

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 275**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on Judiciary; reported

on February 18, 2021]

1 A BILL to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new section, designated §16-2D-16a; to amend said code  
3 by adding thereto a new section, designated §23-1-1h; to amend and reenact §23-5-1,  
4 §23-5-3, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13,  
5 §23-5-15, and §23-5-16 of said code; to amend said code by adding thereto twelve new  
6 sections, designated §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-  
7 5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, and §23-5-16a; to amend and reenact  
8 §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend said code  
9 by adding thereto a new section, designated §51-2A-24; to amend and reenact §51-9-1a  
10 of said code; to amend said code by adding thereto a new article, designated §51-11-1,  
11 §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-  
12 11-10, §51-11-11, §51-11-12, §51-11-13, and §51-11-14; and to amend and reenact §58-  
13 5-1 of said code, all relating generally to creating an Intermediate Court of Appeals;  
14 defining terms; providing that the Judicial Vacancy Advisory Commission assist initial and  
15 subsequent vacancies on the Intermediate Court of Appeals; clarifying meaning of quorum  
16 for Judicial Vacancy Advisory Commission; transferring jurisdiction over appeals of  
17 decisions of the Health Care Authority in certificate-of-need reviews from the Workers'  
18 Compensation Office of Administrative Law Judges and Circuit Court of Kanawha County  
19 to the Intermediate Court of Appeals; establishing procedures and time frames for transfer  
20 or disposition of unresolved appeals pending with the Office of Judges; transferring  
21 jurisdiction over all workers' compensation claims and transferring all powers and duties  
22 related thereto from the Office of Judges to the Workers' Compensation Board of Review  
23 by a date certain; conferring appellate jurisdiction over Office of Judges decisions and  
24 Board of Review decisions to the Intermediate Court of Appeals after a date certain;  
25 sunseting certain provisions relating to duties and procedures of the Office of Judges with  
26 respect to workers' compensation claims; modifying duties and procedures of Board of

27 Review with respect to workers' compensation claims; terminating the Office of Judges by  
28 a date certain; authorizing the Board of Review to employ hearing examiners and other  
29 necessary personnel; establishing qualifications for hearing examiners hired by the Board  
30 of Review; setting forth powers of the Board of Review relating to workers' compensation  
31 claims; providing for reports requested by the Insurance Commissioner to be made by the  
32 chair of the Board of Review; providing for oversight and administrative authority of the  
33 Insurance Commissioner over the Board of Review; authorizing the Board of Review to  
34 promulgate procedural rules; granting due consideration and an interview to employees  
35 of the Office of Judges who apply for positions with the Board of Review on or before a  
36 date certain and directing the Board of Review that such consideration and interview prior  
37 to considering any other applicant; authorizing the Board of Review to hire attorneys as  
38 hearing examiners; requiring that all orders and decisions of the Board of Review  
39 pertaining to an objection be issued and signed by a single member of the Board of  
40 Review, with certain exceptions; permitting the board of review member assigned to an  
41 objection to delegate certain duties to a hearing examiner; establishing the administrative  
42 powers and duties of the Board of Review; increasing the limit on the annual salary of a  
43 Board of Review member; authorizing the board of review to promulgate rules of practice  
44 and procedure, and establishing a process therefor; establishing duties of the chair of the  
45 Board of Review; providing that the administrative expenses of the Board of Review shall  
46 be included in annual budget of the Insurance Commissioner; providing that petitions for  
47 review of final decisions of the Workers' Compensation Board of Review must be made to  
48 the Intermediate Court of Appeals; establishing certain procedures and other requirements  
49 for appeals of Board of Review decisions made to the Intermediate Court of Appeals;  
50 providing that the Supreme Court of Appeals has discretion to review final decisions of the  
51 Intermediate Court of Appeals in workers' compensation claims; requiring that appeal of  
52 contested cases under the State Administrative Procedures Act be made to the

53 Intermediate Court of Appeals; transferring jurisdiction to review family court final orders  
54 from circuit courts to the Intermediate Court of Appeals; creating an Intermediate Court of  
55 Appeals in West Virginia to be established and operable by a date certain; providing a  
56 short title; providing legislative findings; defining terms; establishing and defining two  
57 districts of the Intermediate Court of Appeals; requiring each district of the Intermediate  
58 Court of Appeals to conduct proceedings as a three-judge panel; authorizing jurisdiction  
59 of the Intermediate Court of Appeals over certain matters; providing for the location of  
60 proceedings of the Intermediate Court of Appeals; excluding certain matters from  
61 jurisdiction of the Intermediate Court of Appeals; providing that parties to an appeal in the  
62 Intermediate Court of Appeals shall have an opportunity for a full and meaningful review  
63 on the record of the lower tribunal and an opportunity to be heard; establishing a procedure  
64 by which parties to an appeal in the Intermediate Court of Appeals may file a motion for  
65 direct review of an appeal by the Supreme Court of Appeals in certain extraordinary  
66 circumstances; providing eligibility criteria for judges of the Intermediate Court of Appeals;  
67 providing a process for initial appointment of judges to the Intermediate Court of Appeals  
68 to fill vacancies in the Intermediate Court of Appeals upon its creation; providing for an  
69 initial election of judges to the Intermediate Court of Appeals for staggered terms;  
70 providing for the regular election of a judge to each district of the Intermediate Court of  
71 Appeals upon the expiration of a sitting judge's term; establishing procedures for the filling  
72 of vacancies in unexpired judicial terms by appointment and in certain circumstances,  
73 subsequent election; providing that the Governor's judicial appointments must be made  
74 from a list of candidates submitted by the Judicial Vacancy Advisory Commission and are  
75 subject to advice and consent of the Senate; providing that judges of the Intermediate  
76 Court of Appeals may not be candidates for any elected public office during the judicial  
77 term; establishing certain requirements for the filing of appeals to the Intermediate Court  
78 of Appeals; clarifying that an appeal bond may be required before appeal to the

79 Intermediate Court of Appeals may take effect; authorizing filing fees; providing for deposit  
80 of filing fees in a special revenue account to fund the State Police Forensic Laboratory;  
81 recognizing the constitutional authority of the Supreme Court of Appeals to exercise  
82 administrative authority over the Intermediate Court of Appeals; providing that procedures  
83 and operations of the Intermediate Court of Appeals shall comply with rules promulgated  
84 by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of  
85 Appeals and related filings be filed with the Clerk of the Supreme Court of Appeals;  
86 providing that Intermediate Court of Appeals proceedings shall take place in publicly  
87 available facilities as arranged by the Administrative Director of the Supreme Court of  
88 Appeals; granting the Intermediate Court of Appeals discretion to require oral argument;  
89 authorizing the Administrative Director of the Supreme Court of Appeals to employ staff  
90 for Intermediate Court of Appeals operations; providing that the budget for Intermediate  
91 Court of Appeals operations shall be included in the appropriation for the Supreme Court  
92 of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding  
93 precedent for lower courts; providing that the Intermediate Court of Appeals shall issue  
94 written decisions as a matter of right; providing for discretionary review of Intermediate  
95 Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary,  
96 retirement benefits, and reimbursement of expenses for judges of the Intermediate Court  
97 of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals  
98 staff; providing internal effective dates; removing obsolete language from the code; and  
99 making technical corrections to the code.

*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 of  
3 the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the  
4 formal announcement of the justice or judge by letter to the Governor of an upcoming resignation  
5 or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme  
6 Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of  
7 a family court. The Governor shall make the appointment to fill the vacancy, as required by this  
8 article, within 30 days following the receipt of the list of qualified candidates or within 30 days  
9 following the vacancy, whichever occurs later.

10           (b) The commission shall consist of eight appointed members appointed by the Governor  
11 for six-year terms, including four public members and four attorney members. The Governor shall  
12 appoint attorney members from a list of nominees provided by the Board of Governors of the West  
13 Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more  
14 than 20 nor less than 10 of the most qualified attorneys for appointment to the commission  
15 whenever there is a vacancy in the membership of the commission reserved for attorney  
16 members. The commission shall choose one of its appointed members to serve as chair for a  
17 three-year term. No more than four appointed members of the commission shall belong to the  
18 same political party. All members of the commission shall be citizens of this state. Public members  
19 of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

20           (c) (1) No more than two appointed members of the commission may be residents of the  
21 same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment:  
22 *Provided*, That the members appointed to, and serving on, the commission prior to the enactment  
23 of this subdivision are not disqualified from service for the remainder of the member's term based  
24 on the residency requirements of this subdivision.

25           (2) No more than three appointed members of the commission may be residents of the  
26 same congressional district: *Provided*, That, if the number of congressional districts in the state

27 is reduced to two, then no more than four appointed members of the commission may be residents  
28 of the same congressional district: *Provided, however,* That the members appointed to, and  
29 serving on, the commission prior to the date on which the number of congressional districts in the  
30 state is reduced to two are not disqualified from service for the remainder of the member's term  
31 based on the residency requirements of this subdivision.

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

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

42 (f) The commission shall adopt written policies that formalize and standardize all operating  
43 procedures and ethical practices of its members, including, but not limited to, procedures for  
44 training commission members, publishing notice of judicial vacancies, recruiting qualified  
45 individuals for consideration by the commission, receiving applications from qualified individuals,  
46 notifying the public of judicial vacancies, notifying state or local groups and organizations of  
47 judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the  
48 commission are not subject to the provisions of chapter 29A of this code but shall be filed with the  
49 Secretary of State.

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

51 (h) All organizational meetings of the commission shall be open to the public and subject  
52 to the requirements of §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial

53 meeting to discuss the commission's procedures and requirements for a judicial vacancy. The  
54 commission shall hold at least one organizational meeting upon the occurrence of a judicial  
55 vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

56 (i) The commission shall make available to the public copies of any applications and any  
57 letters of recommendation written on behalf of any applicants. All other documents or materials  
58 created or received by the commission shall be confidential and exempt from the provisions of  
59 chapter 29B of this code, except for the list of the most qualified persons or accompanying  
60 memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this  
61 section, which shall be available for public inspection, and the written policies required to be filed  
62 with the Secretary of State in accordance with subsection (f) of this section.

63 (j) The commission shall submit its list of the most qualified persons to the Governor in  
64 alphabetical order. A memorandum may accompany the list of the most qualified persons and  
65 state facts concerning each of the persons listed. The commission shall make copies of any list  
66 of the most qualified persons and accompanying memoranda it submits to the Governor available  
67 for public inspection.

## CHAPTER 16. PUBLIC HEALTH.

### ARTICLE 2D. CERTIFICATE OF NEED.

#### **§16-2D-16a. Transfer of appellate jurisdiction to Intermediate Court of Appeals.**

1 (a) Notwithstanding any other provision of this article, effective July 1, 2022:

2 (1) The Office of Judges may not review a decision of the authority, issued after June 30,  
3 2022, in a certificate of need review. On or before September 30, 2022, the Office of Judges shall  
4 issue a final decision in, or otherwise dispose of, each and every appeal, pending before the  
5 Office of Judges, of a decision by the authority in a certificate of need review.

6 (2) An appeal of a final decision in a certificate of need review, issued by the authority  
7 after June 30, 2022, shall be made to the West Virginia Intermediate Court of Appeals, pursuant



8 to the provisions governing the judicial review of contested administrative cases in §29A-5-1 et  
9 seq. of this code.

10 (b) If the Office of Judges does not issue a final decision or otherwise dispose of any  
11 appeal of a decision of the authority in a certificate of need review on or before September 30,  
12 2022, the appeal shall be transferred to the Intermediate Court of Appeals, as provided in §29A-  
13 5-4 of this code. For any appeal transferred pursuant to this subsection, the Intermediate Court  
14 of Appeals shall adopt any existing records of evidence and proceedings in the Office of Judges,  
15 conduct further proceedings as it considers necessary, and issue a final decision or otherwise  
16 dispose of the case pursuant to the provisions governing the judicial review of contested  
17 administrative cases in §29A-5-1 et seq. of this code.

## **CHAPTER 23. WORKERS' COMPENSATION.**

### **ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.**

#### **§23-1-1h. Powers and duties of Office of Judges transferred to Board of Review; definition of certain terms effective July 1, 2022.**

1 (a) Notwithstanding any other provision of this code, with regard to an objection, protest,  
2 or any other decision issued after June 30, 2022, all powers and duties of the Workers'  
3 Compensation Office of Judges, as provided in this chapter, shall be transferred to the Workers'  
4 Compensation Board of Review.

5 (b) Notwithstanding any other provision of this code, the West Virginia Intermediate Court  
6 of Appeals has exclusive appellate jurisdiction over the following matters:

7 (1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its  
8 termination; and

9 (2) Decisions of the Workers' Compensation Board of Review, issued after June 30, 2022,  
10 as provided in §23-5-8a and §51-11-1 et seq. of this code.

11 (c) Unless the context clearly indicates a different meaning, effective July 1, 2022, the  
12 following terms shall have the following meanings for the purposes of this chapter, except when  
13 used in §23-5-1 et seq. of this code:

14 (1) “Administrative law judge” means a member of the Workers’ Compensation Board of  
15 Review, or a hearing examiner designated by the Board of Review as authorized in §23-5-1 et  
16 seq. of this code;

17 (2) “Office of Judges” means the “Workers’ Compensation Board of Review”; and

18 (3) “Workers’ Compensation Board of Review” or “Board of Review” when used in  
19 reference to an appeal of a Board of Review decision, means the West Virginia Intermediate Court  
20 of Appeals, created by §51-11-1 et seq. of this code.

**ARTICLE 5. REVIEW.**

**§23-5-1. Notice by commission or self-insured employer of decision; procedures on  
claims; objections and hearing; effective until June 30, 2022.**

21 (a) The Insurance Commissioner, private carriers, and self-insured employers may  
22 determine all questions within their jurisdiction. In matters arising under §23-2C-8(c) of this code,  
23 and under §23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private  
24 carriers and self-insured employers shall promptly review and investigate all claims. The parties  
25 to a claim are the claimant and, if applicable, the claimant's dependents, and the employer, and  
26 with respect to claims involving funds created in §23-2C-1 et seq. of this code for which he or she  
27 has been designated the administrator, the Insurance Commissioner. In claims in which the  
28 employer had coverage on the date of the injury or last exposure, the employer's carrier has sole  
29 authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard  
30 to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-  
31 insured employer, whichever is applicable, shall promptly send the decision to all parties,  
32 including the basis of its decision. As soon as practicable after receipt of any occupational  
33 pneumoconiosis or occupational disease claim, or any injury claim in which temporary total

34 benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer,  
35 whichever is applicable, shall send the claimant a brochure approved by the Insurance  
36 Commissioner setting forth the claims process.

37 (b) (1) Except with regard to interlocutory matters, upon making any decision, upon making  
38 or refusing to make any award, or upon making any modification or change with respect to former  
39 findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private  
40 carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties  
41 to the claim of its action. The notice shall state the time allowed for filing a protest to the finding.  
42 The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is  
43 applicable, is final unless the decision is protested within 60 days after the receipt of such decision  
44 unless a protest is filed within the 60-day period, the finding or action is final. This time limitation  
45 is a condition of the right to litigate the finding or action and hence jurisdictional. Any protest shall  
46 be filed with the Office of Judges with a copy served upon the parties to the claim, and other  
47 parties in accordance with the procedures set forth in §23-8-1 *et seq.* and §23-9-1 *et seq.* of this  
48 code. An employer may protest decisions incorporating findings made by the Occupational  
49 Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator  
50 of claims involving funds created in §23-2C-1 *et seq.* of this code or decisions entered pursuant  
51 to §23-4-7A(c)(1) of this code.

52 (2) (A) With respect to every application for benefits filed on or after July 1, 2008, in which  
53 a decision to deny benefits is protested and the matter involves an issue as to whether the  
54 application was properly filed as a new claim or a reopening of a previous claim, the party that  
55 denied the application shall begin to make conditional payment of benefits and must promptly  
56 give notice to the Office of Judges that another identifiable person may be liable. The Office of  
57 Judges shall promptly order the appropriate persons be joined as parties to the proceeding:  
58 *Provided*, That at any time during a proceeding in which conditional payments are being made in  
59 accordance with the provisions of this subsection, the Office of Judges may, pending final

60 determination of the person properly liable for payment of the claim, order that such conditional  
61 payments of benefits be paid by another party.

62 (B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not  
63 be deemed an admission or conclusive finding of liability of the person making such payments.  
64 When the administrative law judge has made a determination as to the party properly liable for  
65 payment of the claim, he or she shall direct any monetary adjustment or reimbursement between  
66 or among the Insurance Commissioner, private carriers, and self-insured employers as is  
67 necessary.

68 (c) The Office of Judges may direct that:

69 (1) An application for benefits be designated as a petition to reopen, effective as of the  
70 original date of filing;

71 (2) A petition to reopen be designated as an application for benefits, effective as of the  
72 original date of filing; or

73 (3) An application for benefits or petition to reopen filed with the Insurance Commissioner,  
74 private carrier, or self-insured employer be designated as an application or petition to reopen filed  
75 with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the  
76 original date of filing.

77 (d) Where an employer protests a written decision entered pursuant to a finding of the  
78 Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance  
79 Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or  
80 decisions entered pursuant to §23-4-7A(c)(1) of this code, and the employer does not prevail in  
81 its protest, and in the event the claimant is required to attend a hearing by subpoena or agreement  
82 of counsel, or at the express direction of the Office of Judges, then the claimant, in addition to  
83 reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the  
84 claimant in attending the hearing.

85 (e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is

86 applicable, may amend, correct, or set aside any order or decision on any issue entered by it,  
87 which, at the time of issuance or any time after that, is discovered to be defective or clearly  
88 erroneous or the result of mistake, clerical error, or fraud, or with respect to any order or decision  
89 denying benefits, otherwise not supported by the evidence, but any protest filed prior to entry of  
90 the amended decision is a protest from the amended decision unless and until the administrative  
91 law judge before whom the matter is pending enters an order dismissing the protest as moot in  
92 light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection  
93 continues until the expiration of two years from the date of a decision to which the amendment is  
94 made unless the decision is sooner affected by an action of an administrative law judge or other  
95 judicial officer or body: *Provided*, That corrective actions in the case of fraud may be taken at any  
96 time.

97 (f) This section is of no force and effect after June 30, 2022.

**§23-5-1a. Notice by commission or self-insured employer of decision; procedures on  
claims; objections and hearing; effective July 1, 2022.**

1 (a) The Insurance Commissioner, private carriers, and self-insured employers may  
2 determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under  
3 §23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private carriers,  
4 and self-insured employers, whichever is applicable, shall promptly review and investigate all  
5 claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, the  
6 employer, and, with respect to claims involving funds created in §23-2C-1 et seq. of this code for  
7 which he or she has been designated the administrator, the Insurance Commissioner. In claims  
8 in which the employer had coverage on the date of the injury or last exposure, the employer's  
9 carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the  
10 claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private  
11 carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all  
12 parties, including the basis of its decision. As soon as practicable after receipt of any occupational

13 pneumoconiosis or occupational disease claim or any injury claim in which temporary total  
14 benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer,  
15 whichever is applicable, shall send the claimant a brochure approved by the Insurance  
16 Commissioner setting forth the claims process.

17 (b) (1) Except with regard to interlocutory matters, upon making any decision, upon making  
18 or refusing to make any award, or upon making any modification or change with respect to former  
19 findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private  
20 carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties  
21 to the claim of its action. The notice shall state the time allowed for filing an objection to the finding.  
22 The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is  
23 applicable, is final unless an objection to the decision is properly filed within 60 days after the  
24 receipt of such decision. This time limitation is a condition of the right to litigate the finding or  
25 action and hence jurisdictional. Any objection shall be filed with the Workers' Compensation Board  
26 of Review, as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties  
27 to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and  
28 §23-5-9a of this code. An employer may file an objection to a decision incorporating findings made  
29 by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner  
30 acting as administrator of claims involving funds created in §23-2C-1 et seq. of this code, or  
31 decisions entered pursuant to §23-4-7a(c)(1) of this code.

32 (2) (A) With respect to every application for benefits in which an objection to a decision to  
33 deny benefits is filed and the matter involves an issue as to whether the application was properly  
34 filed as a new claim or a reopening of a previous claim, the party that denied the application shall  
35 begin to make conditional payment of benefits and must promptly give notice to the Workers'  
36 Compensation Board of Review that another identifiable person may be liable. The Workers'  
37 Compensation Board of Review shall promptly order the appropriate persons be joined as parties  
38 to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments

39 are being made in accordance with the provisions of this subsection, the Workers' Compensation  
40 Board of Review may, pending final determination of the person properly liable for payment of the  
41 claim, order that such conditional payments of benefits be paid by another party.

42 (B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not  
43 be deemed an admission or conclusive finding of liability of the person making such payments.  
44 When the Workers' Compensation Board of Review has made a determination as to the party  
45 properly liable for payment of the claim, the Board of Review shall direct any monetary adjustment  
46 or reimbursement between or among the Insurance Commissioner, private carriers, and  
47 self-insured employers as is necessary.

48 (c) The member of the Workers' Compensation Board of Review assigned to an objection,  
49 as provided in §23-5-9a(b) of this code, may direct that:

50 (1) An application for benefits be designated as a petition to reopen, effective as of the  
51 original date of filing;

52 (2) A petition to reopen be designated as an application for benefits, effective as of the  
53 original date of filing; or

54 (3) An application for benefits or petition to reopen filed with the Insurance Commissioner,  
55 private carrier, or self-insured employer be designated as an application or petition to reopen filed  
56 with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the  
57 original date of filing.

58 (d) Where an employer files an objection to a written decision entered pursuant to a finding  
59 of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance  
60 Commissioner acting as the administrator of a fund created in §23-2C-1 et seq. of this code, or  
61 decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in  
62 its objection, and in the event the claimant is required to attend a hearing by subpoena, or  
63 agreement of counsel, or at the express direction of Workers' Compensation Board of Review,

64 then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for  
65 loss of wages incurred by the claimant in attending the hearing.

66 (e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is  
67 applicable, may amend, correct, or set aside any order or decision on any issue entered by it  
68 which, at the time of issuance or any time after that, is discovered to be defective, or clearly  
69 erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision  
70 denying benefits, otherwise not supported by the evidence: *Provided*, That any objection filed  
71 prior to entry of the amended decision is an objection to the amended decision unless and until  
72 the Workers' Compensation Board of Review enters an order dismissing the objection as moot in  
73 light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection  
74 continues until the expiration of two years from the date of a decision to which the amendment is  
75 made unless the decision is sooner affected by an action of the Workers' Compensation Board of  
76 Review or a judicial officer or body: *Provided, however*, That corrective actions in the case of  
77 fraud may be taken at any time.

78 (f) This section becomes effective on July 1, 2022.

**§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.**

1 (a) If it appears to the Insurance Commissioner, private insurance carriers, and self-  
2 insured employers, whichever is applicable, that an application filed under §23-2-1 *et seq.* of this  
3 code fails to disclose a progression or aggravation in the claimant's condition, or some other fact  
4 or facts which were not previously considered in its former findings and which would entitle the  
5 claimant to greater benefits than the claimant has already received, the Insurance Commissioner,  
6 private insurance carriers, and self-insured employers, whichever is applicable, shall, within a  
7 reasonable time, notify the claimant and the employer that the application fails to establish a *prima*  
8 *facie* cause for reopening the claim. The notice shall be in writing stating the reasons for denial  
9 and the time allowed for objection to the decision of the commission. The claimant may, within 60  
10 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within



CS for SB 275

11 the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to  
12 objection and hence jurisdictional. Upon receipt of an objection, the Office of Judges shall afford  
13 the claimant an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

14 (b) This section is of no force and effect after June 30, 2022.

**§23-5-3a. Refusal to reopen claim; notice; objection; effective July 1, 2022.**

1 (a) If it appears to the Insurance Commissioner, private insurance carriers, and  
2 self-insured employers, whichever is applicable, that an application filed under §23-5-2a of this  
3 code fails to disclose a progression or aggravation in the claimant's condition, or some other fact  
4 or facts which were not previously considered in its former findings, and which would entitle the  
5 claimant to greater benefits than the claimant has already received, the Insurance Commissioner,  
6 private insurance carriers, and self-insured employers, whichever is applicable, shall, within a  
7 reasonable time, notify the claimant and the employer that the application fails to establish a prima  
8 facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial  
9 and the time allowed for objection to the decision of the commission. The claimant may, within 60  
10 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within  
11 the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to  
12 objection and hence jurisdictional. Upon receipt of an objection, the Workers' Compensation  
13 Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9a of this  
14 code.

15 (b) This section becomes effective on July 1, 2022.

**§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.**

1 If in any case it appears to the commission, the successor to the commission, other private  
2 insurance carriers, and self-insured employers, whichever is applicable, that the application filed  
3 pursuant to §23-4-1 *et seq.* of this code fails to disclose some fact or facts which were not

CS for SB 275

4 previously considered by the commission in its former findings, and which would entitle the  
5 employer to any modification of the previous award, the commission, the successor to the  
6 commission, other private insurance carriers, and self-insured employers, whichever is  
7 applicable, shall, within 60 days from the receipt of the application, notify the claimant and  
8 employer that the application fails to establish a just cause for modification of the award. The  
9 notice shall be in writing stating the reasons for denial and the time allowed for objection to the  
10 decision of the commission, the successor to the commission, other private insurance carriers,  
11 and self-insured employers, whichever is applicable. The employer may, within 30 days after  
12 receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-  
13 day period, no objection shall be allowed. This time limitation is a condition of the right to objection  
14 and hence jurisdictional. Upon receipt of the objection, the office of judges shall afford the  
15 employer an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

1 (b) This section is of no force and effect after June 30, 2022.

**§23-5-5a. Refusal of modification; notice; objection; effective July 1, 2022.**

1 (a) If in any case it appears to the Insurance Commissioner, other private insurance  
2 carriers, and self-insured employers, whichever is applicable, that the application filed pursuant  
3 to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered  
4 in former findings, and which would entitle the employer to any modification of the previous award,  
5 the Insurance Commissioner, other private insurance carriers, and self-insured employers,  
6 whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant  
7 and employer that the application fails to establish a just cause for modification of the award. The  
8 notice shall be in writing stating the reasons for denial and the time allowed for objection to the  
9 decision of the Insurance Commissioner, other private insurance carriers, and self-insured  
10 employers, whichever is applicable. The employer may, within 30 days after receipt of the notice,

11 object in writing to the decision. Unless the objection is filed within the 30-day period, no objection  
12 shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional.  
13 Upon receipt of the objection, the Workers' Compensation Board of Review shall afford the  
14 employer an evidentiary hearing as provided in §23-5-9 of this code.

15 (b) This section becomes effective on July 1, 2022.

**§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.**

1 (a) Notwithstanding the fact that the time periods set forth for objections, protests and  
2 appeals to or from the workers' compensation Office of Judges are jurisdictional, the periods may  
3 be extended or excused upon application of either party within a period of time equal to the  
4 applicable period by requesting an extension of the time period showing good cause or excusable  
5 neglect, accompanied by the objection or appeal petition. In exercising discretion, the  
6 administrative law judge, appeal board, or court, as the case may be, shall consider whether the  
7 applicant was represented by counsel and whether timely and proper notice was actually received  
8 by the applicant or the applicant's representative.

9 (b) This section is of no force and effect after June 30, 2022.

**§23-5-6a. Time periods for objections and appeals; extensions; effective July 1, 2022.**

1 (a) Notwithstanding the fact that the time periods set forth for objections, protests, and  
2 appeals to or from the Workers' Compensation Board of Review are jurisdictional, the periods  
3 may be extended or excused upon application of either party within a period of time equal to the  
4 applicable period by requesting an extension of the time period showing good cause or excusable  
5 neglect, accompanied by the objection or appeal petition. In exercising discretion, the Workers'  
6 Compensation Board of Review or court, as the case may be, shall consider whether the applicant  
7 was represented by counsel and whether timely and proper notice was actually received by the  
8 applicant or the applicant's representative.

9 (b) This section becomes effective on July 1, 2022.

**§23-5-8. Designation of office of administrative law judges; powers of chief administrative**

**law judge; effective until June 30, 2022.**

1 (a) The workers' compensation office of administrative law judges previously created  
2 pursuant to chapter twelve, acts of the Legislature, 1990, second extraordinary session, is hereby  
3 continued and designated to be an integral part of the workers' compensation system of this state.  
4 The Office of Judges shall be under the supervision of a chief administrative law judge who shall  
5 be appointed by the Governor with the advice and consent of the Senate.

6 (b) The chief administrative law judge shall be a person who has been admitted to the  
7 practice of law in this state and shall also have had at least four years of experience as an  
8 attorney. The chief administrative law judge's salary shall be set by the workers' compensation  
9 board of managers. The salary shall be within the salary range for comparable chief administrative  
10 law judges as determined by the state Personnel Board created by §29-6-6 of this code. The chief  
11 administrative law judge may only be removed by a vote of two-thirds of the members of the  
12 Workers' Compensation Board of managers. Upon transfer of the Office of Judges to the  
13 Insurance Commissioner, the chief administrative law judge shall continue to serve as chief  
14 administrative law judge until December 31, 2007. Thereafter, appointments of the chief  
15 administrative law judge shall be for terms of four years beginning January 1, 2008, and the chief  
16 administrative law judge may be removed only for cause by the vote of four members of the  
17 Industrial Council. No other provision of this code purporting to limit the term of office of any  
18 appointed official or employee or affecting the removal of any appointed official or employee is  
19 applicable to the chief administrative law judge.

20 (c) The chief administrative law judge shall employ administrative law judges and other  
21 personnel that are necessary for the proper conduct of a system of administrative review of orders  
22 issued by the Workers' Compensation Commission which orders have been objected to by a  
23 party. The employees shall be in the classified service of the state. Qualifications, compensation

24 and personnel practice relating to the employees of the office of judges, other than the chief  
25 administrative law judge, shall be governed by the provisions of this code and rules of the  
26 classified service pursuant to §29-6-1 of this code. All additional administrative law judges shall  
27 be persons who have been admitted to the practice of law in this state and shall also have had at  
28 least two years of experience as an attorney. The chief administrative law judge shall supervise  
29 the other administrative law judges and other personnel which collectively shall be referred to in  
30 this chapter as the Office of Judges.

31 (d) The administrative expense of the Office of Judges shall be included within the annual  
32 budget of the Workers' Compensation Commission and, upon termination of the commission, the  
33 Insurance Commissioner.

34 (e) The Office of Judges shall, from time to time, promulgate rules of practice and  
35 procedure for the hearing and determination of all objections to findings or orders of the Workers'  
36 Compensation Commission. The Office of Judges shall not have the power to initiate or to  
37 promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules  
38 adopted pursuant to this section which are applicable to the provisions of this article are not  
39 subject to §29A-3-9 through §29A-3-16 of this code. The Office of Judges shall follow the  
40 remaining provisions of said chapter for giving notice to the public of its actions and the holding  
41 of hearings or receiving of comments on the rules.

42 (f) The chief administrative law judge has the power to hear and determine all disputed  
43 claims in accordance with the provisions of this article, establish a procedure for the hearing of  
44 disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of  
45 witness fees, keep records, and make reports that are necessary for disputed claims and exercise  
46 any additional powers, including the delegation of powers to administrative law judges or hearing  
47 examiners that are necessary for the proper conduct of a system of administrative review of

CS for SB 275

48 disputed claims. The chief administrative law judge shall make reports that are requested of him  
49 or her by the workers' compensation board of managers.

50 (g) Effective upon termination of the commission, the Office of Judges and the Board of  
51 Review shall be transferred to the Insurance Commissioner, which shall have the oversight and  
52 administrative authority heretofore provided to the executive director and the board of managers.

53 (h) This section is of no force and effect after June 30, 2022.

**§23-5-8a. Transfer of powers and duties of the Office of Administrative Law Judges to the  
Workers' Compensation Board of Review; powers of the Workers' Compensation  
Board of Review in relation to review of objections; effective July 1, 2022.**

1 (a) The Workers' Compensation Office of Administrative Law Judges, referred to as the  
2 Office of Judges, shall terminate on or before October 1, 2022, as provided in §23-5-8b of this  
3 code. All powers and duties of the Office of Judges to review objections, protests, or any other  
4 matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of  
5 Review on July 1, 2022: *Provided*, That any objection or other matter filed pursuant to this chapter  
6 and pending before the Office of Judges upon its termination, in which a final decision has not  
7 been issued, shall also be transferred to the Workers' Compensation Board of Review as provided  
8 in §23-5-8b of this code.

9 (b) Pursuant to §23-5-11a(n) of this code, the Workers' Compensation Board of Review  
10 shall employ hearing examiners and other personnel that are necessary for the proper conduct of  
11 a system of administrative review of objections to decisions of the Insurance Commissioner,  
12 private carriers, and self-insured employers, whichever is applicable, made pursuant to the  
13 provisions of §23-5-1a of this code and issued after June 30, 2022. All hearing examiners hired  
14 by the Workers' Compensation Board of Review shall be persons who have been admitted to the  
15 practice of law in this state and shall also have had at least four years of experience as an

CS for SB 275

16 attorney. The chair of the Workers' Compensation Board of Review shall supervise hearing  
17 examiners and other personnel of the board, which collectively shall be referred to in this chapter  
18 as the Workers' Compensation Board of Review.

19 (c) The Workers' Compensation Board of Review has the power to hear and determine  
20 all objections in accordance with the provisions of this article, establish a procedure for the hearing  
21 of objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness  
22 fees, keep records, and make reports that are necessary for reviewing objections, and exercise  
23 any additional powers, including the delegation of powers to hearing examiners that are  
24 necessary for the proper conduct of a system of administrative review of objections. The chair of  
25 the Workers' Compensation Board of Review shall make reports that are requested of him or her  
26 by the Insurance Commissioner.

27 (d) Effective upon termination of the Office of Judges, the Insurance Commissioner shall  
28 have oversight and administrative authority over the Workers' Compensation Board of Review as  
29 heretofore provided to the Insurance Commissioner over the Office of Judges.

30 (e) This section becomes effective on July 1, 2022.

**§23-5-8b. Transfer of jurisdiction to review objections to Workers' Compensation Board of Review; termination of Office of Judges; appeals of board decisions to Intermediate Court of Appeals; effective July 1, 2022.**

31 (a) The Office of Judges has no jurisdiction to review objections to a decision of the  
32 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made  
33 pursuant to the provisions of this chapter and issued after June 30, 2022. The Workers'  
34 Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the  
35 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made  
36 pursuant to the provisions of this chapter and issued after June 30, 2022.

37           (b) On or before September 30, 2022, the Office of Judges shall issue a final decision in,  
38 or otherwise dispose of, each and every objection or other matter pending before the Office of  
39 Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any  
40 objection or other matter pending before the Office of Judges on or before September 30, 2022,  
41 the objection or other matter shall be transferred to the Workers' Compensation Board of Review.  
42 For any objections transferred from the Office of Judges to the Workers' Compensation Board of  
43 Review, the Board of Review shall adopt any existing records of proceedings in the Office of  
44 Judges, conduct further proceedings, and collect evidence as it determines to be necessary, and  
45 issue a final decision or otherwise dispose of the case according to the procedural rules  
46 promulgated pursuant to §23-5-11a(m) of this code.

47           (c) Upon the Office of Judges' disposition of every matter pending before the office, or on  
48 October 1, 2022, whichever occurs earlier, the Office of Judges is terminated.

49           (d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 et seq. of this  
50 code, has exclusive appellate jurisdiction over the following:

51           (1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its  
52 termination; and

53           (2) All final orders or decisions issued by the Workers' Compensation Board of Review  
54 after June 30, 2022.

55           (e) Notwithstanding the requirements of this section, the Workers' Compensation Board  
56 of Review shall review and decide all remaining appeals filed with the Board of Review, of Office  
57 of Judges' decisions issued prior to June 30, 2022, according to the procedure and requirements  
58 for such appeals heretofore provided in this article.

59           (f) This section becomes effective on July 1, 2022.

**§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured**



**employer decisions; mediation; remand; effective until June 30, 2022.**

60 (a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured  
61 employer, whichever is applicable, made pursuant to the provisions of §23-5-1 *et seq.* of this code  
62 shall be filed with the Office of Judges. Upon receipt of an objection, the Office of Judges shall  
63 notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is  
64 applicable, and all other parties of the filing of the objection. The Office of Judges shall establish  
65 by rule promulgated in accordance with the provisions of §23-5-8(e) of this code an adjudicatory  
66 process that enables parties to present evidence in support of their positions and provides an  
67 expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner,  
68 private carrier, or self-insured employer, whichever are applicable, shall be notified of any hearing  
69 at least 10 days in advance. The Office of Judges shall review and amend, or modify, as  
70 necessary, its procedural rules by July 1, 2007.

71 (b) The Office of Judges shall establish a program for mediation to be conducted in  
72 accordance with the requirements of rule twenty-five of the West Virginia Trial Court Rules. The  
73 parties may agree that the result of the mediation is binding. A case may be referred to mediation  
74 by the administrative law judge on his or her own motion, on motion of a party or by agreement  
75 of the parties. Upon issuance of an order for mediation, the Office of Judges shall assign a  
76 mediator from a list of qualified mediators maintained by the West Virginia State Bar.

77 (c) The Office of Judges shall keep full and complete records of all proceedings concerning  
78 a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to §23-5-  
79 8 of this code, the record upon which the matter shall be decided shall include any evidence  
80 submitted by a party to the Office of Judges and evidence taken at hearings conducted by the  
81 Office of Judges. The record may include evidence or documents submitted in electronic form or  
82 other appropriate medium in accordance with the rules of practice and procedure. The Office of

83 Judges is not bound by the usual common law or statutory rules of evidence.

84 (d) All hearings shall be conducted as determined by the chief administrative law judge  
85 pursuant to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code.  
86 Upon consideration of the designated record, the chief administrative law judge or other  
87 authorized adjudicator within the office of judges shall, based on the determination of the facts of  
88 the case and applicable law, render a decision affirming, reversing, or modifying the action  
89 protested. The decision shall contain findings of fact and conclusions of law and shall be mailed  
90 to all parties.

91 (e) The Office of Judges may remand a claim to the Insurance Commissioner, private  
92 carrier, or self-insured employer, whichever is applicable, for further development of the facts or  
93 administrative matters as, in the opinion of the administrative law judge, may be necessary for a  
94 full and complete disposition of the case. The administrative law judge shall establish a time within  
95 which the Insurance Commissioner, private carrier, or self-insured employer, whichever is  
96 applicable, must report back to the administrative law judge.

97 (f) The decision of the Office of Judges regarding any objections to a decision of the  
98 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final  
99 and benefits shall be paid or denied in accordance with the decision, unless an order staying the  
100 payment of benefits is specifically entered by the Workers' Compensation Board of Review  
101 created in §23-5-11 of this code or by the administrative law judge who granted the benefits. No  
102 stay with respect to any medical treatment or rehabilitation authorized by the Office of Judges  
103 may be granted. If the decision is subsequently appealed and reversed in accordance with the  
104 procedures set forth in this article, and any overpayment of benefits occurs as a result of such  
105 reversal, any such overpayment may be recovered pursuant to the provisions of §23-4-1C(h) and  
106 §23-4-1D(d) of this code, as applicable.

107 (h) This section is of no force and effect after June 30, 2022.

**§23-5-9a. Hearings on objections to Insurance Commissioner; private carrier, or self-insured employer decisions; mediation; remand; effective July 1, 2022.**

1 (a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured  
2 employer, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code, shall  
3 be filed with the Workers' Compensation Board of Review. Upon receipt of an objection, the  
4 Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier,  
5 or self-insured employer, whichever is applicable, and all other parties of the filing of the objection.  
6 The Workers' Compensation Board of Review shall establish by rule, promulgated in accordance  
7 with the provisions of §23-5-11a(m) of this code, an adjudicatory process that enables parties to  
8 present evidence in support of their positions and provides an expeditious resolution of the  
9 objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the  
10 self-insured employer, whichever is applicable, shall be notified of any hearing at least 10 days in  
11 advance.

12 (b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating  
13 basis, a member of the Board of Review to preside over the review process and issue a decision  
14 in each objection that is properly filed with the board of review. The member of the Workers'  
15 Compensation Board of Review assigned to an objection shall review evidence, conduct  
16 proceedings, and develop a record as is necessary for a full and thorough review of the objection:  
17 Provided, That the board member may delegate such duties to a hearing examiner employed by  
18 the board of review, pursuant to §23-5-8a and §23-5-11a(n) of this code: *Provided, however, That*  
19 any order or decision of the Board of Review must be issued and signed by the member of the  
20 Board assigned to the objection, as provided in subsection (e) of this section: *Provided further,*  
21 That a time frame order, continuance order, show cause order, failure to prosecute order, or other

22 interlocutory order as permitted by the Workers' Compensation Board of Review's procedural  
23 rules may be issued and signed by a hearing examiner only, and is not subject to the general  
24 requirement that orders be issued and signed by a member of the board.

25 (c) The Workers' Compensation Board of Review shall establish a program for mediation  
26 to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court  
27 Rules. The parties may agree that the result of the mediation is binding. A case may be referred  
28 to mediation by the Board of Review member assigned to the objection on his or her own motion,  
29 on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the  
30 Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators  
31 maintained by the West Virginia State Bar.

32 (d) The Workers' Compensation Board of Review shall keep full and complete records of  
33 all proceedings concerning an objection. Subject to the rules of practice and procedure  
34 promulgated pursuant to §23-5-11a(m) of this code, the record upon which the matter shall be  
35 decided shall include any evidence submitted by a party to the Workers' Compensation Board of  
36 Review and evidence taken at hearings conducted by the Board of Review. The record may  
37 include evidence or documents submitted in electronic form or other appropriate medium in  
38 accordance with the rules of practice and procedure. The Workers' Compensation Board of  
39 Review is not bound by the usual common law or statutory rules of evidence.

40 (e) All hearings shall be conducted as determined by the Workers' Compensation Board  
41 of Review according to the rules of practice and procedure promulgated pursuant to §23-5-11a(m)  
42 of this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the  
43 conclusion of the review process, submit the designated record to the member of the Workers'  
44 Compensation Board of Review to whom the objection is assigned, along with the hearing  
45 examiner's recommendation of a decision affirming, reversing, or modifying the action that was  
46 subject to the objection. Upon consideration of the designated record and, if applicable, the  
47 recommendation of the hearing examiner, the member of the Workers' Compensation Board of

48 Review assigned to the objection shall, based on the determination of the facts of the case and  
49 applicable law, render a decision affirming, reversing, or modifying the action that was subject to  
50 the objection. The decision shall contain findings of fact and conclusions of law, shall be signed  
51 by the member of the Workers' Compensation Board of Review rendering the decision, and shall  
52 be mailed to all parties.

53 (f) The Workers' Compensation Board of Review may remand a claim to the Insurance  
54 Commissioner, private carrier, or self-insured employer, whichever is applicable, for further  
55 development of the facts or administrative matters as, in the opinion of the member of the board  
56 of review assigned to the objection, may be necessary for a full and complete disposition of the  
57 case. The member of the Workers' Compensation Board of Review assigned to the objection shall  
58 establish a time within which the Insurance Commissioner, private carrier, or self-insured  
59 employer, whichever is applicable, must report back to the board of review.

60 (g) The decision of the Workers' Compensation Board of Review regarding any objections  
61 to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever  
62 is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless  
63 an order staying the payment of benefits is specifically entered by a court with appellate  
64 jurisdiction over the decision or by the member of the Office of Judges who granted the benefits.  
65 A stay with respect to any medical treatment or rehabilitation authorized by the Workers'  
66 Compensation Board of Review may not be granted. If the decision is subsequently appealed and  
67 reversed in accordance with the procedures set forth in this article, and any overpayment of  
68 benefits occurs as a result of the reversal, the overpayment may be recovered pursuant to the  
69 provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

70 (h) This section becomes effective on July 1, 2022.

**§23-5-10. Appeal from administrative law judge decision to appeal board; effective until**  
**June 30, 2022.**

71 (a) The employer, claimant, Workers' Compensation Commission, the successor to the

CS for SB 275

72 commission, other private insurance carriers and self-insured employers, whichever is applicable,  
73 may appeal to the appeal board created in §23-11-1 *et seq.* of this code for a review of a decision  
74 by an administrative law judge. No appeal or review shall lie unless application therefor be made  
75 within thirty days of receipt of notice of the administrative law judge's final action or in any event  
76 within sixty days of the date of such final action, regardless of notice and, unless the application  
77 for appeal or review is filed within the time specified, no such appeal or review shall be allowed,  
78 such time limitation being hereby declared to be a condition of the right of such appeal or review  
79 and hence jurisdictional.

80 (b) This section is of no force and effect after June 30, 2022.

**§23-5-10a. Appeal from a Workers' Compensation Board of Review decision to the  
Intermediate Court of Appeals; effective July 1, 2022.**

1 (a) The employer, claimant, Insurance Commissioner, other private insurance carriers,  
2 and self-insured employers, whichever is applicable, may appeal to the West Virginia Intermediate  
3 Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of a decision by the  
4 Workers' Compensation Board of Review. No appeal or review shall lie unless application is  
5 made within 30 days of receipt of notice of the Workers' Compensation Board of Review's final  
6 action or in any event within 60 days of the date of such final action, regardless of notice and,  
7 unless the application for appeal or review is filed within the time specified, no such appeal or  
8 review shall be allowed, such time limitation being hereby declared to be a condition of the right  
9 of such appeal or review and hence jurisdictional.

10 (b) This section becomes effective on July 1, 2022.

**§23-5-11. Workers' Compensation Board of Review generally; effective until June 30, 2022.**

11 (a) On January 31, 2004, the Workers' Compensation Appeal Board heretofore  
12 established in this section is hereby abolished.

13 (b) There is created the "Workers' Compensation Board of Review", which may also be  
14 referred to as "the Board of Review" or "the board". Effective February 1, 2004, the board of  
15 Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation  
16 Office of Judges including any and all appeals pending with the board of Appeals on January 31,  
17 2004.

18 (c) The board consists of three members.

19 (d) The Governor shall appoint, from names submitted by the "Workers' Compensation  
20 Board of Review Nominating Committee", with the advice and consent of the Senate, three  
21 qualified attorneys to serve as members of the Board of Review. If the Governor does not select  
22 a nominee for any vacant position from the names provided by the nominating committee, he or  
23 she shall notify the nominating committee of that circumstance and the committee shall provide  
24 additional names for consideration by the Governor. A member of the Board of Review may be  
25 removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality,  
26 or malfeasance, and then only after notice and opportunity to respond and present evidence. No  
27 more than two of the members of the board may be of the same political party. The members of  
28 the Board of Review shall be paid an annual salary of \$85,000: *Provided*, That on and after July  
29 1, 2008, the Governor shall set the salary of the members of the board: *Provided, however*, That  
30 the annual salary of a member of the Board of Review shall not exceed \$110,000. Members are  
31 entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of  
32 official duties in a manner consistent with the guidelines of the Travel Management Office of the  
33 Department of Administration.

34 (e) The nominating committee consists of the following members: (1) The President of the  
35 West Virginia State Bar who serves as the chairperson of the committee; (2) an active member  
36 of the West Virginia State Bar Workers' Compensation Committee selected by the major trade

37 association representing employers in this state; (3) an active member of the West Virginia State  
38 Bar Workers' Compensation Committee selected by the highest ranking officer of the major  
39 employee organization representing workers in this state; (4) the Dean of the West Virginia  
40 University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

41 (f) The nominating committee is responsible for reviewing and evaluating candidates for  
42 possible appointment to the Board of Review by the Governor. In reviewing candidates, the  
43 nominating committee may accept comments from and request information from any person or  
44 source.

45 (g) Each member of the nominating committee may submit up to three names of qualified  
46 candidates for each position on the Board of Review: *Provided*, That the member of the  
47 nominating committee selected by the major trade organization representing employers of this  
48 state shall submit at least one name of a qualified candidate for each position on the board who  
49 either is, or who represents, small business employers of this state. After careful review of the  
50 candidates, the committee shall select a minimum of one candidate for each position on the board.

51 (h) Of the initial appointments, one member shall be appointed for a term ending  
52 December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and  
53 one member shall be appointed for a term ending December 31, 2010. Thereafter, the  
54 appointments shall be for six-year terms.

55 (i) A member of the Board of Review must, at the time he or she takes office and thereafter  
56 during his or her continuance in office, be a resident of this state, be a member in good standing  
57 of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted  
58 to practice law in this state prior to appointment and have a minimum of five years' experience in  
59 preparing and presenting cases or hearing actions and making decisions on the basis of the  
60 record of those hearings before administrative agencies, regulatory bodies, or courts of record at



61 the federal, state, or local level.

62 (j) No member of the Board of Review may hold any other office, or accept any  
63 appointment or public trust, nor may he or she become a candidate for any elective public office  
64 or nomination thereto. Violation of this subsection requires the member to vacate his or her office.  
65 No member of the board of Review may engage in the practice of law during his or her term of  
66 office.

67 (k) A vacancy occurring on the board other than by expiration of a term shall be filled in  
68 the manner original appointments were made, for the unexpired portion of the term.

69 (l) The board shall designate one of its members in rotation to be chairman of the board  
70 for as long as the board may determine by order made and entered of record. In the absence of  
71 the chairman, any other member designated by the members present shall act as chairman.

72 (m) The Board of Review shall meet as often as necessary to hold review hearings, at  
73 such times and places as the chairman may determine. Two members shall be present in order  
74 to conduct review hearings or other business. All decisions of the board shall be determined by a  
75 majority of the members of the board.

76 (n) The Board of Review shall make general rules regarding the pleading, including the  
77 form of the petition and any responsive pleadings, practice, and procedure to be used by the  
78 board.

79 (o) The Board of Review may hire a clerk and other professional and clerical staff  
80 necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of  
81 Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and  
82 directions, to take care of and preserve in an office, kept for the purpose, all records and papers  
83 of the board, and to perform other duties as prescribed by law or required of him or her by the  
84 board. All employees of the board serve at the will and pleasure of the board. The board's

CS for SB 275

85 employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel.  
86 All personnel of the Board of Review are under the supervision of the chairman of the Board of  
87 Review.

88 (p) If considered necessary by the board, the board may, through staffing or other  
89 resources, procure assistance in review of medical portions of decisions.

90 (q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties,  
91 the board shall promptly determine the matter and make an award in accordance with its  
92 determination.

93 (r) The award shall become a part of the commission file. A copy of the award shall be  
94 sent forthwith by mail to all parties in interest.

95 (s) The award is final when entered. The award shall contain a statement explaining the  
96 rights of the parties to an appeal to the board of Review and the applicable time limitations  
97 involved.

98 (t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately  
99 provide for the administrative and other operating expenses of the board.

100 (u) The board shall report monthly to the Industrial Council on the status of all claims on  
101 appeal.

102 (v) Effective upon termination of the commission, the Board of Review shall be transferred  
103 to the Insurance Commissioner which shall have the oversight and administrative authority  
104 heretofore provided to the executive director and the board of managers.

105 (w) This section is of no force and effect after June 30, 2022.

**§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and  
duties of the board; effective July 1, 2022.**

1 (a) The Workers' Compensation Board of Review, which may also be referred to as the

2 “Board of Review” or the “board”, is continued and granted exclusive jurisdiction over all  
3 objections to decisions of the Insurance Commissioner, private carriers, and self-insured  
4 employers, whichever is applicable, including any and all matters pending before the Office of  
5 Judges after September 30, 2022.

6 (b) The board consists of three members.

7 (c) The Governor shall appoint, from names submitted by the Workers’ Compensation  
8 Board of Review Nominating Committee, with the advice and consent of the Senate, three  
9 qualified attorneys to serve as members of the Board of Review. If the Governor does not select  
10 a nominee for any vacant position from the names provided by the nominating committee, he or  
11 she shall notify the nominating committee of that circumstance, and the committee shall provide  
12 additional names for consideration by the Governor. A member of the Board of Review may be  
13 removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality,  
14 or malfeasance, and then, only after notice and opportunity to respond and present evidence. No  
15 more than two of the members of the board may be of the same political party. The Governor  
16 shall set the salary of the members of the board: *Provided*, That the annual salary of a member  
17 of the board of review shall not exceed \$125,000. Members are entitled to be reimbursed for  
18 actual and necessary travel expenses incurred in the discharge of official duties in a manner  
19 consistent with the guidelines of the Travel Management Office of the Department of  
20 Administration.

21 (d) The nominating committee consists of the following members: (1) The President of the  
22 West Virginia State Bar who serves as the chairperson of the committee; (2) an active member  
23 of the West Virginia State Bar Workers’ Compensation Committee, selected by the major trade  
24 association representing employers in this state; (3) an active member of the West Virginia State  
25 Bar Workers’ Compensation Committee, selected by the highest-ranking officer of the major  
26 employee organization representing workers in this state; (4) the Dean of the West Virginia  
27 University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

28           (e) The nominating committee is responsible for reviewing and evaluating candidates for  
29 possible appointment to the Board of Review by the Governor. In reviewing candidates, the  
30 nominating committee may accept comments from, and request information from, any person or  
31 source.

32           (f) Each member of the nominating committee may submit up to three names of qualified  
33 candidates for each position on the Board of Review: *Provided*, That the member of the  
34 nominating committee selected by the major trade organization representing employers of this  
35 state shall submit at least one name of a qualified candidate for each position on the board who  
36 either is, or who represents, small business employers of this state. After careful review of the  
37 candidates, the committee shall select a minimum of one candidate for each position on the board.

38           (g) Appointments shall be for six-year terms.

39           (h) A member of the Board of Review must, at the time he or she takes office and thereafter  
40 during his or her continuance in office, be a resident of this state, be a member in good standing  
41 of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted  
42 to practice law in this state prior to appointment, and have a minimum of five years' experience in  
43 preparing and presenting cases or hearing actions and making decisions on the basis of the  
44 record of those hearings before administrative agencies, regulatory bodies, or courts of record at  
45 the federal, state, or local level.

46           (i) No member of the Board of Review may hold any other office, or accept any  
47 appointment or public trust, nor may he or she become a candidate for any elective public office  
48 or nomination thereto. Violation of this subsection requires the member to vacate his or her office.  
49 No member of the Board of Review may engage in the practice of law during his or her term of  
50 office.

51           (j) A vacancy occurring on the board other than by expiration of a term shall be filled in the  
52 manner original appointments were made, for the unexpired portion of the term.

53           (k) The board shall designate one of its members in rotation to be chair of the board for

54 as long as the board may determine by order made and entered of record. In the absence of the  
55 chair, any other member designated by the members present shall act as chair.

56 (l) The Board of Review shall meet as often as necessary to conduct the board's  
57 administrative business and make rules of practice and procedure, at such times and places as  
58 the chair may determine. Two members shall be present in order to conduct administrative  
59 business and make rules of practice and procedure. All decisions of the board upon administrative  
60 matters, pursuant to this section, shall be determined by a majority of the members of the board.

61 (m) The Board of Review shall promulgate rules of practice and procedure for the review  
62 and determination of all objections filed with the board. Rules adopted pursuant to this section  
63 which are applicable to this article are not subject to §29A-3-9 through §29A-3-16, inclusive, of  
64 this code. The board shall follow requirements set forth in chapter 29A of this code related to  
65 notice to the public of its actions and the holding of hearings and receiving of comments on the  
66 rules.

67 (n) The Board of Review may hire a clerk, hearing examiners, and other professional and  
68 clerical staff necessary to carry out the requirements of this article. The Board of Review shall  
69 give due consideration to and conduct an interview of any employee of the Office of Judges who  
70 applies for a position with the Board of Review on or before January 30, 2022, prior to considering  
71 any other applicant. All employees of the board serve at the will and pleasure of the board. The  
72 board's employees are exempt from the salary schedule or pay plan adopted by the Division of  
73 Personnel: *Provided*, That for the purpose of any applicable Division of Personnel Class  
74 Specifications, hearing examiners must be within a class with "attorney" in the class title. All  
75 personnel of the board of review are under the supervision of the chair of the board of review.

76 (o) The administrative expenses of the Board of Review shall be included within the annual  
77 budget of the Insurance Commissioner, and the Insurance Commissioner shall have  
78 administrative authority and oversight over the board of review.

79           (p) This section becomes effective on July 1, 2022: *Provided*, That the board is authorized  
80 to promulgate rules and hire staff, pursuant to subsection (m) and (n) of this section, respectively,  
81 prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that  
82 become effective on that date.

**§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until**  
**June 30, 2022.**

83           (a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final  
84 action of the administrative law judge taken after a hearing held in accordance with the provisions  
85 of §23-5-9 of this code shall have the right to appeal to the board created in §23-11-1 of this code  
86 for a review of such action. The Workers' Compensation Commission, the successor to the  
87 commission, other private insurance carriers and self-insured employers, whichever is applicable,  
88 shall likewise have the right to appeal to the board any final action taken by the administrative law  
89 judge. The aggrieved party shall file a written notice of appeal with the board of review, with a  
90 copy to the office of judges, within thirty days after receipt of notice of the action complained of  
91 or, in any event, regardless of notice, within sixty days after the date of the action complained of,  
92 and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the  
93 time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify  
94 the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state  
95 the ground for review and whether oral argument is requested. The Office of Judges, after  
96 receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings  
97 before the Office of Judges and certify and transmit it to the board. The certificate shall incorporate  
98 a brief recital of the proceedings in the case and recite each order entered and the date thereof.

99           (b) The board shall set a time and place for the hearing of arguments on each claim and  
100 shall notify the interested parties thereof. The review by the board shall be based upon the record  
101 submitted to it and such oral argument as may be requested and received. The board may affirm,  
102 reverse, modify, or supplement the decision of the administrative law judge and make such

103 disposition of the case as it determines to be appropriate. Briefs may be filed by the interested  
104 parties in accordance with the rules of procedure prescribed by the board. The board may affirm  
105 the order or decision of the administrative law judge or remand the case for further proceedings.  
106 It shall reverse, vacate, or modify the order or decision of the administrative law judge if the  
107 substantial rights of the petitioner or petitioners have been prejudiced because the administrative  
108 law judge's findings are:

- 109 (1) In violation of statutory provisions; or
- 110 (2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
- 111 (3) Made upon unlawful procedures; or
- 112 (4) Affected by other error of law; or
- 113 (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole  
114 record; or
- 115 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
116 exercise of discretion.

117 (c) After a review of the case, the board shall issue a written decision and send a copy by  
118 mail to the parties.

119 (1) All decisions, findings of fact and conclusions of law of the Board of Review shall be in  
120 writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the  
121 administrative law judge's decision.

122 (2) Decisions of the Board of Review shall be made by a majority vote of the board of  
123 review.

124 (3) A decision of the Board of Review is binding upon the executive director and the  
125 commission and the successor to the commission, other private insurance carriers, and self-  
126 insured employers, whichever is applicable, with respect to the parties involved in the particular  
127 appeal. The executive director, the successor to the commission, other private insurance carriers,  
128 and self-insured employers, whichever is applicable, shall have the right to seek judicial review of

129 a board of review decision irrespective of whether or not he or she appeared or participated in the  
130 appeal to the Board of Review.

131 (d) Instead of affirming, reversing, or modifying the decision of the administrative law  
132 judge, the board may, upon motion of any party or upon its own motion, for good cause shown,  
133 to be set forth in the order of the board, remand the case to the chief administrative law judge for  
134 the taking of such new, additional, or further evidence as in the opinion of the board may be  
135 necessary for a full and complete development of the facts of the case. In the event the board  
136 shall remand the case to the chief administrative law judge for the taking of further evidence, the  
137 administrative law judge shall proceed to take new, additional, or further evidence in accordance  
138 with any instruction given by the board within 30 days after receipt of the order remanding the  
139 case. The chief administrative law judge shall give to the interested parties at least 10 days' written  
140 notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of  
141 parties, or by the administrative law judge for good cause. After the completion of a supplemental  
142 hearing, the administrative law judge shall, within 60 days, render his or her decision affirming,  
143 reversing or modifying the former action of the administrative law judge. The decision shall be  
144 appealable to and proceeded with by the Board of Review in the same manner as other appeals.  
145 In addition, upon a finding of good cause, the board may remand the case to the Workers'  
146 Compensation Commission, the successor to the commission, other private insurance carriers,  
147 and self-insured employers, whichever is applicable, for further development. Any decision made  
148 by the commission, the successor to the commission, other private insurance carriers, and self-  
149 insured employers, whichever is applicable, following a remand shall be subject to objection to  
150 the Office of Judges and not to the board. The board may remand any case as often as in its  
151 opinion is necessary for a full development and just decision of the case.

152 (e) All appeals from the action of the administrative law judge shall be decided by the  
153 board at the same session at which they are heard, unless good cause for delay thereof be shown  
154 and entered of record.



155 (f) In all proceedings before the board, any party may be represented by counsel.

156 (g) This section is of no force and effect after June 30, 2022.

**§23-5-12a. Appeal of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing; effective July 1, 2022.**

157 (a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a  
158 decision of the Workers' Compensation Board of Review shall have the right to appeal to the West  
159 Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code, for a review of  
160 such action. The Insurance Commissioner, other private insurance carriers, and self-insured  
161 employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate  
162 Court of Appeals any final action taken by the Workers' Compensation Board of Review. The  
163 aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a  
164 copy to the Workers' Compensation Board of Review, within 30 days after receipt of notice of the  
165 action complained of or, in any event, regardless of notice, within 60 days after the date of the  
166 action complained of: *Provided*, That unless the notice of appeal is filed within the time specified,  
167 no appeal shall be allowed: *Provided, however*, That the time limitation is a condition of the right  
168 to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the  
169 filing of a notice of appeal. The notice of appeal shall state the grounds for review and whether  
170 oral argument is requested. The Workers' Compensation Board of Review, after receiving a copy  
171 of the notice of appeal, shall forthwith make up a transcript of any proceedings before the board  
172 of review and certify and transmit it to the Intermediate Court of Appeals. The certificate shall  
173 incorporate a brief recital of the proceedings in the matter and recite each order entered or  
174 decision issued and the date thereof.

175 (b) The Intermediate Court of Appeals shall set a time and place for the hearing of  
176 arguments on each claim and shall notify the interested parties thereof. The review by the court  
177 shall be based upon the record submitted to it and such oral argument as may be requested and  
178 received. The Intermediate Court of Appeals may affirm, reverse, modify, or supplement the

179 decision of the Workers' Compensation Board of Review and make such disposition of the case  
180 as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with  
181 the rules of procedure prescribed by the court. The Intermediate Court of Appeals may affirm the  
182 order or decision of the Workers' Compensation Board of Review or remand the case for further  
183 proceedings. It shall reverse, vacate, or modify the order or decision of the Workers'  
184 Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been  
185 prejudiced because the Board of Review's findings are:

186 (1) In violation of statutory provisions;

187 (2) In excess of the statutory authority or jurisdiction of the Board of Review;

188 (3) Made upon unlawful procedures;

189 (4) Affected by other error of law;

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

192 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
193 exercise of discretion.

194 (c) After a review of the case, the Intermediate Court of Appeals shall issue a written  
195 decision and send a copy by mail to the parties.

196 (1) All decisions, findings of fact, and conclusions of law of the Intermediate Court of  
197 Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain,  
198 reverse, or modify the Board of Review's decision.

199 (2) A decision of the Intermediate Court of Appeals is binding upon the Insurance  
200 Commissioner, other private insurance carriers, and self-insured employers, whichever is  
201 applicable, with respect to the parties involved in the particular appeal. The Insurance  
202 Commissioner, other private insurance carriers, and self-insured employers, whichever is  
203 applicable, shall have the right to seek judicial review of a final decision of the Intermediate Court  
204 of Appeals, pursuant to §51-11-13 of this code, irrespective of whether the party appeared or

205 participated in the appeal to the Intermediate Court of Appeals.

206 (d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation  
207 Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its  
208 own motion, for good cause shown, to be set forth in the order of the court, remand the case to  
209 the Board of Review for the taking of such new, additional, or further evidence as in the opinion  
210 of the court considers necessary for a full and complete development of the facts of the case. In  
211 the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the  
212 taking of further evidence, the Board of Review shall proceed to take new, additional, or further  
213 evidence in accordance with any instruction given by the court within 30 days after receipt of the  
214 order remanding the case. The Workers' Compensation Board of Review shall give to the  
215 interested parties at least 10 days' written notice of the supplemental hearing, unless the taking  
216 of evidence is postponed by agreement of parties, or by the Board of Review for good cause.  
217 After the completion of a supplemental hearing, the Workers' Compensation Board of Review  
218 shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the  
219 Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded  
220 with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon  
221 a finding of good cause, the court may remand the case to the Insurance Commissioner, other  
222 private insurance carriers, or self-insured employers, whichever is applicable, for further  
223 development. Any decision made by the Insurance Commissioner, other private insurance  
224 carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject  
225 to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of  
226 Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is  
227 necessary for a full development and just decision of the case.

228 (e) In all proceedings before the Intermediate Court of Appeals, any party may be  
229 represented by counsel.

230 (f) This section becomes effective on July 1, 2022

**§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.**

1           (a) It is the policy of this chapter that the rights of claimants for workers' compensation be  
2 determined as speedily and expeditiously as possible to the end that those incapacitated by  
3 injuries and the dependents of deceased workers may receive benefits as quickly as possible in  
4 view of the severe economic hardships which immediately befall the families of injured or  
5 deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good  
6 cause shown" are to be strictly construed by the chief administrative law judge and his or her  
7 authorized representatives to prevent delay when granting or denying continuances and  
8 supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of  
9 injured or deceased workers or their dependents on technicalities.

10           (b) This section is of no force and effect after June 30, 2022.

**§23-5-13a. Continuances and supplemental hearings; claims not to be denied on technicalities; effective July 1, 2022.**

11           (a) It is the policy of this chapter that the rights of claimants for workers' compensation be  
12 determined as speedily and expeditiously as possible to the end that those incapacitated by  
13 injuries and the dependents of deceased workers may receive benefits as quickly as possible in  
14 view of the severe economic hardships which immediately befall the families of injured or  
15 deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good  
16 cause shown" are to be strictly construed by the Workers' Compensation Board of Review and its  
17 authorized representatives to prevent delay when granting or denying continuances and  
18 supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of  
19 injured or deceased workers or their dependents on technicalities.

20           (b) This section becomes effective on July 1, 2022.

**§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals prior to July 1, 2022; procedure; costs.**

1           (a) As provided in §23-5-8b of this code, the provisions of this section do not apply to any  
2 decision issued by the Workers' Compensation Board of Review after June 30, 2022.

3           ~~(a)~~ (b) Review of any final decision of the board, including any order of remand, may be  
4 prosecuted by either party or by the ~~Workers' Compensation Commission, the successor to the~~  
5 ~~commission~~ Insurance Commissioner, other private insurance carriers, and self-insured  
6 employers, whichever is applicable, to the Supreme Court of Appeals within 30 days from the  
7 date of the final order by filing a petition therefor with the court against the board and the adverse  
8 party or parties as respondents. Unless the petition for review is filed within the 30-day period, no  
9 appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or  
10 review and hence jurisdictional. The clerk of the Supreme Court of Appeals shall notify each of  
11 the respondents and the ~~Workers' Compensation Commission, the successor to the commission~~  
12 Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever  
13 is applicable, of the filing of such petition. The board shall, within 10 days after receipt of the  
14 notice, file with the clerk of the court the record of the proceedings had before it, including all the  
15 evidence. The court or any judge thereof in vacation may thereupon determine whether or not a  
16 review shall be granted. If review is granted to a nonresident of this state, he or she shall be  
17 required to execute and file with the clerk before an order or review shall become effective, a  
18 bond, with security to be approved by the clerk, conditioned to perform any judgment which may  
19 be awarded against him or her. The board may certify to the court and request its decision of any  
20 question of law arising upon the record, and withhold its further proceeding in the case, pending  
21 the decision of court on the certified question, or until notice that the court has declined to docket  
22 the same. If a review is granted or the certified question is docketed for hearing, the clerk shall  
23 notify the board and the parties litigant or their attorneys and the ~~Workers' Compensation~~  
24 ~~Commission, the successor to the commission~~ Insurance Commissioner, other private insurance  
25 carriers, and self-insured employers, whichever is applicable, of that fact by mail. If a review is  
26 granted or the certified question docketed, the case shall be heard by the court in the same

27 manner as in other cases, except that neither the record nor briefs need be printed. Every review  
28 granted or certified question docketed prior to 30 days before the beginning of the term, shall be  
29 placed upon the docket for that term. The Attorney General shall, without extra compensation,  
30 represent the board in such cases. The court shall determine the matter brought before it and  
31 certify its decision to the board and to the commission. The cost of the proceedings on petition,  
32 including a reasonable attorney's fee, not exceeding \$30 to the claimant's attorney, shall be fixed  
33 by the court and taxed against the employer if the latter is unsuccessful. If the claimant, or the  
34 commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including  
35 attorney's fees, shall be taxed against the commission, payable out of the Workers' Compensation  
36 Fund, or shall be taxed against the claimant, in the discretion of the court: But there shall be no  
37 cost taxed upon a certified question.

38 ~~(b)~~ (c) In reviewing a decision of the Board of Review, the Supreme Court of Appeals shall  
39 consider the record provided by the board and give deference to the board's findings, reasoning,  
40 and conclusions, in accordance with subsections ~~(c)~~, and (d) and (e) of this section.

41 ~~(c)~~ (d) If the decision of the board represents an affirmation of a prior ruling by both the  
42 commission and the Office of Judges that was entered on the same issue in the same claim, the  
43 decision of the board may be reversed or modified by the Supreme Court of Appeals only if the  
44 decision is in clear violation of constitutional or statutory provision, is clearly the result of  
45 erroneous conclusions of law, or is based upon the board's material misstatement or  
46 mischaracterization of particular components of the evidentiary record. The court may not conduct  
47 a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the  
48 board pursuant to this subsection, it shall state with specificity the basis for the reversal or  
49 modification and the manner in which the decision of the board clearly violated constitutional or  
50 statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's  
51 material misstatement or mischaracterization of particular components of the evidentiary record.

52 ~~(d)~~ (e) If the decision of the board effectively represents a reversal of a prior ruling of either

53 the commission or the Office of Judges that was entered on the same issue in the same claim,  
54 the decision of the board may be reversed or modified by the Supreme Court of Appeals only if  
55 the decision is in clear violation of constitutional or statutory provisions, is clearly the result of  
56 erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even  
57 when all inferences are resolved in favor of the board's findings, reasoning, and conclusions,  
58 there is insufficient support to sustain the decision. The court may not conduct a de novo  
59 reweighing of the evidentiary record. If the court reverses or modifies a decision of the board  
60 pursuant to this subsection, it shall state with specificity the basis for the reversal or modification  
61 and the manner in which the decision of the board clearly violated constitutional or statutory  
62 provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the  
63 evidentiary record that even when all inferences are resolved in favor of the board's findings,  
64 reasoning, and conclusions, there is insufficient support to sustain the decision.

**§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees;  
effective until June 30, 2022.**

65 (a) An attorney's fee in excess of 20 percent of any award granted may not be charged or  
66 received by an attorney for a claimant or dependent. In no case may the fee received by the  
67 attorney of the claimant or dependent be in excess of 20 percent of the benefits to be paid during  
68 a period of 208 weeks. The interest on disability or dependent benefits as provided in this chapter  
69 may not be considered as part of the award in determining the attorney's fee. However, any  
70 contract entered into in excess of 20 percent of the benefits to be paid during a period of 208  
71 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this  
72 state and any fee charged or received by an attorney in violation thereof is an unlawful practice  
73 and renders the attorney subject to disciplinary action.

74 (b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the  
75 total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when  
76 combined with any fees previously charged or received by the attorney for permanent partial

77 disability or permanent total disability benefits may not exceed 20 percent of an award of benefits  
78 to be paid during a period of 208 weeks.

79 (c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code,  
80 an attorney's fee for successful recovery of denied medical benefits may be charged or received  
81 by an attorney, and paid by the private carrier or self-insured employer, for a claimant or  
82 dependent under this section. In no event may attorney's fees and costs be awarded pursuant to  
83 both this section and §23-2C-21(c) of this code.

84 (1) If a claimant successfully prevails in a proceeding relating to a denial of medical  
85 benefits brought before the commission, successor to the commission, other private carrier, or  
86 self-insured employer, whichever is applicable, as a result of utilization review, arbitration,  
87 mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits  
88 before the Office of Judges, Board of Review, or court, there shall additionally be charged against  
89 the private carriers or self-insured employers, whichever is applicable, the reasonable costs and  
90 reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial  
91 in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance  
92 Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of  
93 Review, or court, whichever enters a final decision on the issue. An attorney representing a  
94 claimant must submit a claim for attorney fees and costs within 30 days following a decision in  
95 which the claimant prevails and the order becomes final.

96 (2) The Insurance Commissioner or his or her successors, arbitrators, mediator, the Office  
97 of Judges, the Board of Review, or court shall enter an order within 30 days awarding reasonable  
98 attorney fees not to exceed \$125 per hour and reasonable costs of the claimant to be paid by the  
99 private carriers or self-insured employers, whichever is applicable, which shall be paid as directed.  
100 In no event may an award of the claimant's attorney's fees under this subsection exceed \$500  
101 per litigated medical issue, not to exceed \$2,500 in a claim.

102 (3) In determining the reasonableness of the attorney fees to be awarded, the Insurance



103 Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the  
104 experience of the attorney, the complexity of the issue, the hours expended, and the contingent  
105 nature of the fee.

106 (d) This section is of no force and effect after June 30, 2022.

**§23-5-16a. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.**

107 (a) An attorney's fee in excess of 20 percent of any award granted may not be charged or  
108 received by an attorney for a claimant or dependent. In no case may the fee received by the  
109 attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during  
110 a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter,  
111 may not be considered as part of the award in determining the attorney's fee. However, any  
112 contract entered into in excess of 20 percent of the benefits to be paid during a period of 208  
113 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this  
114 state and any fee charged or received by an attorney in violation thereof is an unlawful practice  
115 and renders the attorney subject to disciplinary action.

116 (b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the  
117 total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when  
118 combined with any fees previously charged or received by the attorney for permanent partial  
119 disability or permanent total disability benefits may not exceed 20 percent of an award of benefits  
120 to be paid during a period of 208 weeks.

121 (c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code,  
122 an attorney's fee for successful recovery of denied medical benefits may be charged or received  
123 by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent  
124 under this section. In no event may attorney's fees and costs be awarded pursuant to both this  
125 section and §23-2C-21(c) of this code.

126 (1) If a claimant successfully prevails in a proceeding relating to a denial of medical  
127 benefits brought before the Insurance Commissioner, other private carrier, or self-insured

128 employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other  
129 proceedings, or a combination thereof, relating to denial of medical benefits before the Workers'  
130 Compensation Board of Review, or a court, there shall additionally be charged against the private  
131 carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable  
132 hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of  
133 the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance  
134 Commissioner or his or her successors, arbitrators, mediator, the Workers' Compensation Board  
135 of Review, or a court, whichever enters a final decision on the issue. An attorney representing a  
136 claimant must submit a claim for attorney's fees and costs within 30 days following a decision in  
137 which the claimant prevails and the order becomes final.

138 (2) The Insurance Commissioner or his or her successors, arbitrators, mediators, the  
139 Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding  
140 reasonable attorney's fees not to exceed \$125 per hour and reasonable costs of the claimant to  
141 be paid by the private carriers or self-insured employers, whichever is applicable, which shall be  
142 paid as directed. In no event may an award of the claimant's attorney's fees under this subsection  
143 exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

144 (3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance  
145 Commissioner, arbitrator, mediator, Workers' Compensation Board of Review, or court shall  
146 consider the experience of the attorney, the complexity of the issue, the hours expended, and the  
147 contingent nature of the fee.

148 (d) This section becomes effective on July 1, 2022.

## **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,  
5 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit  
6 Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner  
7 or any one of the petitioners resides or does business, or with the judge thereof in vacation, within  
8 30 days after the date upon which such party received notice of the final order or decision of the  
9 agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review  
10 of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to  
11 the Intermediate Court of Appeals as provided in §51-11-1 et seq. of this code. A copy of the  
12 petition shall be served upon the agency and all other parties of record by registered or certified  
13 mail. The petition shall state whether the appeal is taken on questions of law or questions of fact,  
14 or both. No appeal bond shall be required to effect any such appeal.

15 (c) The filing of the petition shall not stay enforcement of the agency order or decision or  
16 act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at  
17 any time after the filing of his or her petition, may apply to such ~~circuit~~ court for a stay of or  
18 supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or  
19 supersedeas upon such terms as it deems proper.

20 (d) Within 15 days after receipt of a copy of the petition by the agency, or within such  
21 further time as the court may allow, the agency shall transmit to such ~~circuit~~ court the original or  
22 a certified copy of the entire record of the proceeding under review, including a transcript of all  
23 testimony and all papers, motions, documents, evidence, and records as were before the agency,  
24 all agency staff memoranda submitted in connection with the case, and a statement of matters  
25 officially noted; but, by stipulation of all parties to the review proceeding, the record may be  
26 shortened. The expense of preparing such record shall be taxed as a part of the costs of the  
27 appeal. The appellant shall provide security for costs satisfactory to the court. Any party

28 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional  
29 costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of  
30 the party requesting same, a copy of such record. In the event the complete record is not filed  
31 with the court within the time provided for in this section, the appellant may apply to the court to  
32 have the case docketed, and the court shall order such record filed.

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

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

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

- 47 (1) In violation of constitutional or statutory provisions; ~~or~~
- 48 (2) In excess of the statutory authority or jurisdiction of the agency; ~~or~~
- 49 (3) Made upon unlawful procedures; ~~or~~
- 50 (4) Affected by other error of law; ~~or~~
- 51 (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole  
52 record; or
- 53 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted

54 exercise of discretion.

55 (h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is  
56 applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court  
57 of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

## **ARTICLE 6. APPEALS.**

### **§29A-6-1. Supreme Court of Appeals.**

1 (a) 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 a circuit court has no jurisdiction to review a final order or decision in a contested case issued  
6 after June 30, 2022.

7 (b) Any party adversely affected by the final order, decision, or judgment of the  
8 Intermediate Court of Appeals under this chapter may seek review thereof by petition to the  
9 Supreme Court of Appeals, pursuant to 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 or  
2 decision entered by a family court after June 30, 2022, must be made to the Intermediate Court  
3 of Appeals, as provided in §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 or decision entered by a family court after June 30, 2022, if  
6 review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals.

7 as provided in §51-11-5 of this code.

**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 judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For  
4 purposes of this article, the terms do not mean, refer to, or include family court judges.

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

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

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

15 (e) “Final average salary” means the average of the highest 36 consecutive months’  
16 compensation received by the member as a judge of any court of record of this state.

17 (f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
18 amended.

19 (g) “Member” means a judge participating in this system.

20 (h) “Plan year” means the 12-month period commencing on July 1 of any designated year  
21 and ending the following June 30.

22 (i) “Required beginning date” means April 1 of the calendar year following the later of: (1)  
23 The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in

24 which the member retires or otherwise separates from covered employment.

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

## **ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.**

### **§51-11-1. Short title.**

1 This article is known and may be cited as the West Virginia Appellate Reorganization Act  
2 of 2021.

### **§51-11-2. Findings.**

1 The Legislature finds that:

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

4 (2) Section three, article VIII of the Constitution of West Virginia grants the Supreme Court  
5 of Appeals of West Virginia supervisory control over all intermediate appellate courts in the state,  
6 including the power to promulgate rules for the procedures of an intermediate appellate court  
7 created by statute.

### **§51-11-3. Definitions.**

1 For the purpose of this article:

2 "Circuit court" means a circuit court of this state, as provided in §51-2-1 of this code.

3 "Clerk" means the Clerk of the Supreme Court of Appeals of West Virginia, as provided in  
4 §51-1-11 of this code.

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

7 “Judge” means ~~an individual~~ a person appointed or elected to serve as a judge for the  
8 Intermediate Court of Appeals, pursuant to this article.

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

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

1 (a) In accordance with section one, article VIII of the Constitution of West Virginia, the  
2 Intermediate Court of Appeals is hereby created. The court shall be established and operable on  
3 July 1, 2022.

4 (b) The Intermediate Court of Appeals shall be divided into two districts: the Intermediate  
5 Court of Appeals for the Northern District and the Intermediate Court of Appeals for the Southern  
6 District.

7 (1) The Intermediate Court of Appeals for the Northern District includes the following  
8 counties: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison,  
9 Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston,  
10 Randolph, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt, and Wood.

11 (2) The Intermediate Court of Appeals for the Southern District includes the following  
12 counties: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson,  
13 Kanawha, Lewis, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas,  
14 Pocahontas, Putnam, Raleigh, Roane, Summers, Upshur, Wayne, Webster, and Wyoming.

15 (c) Each district of the Intermediate Court of Appeals shall convene, conduct proceedings,  
16 and issue decisions, rulings, and opinions of the court in panels of three judges.

17 (d) The proceedings of the West Virginia Intermediate Court of Appeals may take place in  
18 any location geographically located within the district that the court serves which is convenient to  
19 litigants, in a facility provided by the clerk pursuant to §51-11-10 of this code.

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



1           (a) The 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 Intermediate Court of Appeals, which has appellate jurisdiction over such  
4 matters:

5           (1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022;

6           (2) Final judgments or orders of a family court, entered after June 30, 2022;

7           (3) Final judgments or orders of a circuit court concerning guardianship or conservatorship  
8 matters, entered after June 30, 2022, pursuant to §44A-1-1 et seq. of this code;

9           (4) Final judgments, orders, or decisions of an agency or an administrative law judge  
10 entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County  
11 pursuant to §29A-5-4 or any other provision of this code;

12           (5) Final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in  
13 a certificate of need review, but transferred to the jurisdiction of the Intermediate Court of Appeals  
14 upon termination of the Office of Judges pursuant to §16-2D-16a of this code;

15           (6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior  
16 to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

17           (7) Final orders or decisions of the Workers' Compensation Board of Review pursuant to  
18 §23-5-1 et seq. of this code, entered after June 30, 2022.

19           (c) In appeals properly filed pursuant to subsection (b) of this section, the parties shall be  
20 afforded a full and meaningful review on the record of the lower tribunal and an opportunity to be  
21 heard.

22           (d) The Intermediate Court of Appeals does not have appellate jurisdiction over the  
23 following matters:

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

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

27 (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to  
28 §49-4-601 et seq. of this code;

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

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

32 (6) Interlocutory appeals;

33 (7) Certified questions of law; and

34 (8) Extraordinary remedies, as provided in §53-1-1 et seq. of this code, and any appeal of  
35 a decision or order of another court regarding an extraordinary remedy.

**§51-11-6. Motion for direct review by Supreme Court of Appeals.**

36 (a) Within 20 days after a petition for appeal is filed in the Intermediate Court of Appeals,  
37 a party may file a motion in the Supreme Court of Appeals for direct review of a final judgment or  
38 order that is otherwise within the appellate jurisdiction of the Intermediate Court of Appeals  
39 pursuant to §51-11-5 of this code.

40 (b) The Supreme Court of Appeals may grant a motion filed pursuant to this section if both  
41 of the following extraordinary circumstances exist:

42 (1) The appeal involves a question of fundamental public importance; and

43 (2) The appeal involves exigencies, in which time is of the essence, necessitating direct  
44 review of the appeal by the Supreme Court of Appeals.

45 (c) Notwithstanding any other provision of this code, if the Supreme Court of Appeals  
46 grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction  
47 over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules  
48 of the court:

**§51-11-7. Qualifications of judges.**

1 To be eligible to serve as a judge of the Intermediate Court of Appeals, a person must:

2 (1) Be a member, in good standing, of the West Virginia State Bar;

3 (2) Be admitted to practice law in the State of West Virginia for 10 years prior to  
4 appointment or election to the Intermediate Court of Appeals;

5 (3) Be a resident of the State of West Virginia for five years prior to appointment or election  
6 to the Intermediate Court of Appeals; and

7 (4) Be a resident of the district of the West Virginia Intermediate Court of Appeals in which  
8 he or she serves.

**§51-11-8. Election of judges; initial appointment and election; vacancies; length and**  
**conditions of judicial terms.**

9 (a) Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis  
10 to serve 12-year terms, subject to the exceptions for initial appointments and elections contained  
11 in subsections (b) and (c) of this section. Each judge shall be elected by the voters of the counties  
12 within the geographical district of the court in which he or she will serve.

13 (b) *Nomination and election to fill initial vacancies.* — The Governor shall appoint, with the  
14 advice and consent of the Senate, three judges to serve in each district of the Intermediate Court  
15 of Appeals from July 1, 2022, until June 30, 2024. The judges shall be nominated and appointed  
16 according to the following procedure:

17 (1) The Judicial Vacancy Advisory Commission shall, no later than January 1, 2022,  
18 compile and certify a list to the Governor of the eight most qualified persons in each district to  
19 serve as judges of the Intermediate Court of Appeals: *Provided*, That each person on the list must  
20 meet the requirements of §51-11-7 of this code at the time the person will begin his or her term  
21 on the court.

22 (2) The Governor shall review the list certified by the Judicial Vacancy Advisory  
23 Commission and nominate three qualified candidates from the list to serve as judge in each  
24 judicial district. The Governor shall make his or her nominations without regard to political  
25 partisanship or affiliation.

26           (3) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a  
27 judge for the Intermediate Court of Appeals pursuant to this subsection shall take an oath of office  
28 and commence his or her duties on July 1, 2022.

29           (c) Initial election of judges to staggered terms. — The initial election of judges to the  
30 Intermediate Court of Appeals shall take place during the primary election of 2024. One judge  
31 shall be elected to serve a 12-year term in each district; one judge shall be elected to serve a  
32 eight-year term in each district; and one judge shall be elected to serve a four-year term in each  
33 district. For the purposes of the initial election of judges pursuant to this subsection, the Secretary  
34 of State shall, in each district, establish three separate divisions corresponding to the judicial  
35 terms on the ballot. The candidates for election in each numbered division shall be tallied  
36 separately, and the eligible candidate receiving the highest numbers of votes cast within a  
37 numbered division in his or her district shall be elected to serve the corresponding judicial term.

38           (d) Regular election of judges. — Following the initial election of judges pursuant to  
39 subsection (c) of this section, during the primary election in every year during which a sitting  
40 judge's term will expire, a judge shall be elected to each district of the Intermediate Court of  
41 Appeals to serve a 12-year term commencing on July 1 of that year.

42           (e) Vacancies. — If a vacancy arises before the expiration of a judicial term, the vacancy  
43 shall be filled by the same nomination and appointment process provided in subsection (b) of this  
44 section, subject to the following requirements:

45           (1) The list of candidates for a single vacancy, submitted to the Governor by the Judicial  
46 Vacancy Advisory Commission, shall include the names of no more than the five nor fewer than  
47 the two most qualified persons to fill the judicial vacancy in the Intermediate Court of Appeals.

48           (2) If the vacancy occurs less than two years and seven months before the expiration of  
49 the original term, the judge shall be appointed to fill the vacancy for the length of the unexpired  
50 term.

51 (3) If the vacancy occurs more than two years and seven months before the expiration of  
52 the original term, the vacancy shall initially be filled by the nomination and appointment process,  
53 followed by a subsequent election, during the next occurring primary election, to fill the vacancy  
54 for the length of the unexpired term.

55 (f) The judges of each district of the Intermediate Court of Appeals shall periodically select  
56 one judge to serve as chief judge for their respective district, pursuant to rules promulgated by  
57 the Supreme Court of Appeals.

58 (g) A person sitting as a judge of the Intermediate Court of Appeals may not retain his or  
59 her position as judge upon becoming a candidate for any elected public office, judicial or  
60 nonjudicial.

**§51-11-9. 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 Intermediate Court of Appeals are governed by rules  
3 promulgated by the Supreme Court of Appeals.

4 (b) Filing; records. —

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

8 (c) Fees. —

9 (1) The Clerk of the Supreme Court of Appeals may charge a party appealing to the  
10 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 The court may order the payment of an appeal bond before an appeal to the Intermediate

16 Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of  
17 Appeals, and when applicable, the requirements of §58-5-14 of this code.

**§51-11-10. Administration of court.**

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

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

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

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

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

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

1 (a) The Intermediate Court of Appeals shall issue, as appropriate in each appeal, written

2 opinions, orders, and decisions: *Provided*, That a written decision on the merits shall be issued  
3 as a matter of right in each appeal that is properly filed and within the jurisdiction of the  
4 Intermediate Court of Appeals.

5 (b) A written opinion, order, or decision of the Intermediate Court of Appeals is binding  
6 precedent for the decisions of all circuit courts, family courts, magistrate courts, and agencies that  
7 lie within the court's district unless the opinion, order, or decision is overruled or modified by the  
8 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 Intermediate Court of Appeals in accordance with rules promulgated by the  
3 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 Intermediate Court of Appeals may be stayed pending the appeal, in  
6 accordance with rules promulgated by the 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 Intermediate Court of Appeals.

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

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

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

**CHAPTER 58. APPEAL AND ERROR.**

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

**AND THE 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 an appeal of a final order or judgment of a circuit  
6 court entered after June 30, 2022, shall be to the Intermediate Court of Appeals, as required by  
7 §51-11-1 et seq. of this code.

8           (b) As provided in §51-11-13 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 Intermediate Court of Appeals in  
10 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.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals.

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