

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 341**

BY SENATORS FERNS AND RUCKER

[Originating in the Committee on the Judiciary;

reported on February 2, 2018]

1 A BILL to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §23-5-10 of said code; to amend said code by adding thereto a new section,  
3 designated §23-5-11a; to amend and reenact §29A-5-4 of said code; to amend and  
4 reenact §29A-6-1 of said code; to amend said code by adding thereto a new section,  
5 designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code  
6 by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4,  
7 §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12,  
8 §51-11-13, and §51-11-14; and to amend and reenact §58-5-1 of said code, all relating  
9 generally to the West Virginia Appellate Reorganization Act of 2018; terminating the  
10 Workers' Compensation Board of Review and transferring duties to the Intermediate Court  
11 of Appeals; requiring board to dispose of cases by a certain date; requiring contested  
12 cases under State Administrative Procedures Act to go to the Intermediate Court of  
13 Appeals; transferring jurisdiction for review of family court final orders from circuit courts  
14 to Intermediate Court of Appeals; placing judges of Intermediate Court of Appeals under  
15 the judicial retirement system; altering the residency requirements for membership on the  
16 Judicial Vacancy Advisory Commission; creating the Intermediate Court of Appeals;  
17 providing a short title; providing legislative findings; defining terms; establishing and  
18 defining two geographical districts of the Intermediate Court of Appeals; requiring three-  
19 judge panels for proceedings; authorizing jurisdiction of the Intermediate Court of Appeals  
20 over certain matters; specifically excluding certain matters from jurisdiction of the  
21 Intermediate Court of Appeals; providing eligibility criteria for judges of the Intermediate  
22 Court of Appeals; providing that no two judges of the Intermediate Court of Appeals may  
23 be residents of the same state senatorial district or of the same county; providing a process  
24 for appointment of judges to the Intermediate Court of Appeals to staggered judicial terms;  
25 providing that the Governor's appointments are subject to Senate confirmation; providing  
26 that judges of the Intermediate Court of Appeals may not be candidates for any elected

27 office during judicial term; providing for temporary filling of judicial vacancy occurring  
28 before the expiration of an appointed judge's term; establishing certain requirements for  
29 the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond  
30 may be required before appeal to the Intermediate Court of Appeals may take effect;  
31 requiring the chief judge of each Intermediate Court of Appeals district to publish and  
32 submit certain reports to the Legislature and Supreme Court of Appeals regarding pending  
33 cases; authorizing filing fees; providing for deposit of filing fees in a special revenue  
34 account to fund the State Police Forensic Laboratory; recognizing the constitutional  
35 authority of the Supreme Court of Appeals to exercise administrative authority of the  
36 Intermediate Court of Appeals; providing that procedures and operations of the  
37 Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court  
38 of Appeals; requiring that appeals to the Intermediate Court of Appeals be filed with the  
39 Clerk of the Supreme Court of Appeals; providing that Intermediate Court of Appeals  
40 proceedings take place in publicly available facilities across the state; granting the  
41 Intermediate Court of Appeals discretion to require oral argument; authorizing the  
42 Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate  
43 Court of Appeals operations; providing that the budget for Intermediate Court of Appeals  
44 operations shall be included in the appropriation for the Supreme Court of Appeals;  
45 authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for  
46 respective districts; providing for discretionary review of Intermediate Court of Appeals  
47 decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits,  
48 and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing  
49 for reimbursement of expenses of Intermediate Court of Appeals staff; providing for sunset  
50 of the Intermediate Court of Appeals on certain date unless continued by the Legislature;  
51 and providing that certain appeals are reviewed and a written decision issued by either  
52 the Intermediate Court of Appeals or the Supreme Court of Appeals, as a matter of right.

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

## **CHAPTER 3. ELECTIONS.**

### **ARTICLE 10. FILLING VACANCIES.**

#### **§3-10-3a. Judicial Vacancy Advisory Commission.**

1           (a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial  
2 vacancies. The commission shall meet and submit a list of no more than five nor less than two  
3 best qualified persons to the Governor within ~~ninety~~ 90 days of the occurrence of a vacancy, or  
4 the formal announcement of the justice or judge by letter to the Governor of an upcoming  
5 resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of  
6 the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, judge of a circuit  
7 court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as  
8 required by this article, within ~~thirty~~ 30 days following the receipt of the list of qualified candidates  
9 or within ~~thirty~~ 30 days following the vacancy, whichever occurs later.

10           (b) The commission ~~shall consist~~ consists of eight appointed members, ~~Four~~ four of whom  
11 are public members shall be appointed by the Governor for six-year terms, except for the initial  
12 appointments which shall be staggered in accordance with subsection (c) of this section. Four  
13 and four of whom are attorney members. The Governor shall appoint attorney members ~~shall be~~  
14 ~~appointed by the Governor for six-year terms, except as provided in subsection (c) of this section,~~  
15 from a list of nominees provided by the Board of Governors of the West Virginia State Bar. When  
16 filling a vacancy in the commission, the Governor shall appoint a member for a six-year term. The  
17 Board of Governors of the West Virginia State Bar shall nominate no more than ~~twenty~~ 20 nor  
18 ~~less~~ fewer than ~~ten~~ 10 best qualified attorneys for appointment to the commission whenever there  
19 is a vacancy in the membership of the commission reserved for attorney members. The  
20 commission shall choose one of its appointed members to serve as chair for a three-year term.  
21 No more than four appointed members of the commission shall belong to the same political party.

22 ~~No more than three appointed members of the commission shall be residents of the same~~  
23 ~~congressional district.~~ All members of the commission shall be citizens of this state. Public  
24 members of the commission may not be licensed to practice law in West Virginia or any other  
25 jurisdiction.

26 ~~(c) Of the initial appointments made to the commission, two public members and two~~  
27 ~~attorney members shall be appointed for a term ending two years after the effective date of this~~  
28 ~~section, one public member and one attorney member shall be appointed for a term ending four~~  
29 ~~years after the effective date of this section, and one public member and one attorney member~~  
30 ~~shall be appointed for a term ending six years after the effective date of this section.~~

31 (c) No more than two appointed members of the commission shall be residents of the  
32 same state senatorial district, as provided in §1-2-1 of this code at the time of appointment:  
33 Provided, That the members of the commission appointed prior to the enactment of this  
34 subsection and serving on the commission upon the effective date of this subsection are not  
35 disqualified from service for the remainder of the member's term based on the residency  
36 requirements of this subsection.

37 (d) The Governor, or his or her designee, the President of the West Virginia State Bar and  
38 the Dean of the West Virginia University College of Law shall serve as *ex officio* members of the  
39 commission.

40 (e) Members of the commission shall serve without compensation, except that commission  
41 members are entitled to reimbursement of travel and other necessary expenses actually incurred  
42 while engaged in official commission activities in accordance with the guidelines of the Travel  
43 Management Office of the Department of Administration, or its successor entity. The Governor's  
44 Office shall cooperate with the commission to ensure that all resources necessary to carrying out  
45 the official duties of the commission are provided, including staff assistance, equipment and  
46 materials.

47 (f) The commission shall adopt written policies that formalize and standardize all operating

48 procedures and ethical practices of its members including, but not limited to, procedures for  
49 training commission members, publishing notice of judicial vacancies, recruiting qualified  
50 individuals for consideration by the commission, receiving applications from qualified individuals,  
51 notifying the public of judicial vacancies, notifying state or local groups and organizations of  
52 judicial vacancies and soliciting public comment on judicial vacancies. The written policies of the  
53 commission are not subject to the provisions of ~~§29A-§29A-1-1~~ et seq., of this code but shall be  
54 filed with the Secretary of State.

55 (g) A majority of the commission plus one ~~shall constitute~~ constitutes a quorum to do  
56 business.

57 (h) All organizational meetings of the commission shall be open to the public and subject  
58 to the requirements of §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial  
59 meeting to discuss the commission's procedures and requirements for a judicial vacancy. The  
60 commission shall hold at least one organizational meeting upon the occurrence of a judicial  
61 vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

62 (i) The commission shall make available to the public copies of any applications and any  
63 letters of recommendation written on behalf of any applicants. All other documents or materials  
64 created or received by the commission ~~shall be~~ are confidential and exempt from the provisions  
65 of §29B-1-1 *et seq.* of this code, except for the list of best qualified persons or accompanying  
66 memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this  
67 section, which shall be available for public inspection, and the written policies required to be filed  
68 with the Secretary of State in accordance with subsection (f) of this section.

69 (j) The commission shall submit its list of best qualified persons to the Governor in  
70 alphabetical order. A memorandum may accompany the list of best qualified persons and state  
71 facts concerning each of the persons listed. The commission shall make copies of any list of best  
72 qualified persons and accompanying memoranda it submits to the Governor available for public  
73 inspection.

## CHAPTER 23. WORKERS' COMPENSATION.

### ARTICLE 5. REVIEW.

#### **§23-5-10. Appeal from administrative law judge decision to appeal board; appeals to Intermediate Court of Appeals after certain date.**

1           (a) The employer, claimant, Workers' Compensation Commission, the successor to the  
2 commission, other private insurance carriers and self-insured employers, whichever is applicable,  
3 may appeal to the appeal board created in §23-5-11 of this code for a review of a decision by an  
4 administrative law judge; Provided, That the appeal board created in §23-5-11 of this code has  
5 no jurisdiction to hear an appeal of a decision by an administrative law judge entered after June  
6 30, 2019. No appeal or review shall lie unless application therefor be made within ~~thirty~~ 30 days  
7 of receipt of notice of the administrative law judge's final action or in any event within ~~sixty~~ 60  
8 days of the date of such final action, regardless of notice and, unless the application for appeal  
9 or review is filed within the time specified, no such appeal or review shall be allowed, such time  
10 limitation being hereby declared to be a condition of the right of such appeal or review and hence  
11 jurisdictional.

12           (b) An appeal of a final order or decision by the Office of Judges, entered after June 30,  
13 2019, shall be made to the West Virginia Intermediate Court of Appeals, pursuant to §51-11-1 et  
14 seq. of this code.

#### **§23-5-11a. Transfer of jurisdiction of appeals to West Virginia Intermediate Court of Appeals; termination of Board of Review.**

1           (a) The Workers' Compensation Board of Review, created in §23-5-11 of this code, has  
2 no jurisdiction to review a decision issued by the Office of Judges after June 30, 2019.

3           (b) The West Virginia Intermediate Court of Appeals, created in §51-11-1 et seq. of this  
4 code, has exclusive appellate jurisdiction over all final orders or decisions issued by the Office of  
5 Judges after June 30, 2019.

6 (c) On or before June 30, 2020, the Workers' Compensation Board of Review shall issue  
7 a final decision in, or otherwise dispose of, each and every appeal pending before the board.

8 (d) Upon the Workers' Compensation Board of Review's disposition of all appeals filed  
9 with the board on or before June 30, 2019, the Workers' Compensation Board of Review is  
10 terminated.

## **CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.**

### **ARTICLE 5. CONTESTED CASES.**

#### **§29A-5-4. Judicial review of contested cases.**

1 (a) Any party adversely affected by a final order or decision in a contested case is entitled  
2 to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent  
3 other means of review, redress, or relief provided by law.

4 (b) Proceedings for review of any final order or decision issued on or before June 30, 2019  
5 ~~proceedings for review~~ shall be instituted by filing a petition, at the election of the petitioner, in  
6 either the circuit court of Kanawha County, West Virginia or in the circuit court of the county in  
7 which the petitioner or any one of the petitioners resides or does business, or with the judge  
8 thereof in vacation, within ~~thirty~~ 30 days after the date upon which such party received notice of  
9 the final order or decision of the agency. Notwithstanding any provision of this code to the  
10 contrary, proceedings for judicial review of any final order or decision issued after June 30, 2019  
11 must be instituted by filing an appeal, at the election of a party desiring appeal, to the West Virginia  
12 Intermediate Court of Appeals as provided in §51-11-1 et seq. of this code. A copy of the petition  
13 shall be served upon the agency and all other parties of record by registered or certified mail. The  
14 petition shall state whether the appeal is taken on questions of law or questions of fact, or both.  
15 No appeal bond shall be required to effect any such appeal.

16 (c) The filing of the petition shall not stay enforcement of the agency order or decision or  
17 act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at

18 any time after the filing of his or her petition, may apply to such circuit court for a stay of or  
19 supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or  
20 supersedeas upon such terms as it deems proper.

21 (d) Within ~~fifteen~~ 15 days after receipt of a copy of the petition by the agency, or within  
22 such further time as the court may allow, the agency shall transmit to such circuit court the original  
23 or a certified copy of the entire record of the proceeding under review, including a transcript of all  
24 testimony and all papers, motions, documents, evidence and records as were before the agency,  
25 all agency staff memoranda submitted in connection with the case, and a statement of matters  
26 officially noted; but, by stipulation of all parties to the review proceeding, the record may be  
27 shortened. The expense of preparing such record shall be taxed as a part of the costs of the  
28 appeal. The appellant shall provide security for costs satisfactory to the court. Any party  
29 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional  
30 costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of  
31 the party requesting same, a copy of such record. In the event the complete record is not filed  
32 with the court within the time provided for in this section, the appellant may apply to the court to  
33 have the case docketed, and the court shall order such record filed.

34 (e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of  
35 error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be  
36 disregarded, but the court may consider and decide errors which are not assigned or argued. The  
37 court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by  
38 agreement of the parties, shall not be held sooner than ~~ten~~ 10 days after the filing of the petition,  
39 and notice of such date and time shall be forthwith given to the agency.

40 (f) The review shall be conducted by the court without a jury and shall be upon the record  
41 made before the agency, except that in cases of alleged irregularities in procedure before the  
42 agency, not shown in the record, testimony thereon may be taken before the court. The court may  
43 hear oral arguments and require written briefs.

44 (g) The court may affirm the order or decision of the agency or remand the case for further  
45 proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the  
46 substantial rights of the petitioner or petitioners have been prejudiced because the administrative  
47 findings, inferences, conclusions, decision, or order are:

48 (1) In violation of constitutional or statutory provisions; or

49 (2) In excess of the statutory authority or jurisdiction of the agency; or

50 (3) Made upon unlawful procedures; or

51 (4) Affected by other error of law; or

52 (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole  
53 record; or

54 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
55 exercise of discretion.

56 (h) The judgment of the circuit court shall be final unless reversed, vacated, or modified  
57 on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of  
58 ~~section one, article six of this chapter~~ §29A-6-1 et seq. of this code.

## **ARTICLE 6. APPEALS.**

### **§29A-6-1. Supreme court of appeals.**

1 Any party adversely affected by the final judgment of the circuit court under this chapter  
2 may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction  
3 is hereby conferred upon such court to hear and entertain such appeals upon application made  
4 therefor in the manner and within the time provided by law for civil appeals generally: Provided,  
5 That appeal of a final order, decision, or judgment of the West Virginia Intermediate Court of  
6 Appeals must comply with the requirements of §51-11-1 et seq. of this code.

## **CHAPTER 51. COURTS AND THEIR OFFICERS.**

### **ARTICLE 2A. FAMILY COURTS.**

**§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit courts.**

1           (a) Notwithstanding any provision of this code to the contrary, an appeal of a final order  
2 by a family court, entered after June 30, 2019, must be made to the West Virginia Intermediate  
3 Court of Appeals pursuant to §51-11-1 et seq. of this code.

4           (b) Notwithstanding any provision of this code to the contrary, a circuit court has no  
5 jurisdiction to review a final order by a family court, entered after June 30, 2019, if review of the  
6 final order is under the jurisdiction of the West Virginia Intermediate Court of Appeals, as provided  
7 in §51-11-5 of this code

8           (c) Upon the sunset of the West Virginia Intermediate Court of Appeals, pursuant to  
9 §51-11-14 of this code, the provisions of this section are of no force and effect.

**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 judges of the several circuit courts,  
3 the judges of the West Virginia Intermediate Court of Appeals, and justices of the Supreme Court  
4 of Appeals. For purposes of this article, the terms do not mean, refer to or include family court  
5 judges.

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

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

14 (d) "Board" means the Consolidated Public Retirement Board created pursuant to  
15 §5-10D-1 *et seq.* of this code.

16 (e) "Final average salary" means the average of the highest ~~thirty-six~~ 36 consecutive  
17 months' compensation received by the member as a judge of any court of record of this state.

18 (f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
19 amended.

20 (g) "Member" means a judge participating in this system.

21 (h) "Plan year" means the ~~twelve~~ 12 month period commencing on July 1 of any  
22 designated year and ending the following June 30.

23 (i) "Required beginning date" means April 1 of the calendar year following the later of: (i)  
24 The calendar year in which the member attains age 70 ~~4/2~~ one-half; or (ii) The calendar year in  
25 which the member retires or otherwise separates from covered employment.

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

**ARTICLE 11. THE WEST VIRGINIA APPELLATE REVIEW REORGANIZATION ACT**  
**OF 2018.**

**§51-11-1. Short title.**

1 This article is known and may be cited as "The West Virginia Appellate Review  
2 Reorganization Act of 2018".

**§51-11-2. Findings.**

1           The Legislature finds that:

2           (1) Section 1, Article VIII of the Constitution of West Virginia explicitly recognizes the power  
3 of the Legislature to establish an intermediate court of appeals;

4           (2) Section 6, Article VIII of the Constitution of West Virginia acknowledges that appellate  
5 jurisdiction “may be conferred by law exclusively upon an intermediate appellate court” and  
6 numerous additional references to the potential creation of an intermediate appellate court by the  
7 Legislature appear throughout the Constitution; and

8           (3) Section 3, Article VIII of the Constitution of West Virginia grants the West Virginia  
9 Supreme Court of Appeals supervisory control over all intermediate appellate courts in the state,  
10 including the power to promulgate rules for the procedures of an intermediate appellate court  
11 created by statute. The same constitutional provisions name the chief justice of the Supreme  
12 Court of Appeals the “administrative head” of such courts, empowering the chief justice to  
13 exercise supervisory control over any potential intermediate court of appeals.

**§51-11-3. Definitions.**

1           For the purpose of this article:

2           (1) “Circuit court” means a circuit court of this state, as provided in §51-2-1 of this code.

3           (2) “Clerk” means the Clerk of the West Virginia Supreme Court of Appeals, as provided  
4 in §51-1-11 of this code.

5           (3) “Intermediate Court of Appeals” means the West Virginia Intermediate Court of  
6 Appeals created by this article.

7           (4) “Judge” means an individual appointed to serve as a judge for the West Virginia  
8 Intermediate Court of Appeals, pursuant to this article.

9           (5) “Supreme Court of Appeals” means the West Virginia Supreme Court of Appeals.

**§51-11-4. West Virginia Intermediate Court of Appeals created; geographical districts.**

1           (a) In accordance with Section 1, Article VIII of the Constitution of West Virginia, the West  
2 Virginia Intermediate Court of Appeals is hereby created. The court shall be established and

3 operable on or before July 1, 2019.

4 (b) The West Virginia Intermediate Court of Appeals is composed of two geographical  
5 districts: The West Virginia Intermediate Court of Appeals for the Northern District and the West  
6 Virginia Intermediate Court of Appeals for the Southern District. Each district has jurisdiction over  
7 appeals of final decisions, judgments, or orders entered within the district's designated counties,  
8 as follows:

9 (1) The West Virginia Intermediate Court of Appeals for the Northern District has  
10 jurisdiction over appeals of decisions, judgments, or orders entered within the following counties:  
11 Barbour, Berkeley, Braxton, Brooke, Calhoun, Doddridge, Gilmer, Grant, Hampshire, Hancock,  
12 Hardy, Harrison, Jackson, Jefferson, Lewis, Marion, Marshall, Mineral, Monongalia, Morgan,  
13 Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Upshur, Wetzel, Wirt and Wood.

14 (2) The West Virginia Intermediate Court of Appeals for the Southern District has  
15 jurisdiction over appeals of decisions, judgments, or orders entered within the following counties:  
16 Boone, Cabell, Clay, Fayette, Greenbrier, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer,  
17 Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane,  
18 Summers, Wayne, Webster, and Wyoming.

19 (c) Each district of the West Virginia Intermediate Court of Appeals shall convene, conduct  
20 proceedings and issue decisions, rulings and opinions of the court in panels comprised of three  
21 judges.

22 (d) The proceedings of the West Virginia Intermediate Court of Appeals may take place in  
23 any location geographically located within the district the court serves that is convenient to  
24 litigants, in a facility provided by the Clerk, pursuant to §51-11-9 of this code.

**§51-11-5. Jurisdiction; limitations.**

1 (a) The West Virginia Intermediate Court of Appeals has no original jurisdiction.

2           (b) Unless specifically provided otherwise in this article, appeals of the following matters  
3 shall be made to the West Virginia Intermediate Court of Appeals, which has appellate jurisdiction  
4 over those matters:

5           (1) Final judgments or orders of a circuit court in a civil case, entered after June 30, 2019;

6           (2) Final judgments or orders of a family court, entered after June 30, 2019;

7           (3) Final judgments, orders, or decisions of an agency or an administrative law judge  
8 entered after June 30, 2019, heretofore appealable to the circuit court of Kanawha County  
9 pursuant to §29A-5-4 or any other provision of this code;

10           (4) Final judgments, orders, or determinations of the Office of Judges pursuant to §23-5-1  
11 et seq. of this code, entered after June 30, 2019; and

12           (5) Final judgments or orders of a circuit court concerning guardianship or conservatorship  
13 matters, pursuant to §44A-1-1 et seq. of this code.

14           (c) The West Virginia Intermediate Court of Appeals does not have appellate jurisdiction  
15 over the following matters:

16           (1) Judgments or final orders issued in any criminal proceeding in this state;

17           (2) Judgments or final orders issued in any juvenile proceeding pursuant to §49-4-701 et  
18 seq. of this code;

19           (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to  
20 §49-4-601 et seq. of this code;

21           (4) Orders of commitment, pursuant to §27-5-1 et seq. of this code;

22           (5) Final decisions of the Public Service Commission, pursuant to §24-5-1 of this code;

23           (6) Judgments or final orders issued in a civil action challenging election practices or  
24 procedures, including, but not limited to, actions challenging election results, actions challenging  
25 or asserting a candidate's eligibility to run for office, and actions asserting an individual's right to  
26 vote;

27           (7) Interlocutory appeals;

28 (8) Certified questions of law, as provided in §58-5-2 of this code; and

29 (9) Extraordinary remedies, as provided in Chapter 53 of this code.

**§51-11-6. Qualifications of judges.**

1 A person must meet the following eligibility criteria to serve as a judge of the West Virginia

2 Intermediate Court of Appeals:

3 (1) The person must be a member, in good standing, of the West Virginia State Bar;

4 (2) The person must be admitted to practice law in the State of West Virginia for 10 years  
5 prior to appointment to the West Virginia Intermediate Court of Appeals;

6 (3) The person must be a resident of the State of West Virginia for five years prior to  
7 appointment to the West Virginia Intermediate Court of Appeals;

8 (4) The person must be a resident of the district of the West Virginia Intermediate Court of  
9 Appeals in which he or she serves; and

10 (5) The person must not be engaged in the practice of law.

**§51-11-7. Appointment of Judges; procedure; term of service.**

1 (a) Each district of the West Virginia Intermediate Court of Appeals shall be comprised of  
2 three judges, each appointed to serve staggered judicial terms, as provided in subsection (b) of  
3 this section. No two judges may be residents of the same county or of the same state senatorial  
4 district, as those districts are provided in §1-2-1 of this code at the time of a judge's appointment.

5 (b) The procedure for the appointment of a judge to the West Virginia Intermediate Court  
6 of Appeals is as follows:

7 (1) For the initial nomination of judges following the creation of the West Virginia  
8 Intermediate Court of Appeals, the Judicial Vacancy Advisory Commission shall compile and  
9 certify a list to the Governor of the eight most qualified persons to serve as judge for each district  
10 of the West Virginia Intermediate Court of Appeals no later than January 1, 2019: *Provided, That*  
11 no more than three candidates on the list may reside in the same county or in the same state  
12 senatorial district, as those districts are provided in §1-2-1 of this code at the time of a candidate's

13 inclusion on the list: *Provided, however,* That each person on the list must meet the requirements  
14 of §51-11-6 of this code. After the initial appointment of judges to the West Virginia Intermediate  
15 Court of Appeals, the Judicial Vacancy Advisory Commission shall assist the Governor in filling  
16 any vacancy arising upon the expiration of a judge's term, in the manner required by §3-10-3a of  
17 this code.

18 (2) The Governor shall appoint, with the advice and consent of the West Virginia Senate,  
19 an appropriate number of candidates to fill vacancies in the West Virginia Intermediate Court of  
20 Appeals. The Governor shall make his or her nominations without regard to political partisanship  
21 or affiliation. No two judicial candidates may be residents of the same county or of the same state  
22 senatorial district, as those districts are provided in §1-2-1 of this code at the time of a candidate's  
23 nomination. The Governor shall nominate candidates for appointment to serve judicial terms  
24 within each district of the West Virginia Intermediate Court of Appeals, as follows:

25 (A) For the initial nomination of judges following the creation of the Intermediate Court of  
26 Appeals, the Governor shall nominate three candidates for each judicial district. Of the three  
27 candidates nominated per district, the Governor shall nominate one candidate to serve a 10 year  
28 term, one candidate to serve an eight year term, and one candidate to serve a six year term. The  
29 terms of each judge initially appointed to the West Virginia Intermediate Court of Appeals shall  
30 commence on July 1, 2019.

31 (B) After the initial appointments described in Paragraph (A) of this subdivision, judges of  
32 the West Virginia Intermediate Court of Appeals will be appointed to fill judicial vacancies in the  
33 West Virginia Intermediate Court of Appeals, as judicial vacancies arise upon the expiration of  
34 judicial terms. After the initial appointments described in Paragraph (A), judges of the  
35 Intermediate Court of Appeals shall be appointed to serve 10 year terms.

36 (c) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a  
37 judge for the West Virginia Intermediate Court of Appeals will take an oath of office, and will  
38 commence his or her duties thereafter.

39 (d) Upon the expiration of his or her term of office, a judge for the West Virginia  
40 Intermediate Court of Appeals may be reappointed through the regular appointment process  
41 provided in this section.

42 (e) The three judges of each district of the West Virginia Intermediate Court of Appeals  
43 shall select a member of the West Virginia Intermediate Court of Appeals to serve as chief judge,  
44 pursuant to rules promulgated by the Supreme Court of Appeals.

45 (f) No person sitting as judge of the West Virginia Intermediate Court of Appeals may retain  
46 his or her position as judge upon becoming a candidate for any elected office, judicial or  
47 nonjudicial.

48 (g) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court  
49 of Appeals has authority to temporarily assign judges to the West Virginia Intermediate Court of  
50 Appeals pursuant to Section 8, Article VIII of the Constitution of West Virginia, in the event that  
51 an appointed judge is temporarily unable to serve on the court.

**§51-11-8. Rules of practice and procedure; fees; deadlines.**

1 (a) Unless specifically provided otherwise in this article, the pleadings, practice, and  
2 procedure in all matters before the West Virginia Intermediate Court of Appeals are governed by  
3 rules promulgated by the Supreme Court of Appeals.

4 (b) *Filing; records.--*

5 All notices of appeal, petitions, documents, and records filed in connection with an appeal  
6 to the West Virginia Intermediate Court of Appeals shall be filed in accordance with rules  
7 promulgated by the Supreme Court of Appeals.

8 (c) *Fees.--*

9 (1) The Clerk of the West Virginia Supreme Court of Appeals may charge a party appealing  
10 to the West Virginia Intermediate Court of Appeals a filing fee in the amount of \$200.

11 (2) All moneys collected pursuant to this subsection shall be deposited in the State Police  
12 Forensic Laboratory Fund, created by §15-2-24d of this code, and all expenditures from the Fund

13 shall comply with the requirements of that section.

14 (d) Appeal Bonds.--

15 A court may order the payment of an appeal bond before an appeal to the Intermediate  
16 Court of Appeals may take effect, in accordance with the requirements of §58-5-14 of this code  
17 and rules promulgated by the Supreme Court of Appeals.

**§51-11-9. Administration of court.**

1 (a) In accordance with Section 3, Article VIII of the West Virginia Constitution, the West  
2 Virginia Intermediate Court of Appeals is subject to the administrative control, supervision, and  
3 oversight of the West Virginia Supreme Court of Appeals.

4 (b) Filing; records.— Appeals to the West Virginia Intermediate Court of Appeals shall be  
5 filed with the Clerk of the West Virginia Supreme Court of Appeals. All appeals and other related  
6 documents shall be filed by electronic means, when available.

7 (c) Facilities.— The West Virginia Intermediate Court of Appeals shall hear arguments  
8 throughout the court's respective districts in locations that are convenient to litigants. The  
9 Administrative Director of the West Virginia Supreme Court of Appeals shall arrange for the  
10 availability of suitable public facilities where proceedings of the West Virginia Intermediate Court  
11 of Appeals will take place. Facilities for proceedings may include, but are not limited to,  
12 courtrooms in county courthouses, courtrooms in federal courthouses, county commission rooms  
13 in county courthouses, rooms or facilities at institutions of higher education, and other suitable  
14 spaces in federal, state, county, or municipal buildings throughout the state.

15 (d) Oral Argument.—The West Virginia Intermediate Court of Appeals has discretion to  
16 determine whether appellate review of a case before the court requires oral argument.

17 (e) Staff.—The Administrative Director of the West Virginia Supreme Court of Appeals  
18 shall provide administrative support and may employ additional staff, as necessary, for the  
19 efficient operation of the West Virginia Intermediate Court of Appeals. The budget for the payment

20 of compensation and expenses of West Virginia Intermediate Court of Appeals staff shall be  
21 included in the appropriation for the Supreme Court of Appeals.

**§51-11-10. Reporting of judicial information.**

1 (a) The chief justice of each district of the West Virginia Intermediate Court of Appeals  
2 shall prepare a biannual report, available to the public, that contains the following information, as  
3 it pertains to the justice's district:

4 (1) The number of motions that have been pending before the court for more than three  
5 months and the name and case number assigned to each case in which such motion has been  
6 pending; and

7 (2) The number of cases that have not been disposed of within six months after filing and  
8 the name and case number assigned to each case.

9 (b) The chief justice of each district of the West Virginia Intermediate Court of Appeals  
10 shall submit and certify the list required by this section to the Supreme Court of Appeals and Joint  
11 Committee on Government and Finance on a biannual basis.

**§51-11-11. Written opinions; precedential effect.**

1 (a) The West Virginia Intermediate Court of Appeals is a court of record and shall issue,  
2 as appropriate in each appeal, written opinions, orders, and decisions.

3 (b) The written opinion, orders, and decisions of the West Virginia Intermediate Court of  
4 Appeals are binding precedent for the decisions of all circuit courts, family courts, and magistrate  
5 courts that lie within the court's district unless such decision is overruled or modified by the  
6 Supreme Court of Appeals.

**§51-11-12. Discretionary review by Supreme Court of Appeals by petition.**

1 (a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order  
2 or judgment of the West Virginia Intermediate Court of Appeals in accordance with rules  
3 promulgated by the Supreme Court of Appeals.

4 (b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order  
5 or judgment of the West Virginia Intermediate Court of Appeals is stayed pending action of the  
6 Supreme Court of Appeals.

7 (c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal  
8 or certiorari of a decision by the West Virginia Intermediate Court of Appeals.

**§51-11-13. Judicial compensation and benefits; expenses.**

1 (a) The annual salary of a judge of the West Virginia Intermediate Court of Appeals is  
2 \$130,000. The budget for the payment of compensation and expenses of West Virginia  
3 Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court  
4 of Appeals.

5 (b) West Virginia Intermediate Court of Appeals judges and staff shall be reimbursed for  
6 their actual and necessary expenses incurred in the performance of their duties under such  
7 guidelines as may be prescribed by the Administrative Director of the Supreme Court of Appeals.

**§51-11-14. Sunset.**

1 The West Virginia Intermediate Court of Appeals sunsets on July 1, 2029, unless  
2 continued by act of the Legislature.

**CHAPTER 58. APPEAL AND ERROR.**

**ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE AND SUPREME COURT**  
**OF APPEALS.**

**§58-5-1. When appeal lies.**

1 (a) A party to a civil action may appeal to the Supreme Court of Appeals from a final  
2 judgment of any circuit court or from an order of any circuit court constituting a final judgment as  
3 to one or more but fewer than all claims or parties upon an express determination by the circuit  
4 court that there is no just reason for delay and upon an express direction for the entry of judgment  
5 as to such claims or parties: *Provided*, That a party shall appeal a final order or judgment of a

6 circuit court entered after June 30, 2019 to the West Virginia Intermediate Court of Appeals, as  
7 required by §51-11-1 et seq. of this code.

8 (b) As provided in §51-11-12 of this code, a party in interest may petition the Supreme  
9 Court of Appeals for appeal of a final order or judgment of the West Virginia Intermediate Court  
10 of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

11 (c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from  
12 a final judgment of any circuit court in which there has been a conviction or which affirms a  
13 conviction obtained in an inferior court.

14 (d) All appeals pursuant to this section shall be afforded a full and meaningful review, and  
15 an opportunity to be heard, by the West Virginia Supreme Court of Appeals or the West Virginia  
16 Intermediate Court of Appeals, and a written decision on the merits shall be issued, as a matter  
17 of right.