guardian, committee or  
10 curator, or concerning a mill, road, way, ferry or landing, or the  
11 right of a corporation or county to levy tolls or taxes, in cases  
12 of quo warranto, habeas corpus, mandamus, certiorari and  
13 prohibition, and in cases involving freedom or the  
14 Constitutionality of a law. It has appellate jurisdiction in  
15 criminal cases where there has been a conviction for felony or  
16 misdemeanor in a circuit court, and where there has been a  
17 conviction in an inferior court and affirmed by a circuit court,  
18 and in cases relating to the public revenue, the right of appeal  
19 shall belong to the state, as well as the defendant, and such other  
20 appellate jurisdiction, in both civil and criminal cases, as may be  
21 prescribed by law. It shall have appellate jurisdiction in all  
22 cases involving appeals of worker's compensation cases. Appeal to  
23 the Intermediate Court of Appeals shall be an appeal of right upon  
24 an assignment of error in the judgment or proceedings of a circuit

1 court; it shall have no discretion to reject any appeal.

2 **§51-1B-3. Pleading, practice and procedure.**

3 The Supreme Court of Appeals may, from time to time, make and  
4 promulgate general rules and regulations governing pleading,  
5 practice and procedure in the Intermediate Court of Appeals as in  
6 all other courts of record of this state.

7 **§51-1B-4. Scheduling of terms.**

8 The Supreme Court of Appeals shall, from time to time,  
9 determine the time and place that the Intermediate Court of Appeals  
10 shall convene and transact its business, which may, depending on  
11 the volume of appeals that need to be heard, consist of one or more  
12 terms, each of which shall continue until the business assigned to  
13 the court is dispatched.

14 **§51-1B-5. Adjournment.**

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

18 **§51-1B-6. Salary of judges.**

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

23 **§51-1B-7. Clerk; deputy, associate and assistant clerks; other**

1                   **clerical assistants; compensation.**

2           The Supreme Court of Appeals system shall appoint one chief  
3 clerk to exclusively serve the Intermediate Court of Appeals and  
4 may also appoint one deputy clerk, one assistant clerk and such  
5 other full-time and part-time clerical assistants as are necessary  
6 and reasonable to properly perform the functions and duties of the  
7 office of the clerk of the Intermediate Court of Appeals. The  
8 annual compensation of the chief clerk and all other employees of  
9 the court shall be fixed by the Supreme Court of Appeals, payable  
10 in the same manner and on the same schedule as the regular  
11 employees of the Supreme Court of Appeals, and shall be payable out  
12 of the biennium appropriations made by the Legislature according to  
13 law. These officers serve at the pleasure of the Supreme Court of  
14 Appeals or its Justices. Vacancies in the office of the clerk  
15 occurring during vacation may be filled by appointment, in writing,  
16 made by the Justices of the Supreme Court of Appeals, or by a  
17 majority.

18 **§51-1B-8. Duties of clerk.**

19           It shall be the duty of the clerk of the Intermediate Court of  
20 Appeals to attend in person, or by an employee of said clerk's  
21 office deputized for that purpose, all the sessions of the court,  
22 to obey its orders and directions in term time and in vacation, to  
23 take care of and preserve in an office, kept for the purpose, all  
24 records and papers of the court, and to perform such other duties

1 as may be prescribed by law or required of him or her by the court.

2 **§51-1B-9. Budget of the Intermediate Court of Appeals.**

3 The budget for the payment of the salaries and benefits of the  
4 clerical and secretarial staff of the Intermediate Court of Appeals  
5 shall be included in the appropriation for the Supreme Court of  
6 Appeals.

7 **§51-1B-10. Supreme Court of Appeals review.**

8 Any final decision rendered by the Intermediate Court of  
9 Appeals may be appealed by any aggrieved party in interest to the  
10 Supreme Court of Appeals by writ of certiorari pursuant to the  
11 rules promulgated by the Supreme Court of Appeals.

NOTE: The purpose of this bill is to create a new Intermediate Court of Appeals. The bill sets forth the structure and duties of that court. The bill sets forth how judges are selected. The bill establishes jurisdiction. The bill sets forth pleading, practice and procedure. The bill provides for terms and adjournment. The bill provides for other officers of the court. The bill sets forth the duties of the clerk. The bill sets forth the court's budget. The bill provides for review by the Supreme Court of Appeals.

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