

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### House Bill 4588

FISCAL  
NOTE

BY DELEGATES FOLK, MCGEEHAN AND HOUSEHOLDER

[Introduced February 13, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §29A-6-1 of the Code of West Virginia, 1931, as amended; to amend  
 2 said code by adding thereto a new section, designated §51-2A-24; and to amend said  
 3 code by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-  
 4 4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, and §51-11-9, all relating generally to  
 5 establishing a system of district courts of appeals to serve as an intermediate level of  
 6 appeals in judicial proceedings; making legislative findings; defining the jurisdiction of the  
 7 district courts of appeals and the effect of the courts' decisions; establishing a date for  
 8 operation of the district courts; providing for the transfer of appellate functions; creating  
 9 appellate districts; providing for the assignment of judges; providing for rules of practice  
 10 and procedure to be established through rules of the West Virginia Supreme Court of  
 11 Appeals; providing for administration of the district courts through the Supreme Court;  
 12 changing other statutory provisions for certain specified appeals to district courts of  
 13 appeals in lieu of appeal to the Supreme Court; and requiring biannual reporting of case  
 14 information.

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

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

### **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~~ district court of  
 3 appeals for the appellate district in which the circuit court is assigned and jurisdiction is hereby  
 4 conferred upon such court to hear and entertain such appeals upon application made therefor in  
 5 the manner and within the time provided by ~~law for civil appeals generally~~ rules of the West  
 6 Virginia Supreme Court of Appeals.

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

**ARTICLE 2A. FAMILY COURTS.**

**§51-2A-24. Review by district courts 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 relevant district court of  
3 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 a district court of appeals as provided in §51-11-3 of this  
7 code.

**ARTICLE 11. DISTRICT COURTS OF APPEAL.**

**§51-11-1. Legislative findings.**

1        The Legislature finds that Section 1, Article VIII of the Constitution of West Virginia  
2 explicitly recognizes the power of the Legislature to establish an intermediate court of appeals;  
3 and Section 3, Article VIII of the Constitution of West Virginia grants the West Virginia Supreme  
4 Court of Appeals supervisory control over all intermediate appellate courts in the state, including  
5 the power to promulgate rules for the procedures of an intermediate appellate court created by  
6 statute. The same constitutional provision names the chief justice of the Supreme Court of  
7 Appeals the administrative head of all courts, empowering the chief justice to exercise supervisory  
8 control over any potential intermediate court of appeals.

**§51-11-2. District Courts of Appeals created; assignment of judges; geographical districts.**

1        (a) In accordance with Section 1, Article VIII of the Constitution of West Virginia, the  
2 Legislature hereby establishes a system of district courts to serve as intermediate appellate  
3 courts. These courts shall be known as district courts of appeals.

4        (b) The judicial power of the district courts of appeal is exercised by panels of three judges  
5 drawn from the judges of the circuit courts within the individual appellate districts and assigned

6 on a per appeal, rotating basis. No judge shall be permitted to serve on a panel to review any  
7 matter arising from a case heard or decided by that judge acting as a circuit judge.

8 (c) The state shall be divided into the following appellate districts to consider appeals as  
9 provided by this article from the courts of the circuits designated herein:

10 (1) The first appellate district shall be comprised of the judges from the first and second  
11 judicial circuits and shall have appellate jurisdiction over matters arising from the courts of those  
12 circuits;

13 (2) The second appellate district shall be comprised of the judges from the third, fourth  
14 and fifth judicial circuits and shall have appellate jurisdiction over matters arising from the courts  
15 of those circuits;

16 (3) The third appellate district shall be comprised of the judges from the sixth and twenty-  
17 ninth judicial circuits and shall have appellate jurisdiction over matters arising from the courts of  
18 those circuits;

19 (4) The fourth appellate district shall be comprised of the judges from the seventh, twenty-  
20 fourth, and twenty-fifth judicial circuits and shall have appellate jurisdiction over matters arising  
21 from the courts of those circuits;

22 (5) The fifth appellate district shall be comprised of the judges from the eighth, twenty-  
23 seventh, and thirtieth judicial circuits and shall have appellate jurisdiction over matters arising  
24 from the courts of those circuits;

25 (6) The sixth appellate district shall be comprised of the judges from the tenth and twelfth  
26 judicial circuits and shall have appellate jurisdiction over matters arising from the courts of those  
27 circuits;

28 (7) The seventh appellate district shall be comprised of the judges from the ninth and  
29 thirty-first judicial circuits and shall have appellate jurisdiction over matters arising from the courts  
30 of those circuits;

31 (8) The eighth appellate circuit shall be comprised of the judges from the thirteenth judicial

32 circuit and shall have appellate jurisdiction over matters arising from the courts of that circuit;

33 (9) The ninth appellate district shall be comprised of the judges from the eleventh,  
34 fourteenth, and twenty-eight judicial circuits and shall have appellate jurisdiction over matters  
35 arising from the courts of those circuits;

36 (10) The tenth appellate district shall be comprised of the judges from the fifteenth,  
37 nineteenth, and twenty-sixth judicial circuits and shall have appellate jurisdiction over matters  
38 arising from the courts of those circuits;

39 (11) The eleventh appellate district shall be comprised of the judges from the sixteenth,  
40 seventeenth, and eighteenth judicial circuits and shall have appellate jurisdiction over matters  
41 arising from the courts of those circuits;

42 (12) The twelfth appellate district shall be comprised of the judges from the twentieth,  
43 twenty-first, and twenty-second judicial circuits and shall have appellate jurisdiction over matters  
44 arising from the courts of those circuits; and

45 (13) The thirteenth appellate circuit shall be comprised of the judges from the twenty-third  
46 judicial circuit and shall have appellate jurisdiction over matters arising from the courts of that  
47 circuit.

**§51-11-3. Jurisdiction; limitations.**

1 (a) The West Virginia District Courts of Appeals have no original jurisdiction.

2 (b) Unless specifically provided otherwise in this article, a district court of appeals has  
3 appellate jurisdiction over the following matters:

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

6 (2) Final judgments or orders of a family court within the appellate district, entered after  
7 June 30, 2019;

8           (3) Final judgments or orders, entered after June 30, 2019, of a circuit court within the  
9 appellate district concluding judicial review of a contested case pursuant to §29A-5-4 of this code;  
10 and

11           (4) Final judgments or orders of a circuit court, entered after June 30, 2019, within the  
12 appellate district concerning guardianship or conservatorship matters, pursuant to §44A-1-1 et  
13 seq. of this code.

14           (c) The district courts of appeals shall not have appellate jurisdiction over the following  
15 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.

30           (d) Except as specifically provided in this article, a district court of appeal shall not have  
31 jurisdiction to review any matter that did not arise out of a circuit court or family court within the  
32 district of the court of appeals. In matters where absence, disability, or recusal prevents the  
33 assignment to an appeal panel of three judges from the district, one or more judges from another

34 district may serve by designation under rules to be promulgated by the West Virginia Supreme  
35 Court of Appeals.

**§51-11-4. Rules of practice and procedure; fees; deadlines.**

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

4 (b) Filing; records. — All notices of appeal, petitions, documents, and records filed in  
5 connection with an appeal to a district court of appeals shall be filed in accordance with rules  
6 promulgated by the Supreme Court of Appeals.

7 (c) Fees. — The Clerk of the West Virginia Supreme Court of Appeals may charge a party  
8 appealing to a district court of appeals a filing fee in the amount of \$200.

9 (d) Appeal Bonds. — A court may order the payment of an appeal bond before an appeal  
10 to a district court of appeals may take effect, in accordance with the requirements of §58-5-14 of  
11 this code and rules promulgated by the Supreme Court of Appeals.

**§51-11-5. Administration of court.**

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

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

7 (c) Facilities. — The district courts of appeals shall hear arguments throughout the courts'  
8 respective districts in locations that are convenient to litigants. The Administrative Director of the  
9 West Virginia Supreme Court of Appeals shall arrange for the availability of suitable public  
10 facilities where proceedings of the district courts of appeals will take place. Facilities for  
11 proceedings may include, but are not limited to, courtrooms in county courthouses, courtrooms in

12 federal courthouses, county commission rooms in county courthouses, rooms or facilities at  
13 institutions of higher education, and other suitable spaces in federal, state, county, or municipal  
14 buildings throughout the state.

15 (d) Oral Argument. – Each district court of appeals has the discretion to determine whether  
16 appellate review of a case before the court requires oral argument.

17 (e) Staff. –The Administrative Director of the Courts shall provide administrative support  
18 and may employ additional staff, as necessary, for the efficient operation of the district courts of  
19 appeals. The budget for the payment of compensation and expenses of district court staff shall  
20 be included in the appropriation for the Supreme Court of Appeals.

**§51-11-6. Written opinions; precedential effect.**

1 (a) District courts of appeals are courts of record and shall issue, as appropriate in each  
2 appeal, written opinions, orders, and decisions.

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

**§51-11-7. Reporting of judicial information.**

1 (a) The Administrative Director of the Courts shall prepare a biannual report, available to  
2 the public, that contains the following information for each district court of appeals:

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

6 (2) The number of cases that have not been disposed of within 12 months after filing and  
7 the name and case number assigned to each case.

8 (b) The Administrative Director of the Courts shall submit the report to the Governor and  
9 to the Legislature's Joint Committee on Government and Finance on a biannual basis.



**§51-11-8. 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 a district court of appeals in accordance with rules promulgated by the Supreme  
3 Court of Appeals.

4           (b) The Supreme Court of Appeals has discretion to grant or deny the petition for writ of  
5 certiorari or appeal of a decision by a district court of appeals.

**§51-11-9. Implementation.**

1           The district courts of appeals established in this article shall become operable on or before  
2 July 1, 2019.

NOTE: The purpose of this bill is to establish district courts of appeals to serve as an intermediate level of appeals in judicial matters.

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