

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 4

FISCAL  
NOTE

BY SENATORS TRUMP, ROBERTS, TAKUBO, AND SWOPE

[Introduced February 10, 2021; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

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 a new section,  
6 designated §23-5-8a; to amend and reenact §29A-5-4 of said code; to amend and reenact  
7 §29A-6-1 of said code; to amend and reenact §51-2A-24 of said code; to amend and  
8 reenact §51-9-1a of said code; to amend said code by adding thereto a new article,  
9 designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-  
10 11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-13, and §51-11-14; and to  
11 amend and reenact §58-5-1 of said code, all relating generally to the West Virginia  
12 Appellate Reorganization Act of 2021; providing that the Judicial Vacancy Advisory  
13 Commission shall assist the Governor in filling judicial vacancies in an Intermediate Court  
14 of Appeals; transferring jurisdiction over appeals of decisions of the Health Care Authority  
15 in certificate of need reviews from the Workers' Compensation Office of Administrative  
16 Judges to the Intermediate Court of Appeals; transferring jurisdiction over objections filed  
17 in workers' compensation claims from the Office of Judges to the Workers' Compensation  
18 board of review; terminating the Office of Judges by a certain date and transferring all  
19 powers and duties, related to objections, from the Office of Judges to the board of review;  
20 providing that the Insurance Commissioner shall have administrative oversight and  
21 authority over the board of review; authorizing the board of review to hire hearing  
22 examiners meeting certain qualifications and classified as attorneys; requiring the  
23 chairman of the board of review to assign a member of the board to each objection;  
24 requiring that all orders and decisions of the board of review pertaining to an objection be  
25 issued and signed by a single member of the board of review; permitting the board of  
26 review member assigned to an objection to delegate certain duties to a hearing examiner;

27 establishing the administrative powers and duties of the board of review; increasing the  
28 limit on the annual salary of a board of review member; authorizing the board of review to  
29 promulgate rules of practice and procedure, and establishing a process therefor;  
30 establishing duties of the chairman of the board of review; providing that the administrative  
31 expenses of the board of review shall be included in annual budget of the Insurance  
32 Commissioner; providing that petitions for review of final decisions of the Workers'  
33 Compensation Board of Review shall be made to the Intermediate Court of Appeals;  
34 establishing certain procedures and other requirements for appeals of board of review  
35 decisions made to the Intermediate Court of Appeals; providing that the Supreme Court  
36 of Appeals has discretion to review final decisions of the Intermediate Court of Appeals in  
37 workers' compensation claims; requiring that appeal of contested cases under the State  
38 Administrative Procedures Act be made to the Intermediate Court of Appeals; transferring  
39 jurisdiction to review family court final orders from circuit courts to the Intermediate Court  
40 of Appeals; creating an Intermediate Court of Appeals in West Virginia to be operational  
41 by a certain date; providing a short title; providing legislative findings; defining terms;  
42 establishing and defining two geographical districts of the Intermediate Court of Appeals;  
43 requiring a three-judge panel for proceedings of each district of the Intermediate Court of  
44 Appeals; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters;  
45 excluding certain matters from jurisdiction of the Intermediate Court of Appeals; providing  
46 that parties to an appeal in the Intermediate Court of Appeals shall have an opportunity  
47 for a full and meaningful review on the record of the lower tribunal and an opportunity to  
48 be heard; establishing a procedure by which parties to an appeal in the Intermediate Court  
49 of Appeals may file a motion for direct review of an appeal by the Supreme Court of  
50 Appeals in extraordinary circumstances; providing eligibility criteria for judges of the  
51 Intermediate Court of Appeals; providing a process for initial appointment of judges to the  
52 Intermediate Court of Appeals to fill vacancies in the Intermediate Court of Appeals upon

53 its creation; providing for an initial election of judges to the Intermediate Court of Appeals  
54 for staggered terms; providing for the regular election of a judge to each district of the  
55 Intermediate Court of Appeals upon the expiration of a sitting judge's term; establishing a  
56 procedure for the filling of vacancies in unexpired judicial terms by appointment and in  
57 certain circumstances, subsequent election; providing that the Governor's judicial  
58 appointments shall be made from a list of candidates submitted by the Judicial Vacancy  
59 Advisory Commission and are subject to advice and consent of the Senate; providing that  
60 judges of the Intermediate Court of Appeals may not be candidates for any elected public  
61 office during the judicial term; establishing certain requirements for the filing of appeals to  
62 the Intermediate Court of Appeals; clarifying that an appeal bond may be required before  
63 appeal to the Intermediate Court of Appeals may take effect; requiring the Chief Judge of  
64 the Intermediate Court of Appeals to publish and submit certain reports to the Legislature  
65 and Supreme Court of Appeals regarding pending cases; authorizing filing fees; providing  
66 for deposit of filing fees in a special revenue account to fund the State Police Forensic  
67 Laboratory; recognizing the constitutional authority of the Supreme Court of Appeals to  
68 exercise administrative authority over the Intermediate Court of Appeals; providing that  
69 procedures and operations of the Intermediate Court of Appeals shall comply with rules  
70 promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate  
71 Court of Appeals be filed with the Clerk of the Supreme Court of Appeals; providing that  
72 Intermediate Court of Appeals proceedings shall take place in publicly available facilities  
73 as arranged by the Administrative Director of the Supreme Court of Appeals; granting the  
74 Intermediate Court of Appeals discretion to require oral argument; authorizing the  
75 Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate  
76 Court of Appeals operations; providing that the budget for Intermediate Court of Appeals  
77 operations shall be included in the appropriation for the Supreme Court of Appeals;  
78 authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for

79 lower courts; providing that the Intermediate Court of Appeals shall issue written decisions  
80 as a matter of right; providing for discretionary review of Intermediate Court of Appeals  
81 decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits,  
82 and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing  
83 for reimbursement of expenses of Intermediate Court of Appeals staff; providing internal  
84 effective dates; removing obsolete language from the code; and making technical  
85 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 pending before the Office of  
12 Judges on or before September 30, 2022, the appeal shall be transferred to the Intermediate  
13 Court of Appeals, as provided in §29A-5-4 of this code. For any appeal transferred pursuant to  
14 this subsection, the Intermediate Court of Appeals shall adopt any existing records of evidence  
15 and proceedings in the Office of Judges, conduct further proceedings as it deems necessary, and  
16 issue a final decision or otherwise dispose of the case pursuant to the provisions governing the  
17 judicial review of contested 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 Workers' Compensation**  
**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 Administrative Law Judges, as provided in this chapter, shall be  
4 transferred to the Workers' 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.**

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, and  
6 the employer, and, with respect to claims involving funds created in §23-2C-1 *et seq.* of this code  
7 for which he or she has been designated the administrator, the Insurance Commissioner. In  
8 claims in which the employer had coverage on the date of the injury or last exposure, the  
9 employer's carrier has sole authority to act on the employer's behalf in all aspects related to  
10 litigation of the claim. With regard to any issue which is ready for a decision, the Insurance  
11 Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly  
12 send the decision to all parties, including the basis of its decision. As soon as practicable after  
13 receipt of any occupational pneumoconiosis or occupational disease claim or any injury claim in  
14 which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or  
15 self-insured employer, whichever is applicable, shall send the claimant a brochure approved by  
16 the Insurance 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 ~~a protest~~ an objection to  
22 the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer,  
23 whichever is applicable, is final unless an objection to the decision is properly filed within  
24 60 days after the receipt of such decision ~~unless a protest is filed within the 60 day period~~, the  
25 finding or action is final. This time limitation is a condition of the right to litigate the finding or action  
26 and hence jurisdictional. ~~Any protest~~ Any objection shall be filed with the ~~Office of Judges~~  
27 Workers' Compensation Board of Review, as provided in §23-5-8 and §23-5-8a of this code, with  
28 a copy served upon the parties to the claim, and other parties in accordance with the procedures  
29 set forth in §23-5-8 and §23-5-9 of this code. An employer may ~~protest~~ file an objection to a

30 ~~decisions~~ decision incorporating findings made by the Occupational Pneumoconiosis Board,  
31 decisions made by the Insurance Commissioner acting as administrator of claims involving funds  
32 created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this  
33 code.

34 (2) (A) With respect to every application for benefits ~~filed on or after July 1, 2008~~, in which  
35 an objection to a decision to deny benefits is ~~protected~~ filed and the matter involves an issue as  
36 to whether the application was properly filed as a new claim or a reopening of a previous claim,  
37 the party that denied the application shall begin to make conditional payment of benefits and ~~must~~  
38 shall promptly give notice to the ~~Office of Judges~~ Workers' Compensation Board of Review that  
39 another identifiable person may be liable. The ~~Office of Judges~~ Workers' Compensation Board of  
40 Review shall promptly order the appropriate persons be joined as parties to the proceeding:  
41 *Provided*, That at any time during a proceeding in which conditional payments are being made in  
42 accordance with the provisions of this subsection, the ~~Office of Judges~~ Workers' Compensation  
43 Board of Review may, pending final determination of the person properly liable for payment of the  
44 claim, order that such conditional payments of benefits be paid by another party.

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

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

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

55 (2) A petition to reopen be designated as an application for benefits, effective as of the

56 original date of filing; or

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

61 (d) Where an employer ~~protests~~ files an objection to a written decision entered pursuant  
62 to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the  
63 Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this  
64 code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not  
65 prevail in its ~~protest~~ objection, and in the event the claimant is required to attend a hearing by  
66 subpoena, or agreement of counsel, or at the express direction of the ~~Office of Judges~~ Workers'  
67 Compensation Board of Review, then the claimant, in addition to reasonable traveling and other  
68 expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

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

82           (f) The amendments to this section made during the 2021 Regular Session of the  
83 Legislature shall become effective on July 1, 2022.

**§23-5-3. Refusal to reopen claim; notice; objection.**

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

15           (b) The amendments to this section made during the 2021 Regular Session of the  
16 Legislature shall become effective on July 1, 2022.

**§23-5-5. Refusal of modification; notice; objection.**

1           (a) If in any case it appears to the ~~commission, the successor to the commission~~ Insurance  
2 Commissioner, other private insurance carriers, and self-insured employers, whichever is  
3 applicable, that the application filed pursuant to §23-5-4 of this code fails to disclose some fact or  
4 facts which were not previously considered ~~by the commission~~ in its former findings, and which  
5 would entitle the employer to any modification of the previous award, the ~~commission, the~~  
6 ~~successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-

7 insured employers, whichever is applicable, shall, within 60 days from the receipt of the  
 8 application, notify the claimant and employer that the application fails to establish a just cause for  
 9 modification of the award. The notice shall be in writing stating the reasons for denial and the time  
 10 allowed for objection to the decision of the ~~commission, the successor to the commission~~  
 11 Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever  
 12 is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the  
 13 decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This  
 14 time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the  
 15 objection, the ~~Office of Judges~~ Workers' Compensation Board of Review shall afford the employer  
 16 an evidentiary hearing as provided in §23-5-9 of this code.

17 (b) The amendments to this section made during the 2021 Regular Session of the  
 18 Legislature shall become effective on July 1, 2022.

**§23-5-6. Time periods for objections and appeals; extensions.**

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

10 (b) The amendments to this section made during the 2021 Regular Session of the  
 11 Legislature shall become effective on July 1, 2022.

**§23-5-8. ~~Designation of~~ Transfer of powers and duties of the Office of Administrative Law  
Judges to the Workers' Compensation Board of Review; powers of chief**

**administrative law judge the Workers' Compensation Board of Review in relation to review of objections.**

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

14       ~~(b) The chief administrative law judge shall be a person who has been admitted to the~~  
15 ~~practice of law in this state and shall also have had at least four years of experience as an~~  
16 ~~attorney. The chief administrative law judge's salary shall be set by the workers' compensation~~  
17 ~~board of managers. The salary shall be within the salary range for comparable chief administrative~~  
18 ~~law judges as determined by the state Personnel Board created by section six, article six, chapter~~  
19 ~~twenty-nine of this code. The chief administrative law judge may only be removed by a vote of~~  
20 ~~two-thirds of the members of the Workers' Compensation Board of managers. Upon transfer of~~  
21 ~~the office of judges to the Insurance Commissioner, the chief administrative law judge shall~~  
22 ~~continue to serve as chief administrative law judge until December 31, 2007. Thereafter,~~  
23 ~~appointments of the chief administrative law judge shall be for terms of four years beginning~~  
24 ~~January 1, 2008, and the chief administrative law judge may be removed only for cause by the~~

25 ~~vote of four members of the Industrial Council. No other provision of this code purporting to limit~~  
26 ~~the term of office of any appointed official or employee or affecting the removal of any appointed~~  
27 ~~official or employee is applicable to the chief administrative law judge.~~

28 ~~(c) (b) The chief administrative law judge Pursuant to §23-5-11(o) of this code, the~~  
29 ~~Workers' Compensation Board of Review shall employ administrative law judges hearing~~  
30 ~~examiners and other personnel that are necessary for the proper conduct of a system of~~  
31 ~~administrative review of orders issued by the Workers' Compensation Commission which orders~~  
32 ~~have been objected to by a party objections to decisions of the Insurance Commissioner, private~~  
33 ~~carrier, and self-insured employer, whichever is applicable, made pursuant to the provisions of~~  
34 ~~§23-5-1 of this code and issued after June 30, 2022. The employees shall be in the classified~~  
35 ~~service of the state. Qualifications, compensation and personnel practice relating to the~~  
36 ~~employees of the office of judges other than the chief administrative law judge shall be governed~~  
37 ~~by the provisions of this code and rules of the classified service pursuant to §29-6-1 et seq. of~~  
38 ~~this code. All additional administrative law judges All hearing examiners hired by the Workers'~~  
39 ~~Compensation Board of Review shall be persons who have been admitted to the practice of law~~  
40 ~~in this state and shall also have had at least two four years of experience as an attorney. The~~  
41 ~~chief administrative law judge chairman of the Workers' Compensation Board of Review shall~~  
42 ~~supervise the other administrative law judges hearing examiners and other personnel of the~~  
43 ~~board, which collectively shall be referred to in this chapter as the office of judges Workers'~~  
44 ~~Compensation Board of Review.~~

45 ~~(d) The administrative expense of the office of judges shall be included within the annual~~  
46 ~~budget of the Workers' Compensation Commission and, upon termination of the commission, the~~  
47 ~~Insurance Commissioner.~~

48 ~~(e) The office of judges shall, from time to time, promulgate rules of practice and procedure~~  
49 ~~for the hearing and determination of all objections to findings or orders of the office of judges. The~~  
50 ~~office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase~~



51 ~~is defined in §29A-3-1 et seq. of this code. Any rules adopted pursuant to this section which are~~  
52 ~~applicable to the provisions of this article are not subject to sections nine through sixteen,~~  
53 ~~inclusive, article three, chapter twenty-nine-a of this code. The office of judges shall follow the~~  
54 ~~remaining provisions of chapter 29A of this code for giving notice to the public of its actions and~~  
55 ~~the holding of hearings or receiving of comments on the rules.~~

56 (f) ~~(c)~~ The chief administrative law judge Workers' Compensation Board of Review has the  
57 power to hear and determine all ~~disputed claims~~ objections in accordance with the provisions of  
58 this article, establish a procedure for the hearing of ~~disputed claims~~ objections, take oaths,  
59 examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and  
60 make reports that are necessary for ~~disputed claims~~ reviewing objections, and exercise any  
61 additional powers, including the delegation of powers to ~~administrative law judges or hearing~~  
62 ~~examiners that are necessary for the proper conduct of a system of administrative review of~~  
63 ~~disputed claims~~ objections. The chairman of the Workers' Compensation Board of Review shall  
64 make reports that are requested of him or her by the ~~workers' compensation board of managers~~  
65 Insurance Commissioner.

66 (g) ~~(d)~~ Effective upon termination of the ~~commission~~ Office of Judges, the office of judges  
67 and the board of review shall be transferred to the Insurance Commissioner, which shall have the  
68 oversight and administrative authority heretofore provided to the executive director and the board  
69 of managers the Insurance Commissioner has oversight and administrative authority over the  
70 Workers' Compensation Board of Review as heretofore provided to the Insurance Commissioner  
71 over the Office of Judges.

72 (e) The amendments to this section made during the 2021 Regular Session of the  
73 Legislature shall become effective on July 1, 2022.

**§23-5-8a. 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.**

74 (a) The Office of Judges has no jurisdiction to review objections to a decision of the  
75 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made  
76 pursuant to the provisions of this chapter and issued after June 30, 2022. The Workers'  
77 Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the  
78 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made  
79 pursuant to the provisions of this chapter and issued after June 30, 2022.

80 (b) On or before September 30, 2022, the Office of Judges shall issue a final decision in,  
81 or otherwise dispose of, each and every objection or other matter pending before the Office of  
82 Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any  
83 objection or other matter pending before the Office of Judges on or before September 30, 2022,  
84 the objection or other matter shall be transferred to the Workers' Compensation Board of Review.  
85 For any objections transferred from the Office of Judges to the Workers' Compensation Board of  
86 Review, the Board of Review shall adopt any existing records of proceedings in the Office of  
87 Judges, conduct further proceedings and collect evidence as it deems necessary, and issue a  
88 final decision or otherwise dispose of the case according to the procedural rules promulgated  
89 pursuant to §23-5-11(n) of this code.

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

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

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

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

98 (e) Notwithstanding the requirements of this section, the Workers' Compensation Board  
99 of Review shall review and decide all remaining appeals filed with the Board of Review, of Office

100 of Judges' decisions issued prior to June 30, 2022, according to the procedure and requirements  
101 for such appeals heretofore provided in this article.

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

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 §23-5-1 of this code, shall  
3 be filed with the ~~office of judges~~ Workers' Compensation Board of Review. Upon receipt of an  
4 objection, the ~~office of judges~~ Workers' Compensation Board of Review shall notify the Insurance  
5 Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other  
6 parties of the filing of the objection. The ~~office of judges~~ Workers' Compensation Board of Review  
7 shall establish by rule, promulgated in accordance with the provisions of ~~§23-5-8(e)~~ §23-5-11(n)  
8 of this code, an adjudicatory process that enables parties to present evidence in support of their  
9 positions and provides an expeditious resolution of the objection. The employer, the claimant, the  
10 Insurance Commissioner, the private carrier, or the self-insured employer, whichever ~~are~~ is  
11 applicable, shall be notified of any hearing at least 10 days in advance. ~~The office of judges shall~~  
12 ~~review and amend, or modify, as necessary, its procedural rules by July 1, 2007.~~

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

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

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

34 ~~(e)~~ (d) The ~~office of judges~~ Workers' Compensation Board of Review shall keep full and  
35 complete records of all proceedings concerning ~~a disputed claim~~ an objection. Subject to the rules  
36 of practice and procedure promulgated pursuant to ~~§23-5-8(e)~~ §23-5-11(n) of this code, the record  
37 upon which the matter shall be decided shall include any evidence submitted by a party to the  
38 ~~office of judges~~ Workers' Compensation Board of Review and evidence taken at hearings  
39 conducted by the ~~office of judges~~ Board of Review. The record may include evidence or  
40 documents submitted in electronic form or other appropriate medium in accordance with the rules  
41 of practice and procedure. The ~~office of judges~~ Workers' Compensation Board of Review is not  
42 bound by the usual common law or statutory rules of evidence.

43 ~~(d)~~ (e) All hearings shall be conducted as determined by the ~~chief administrative law judge~~  
44 Workers' Compensation Board of Review pursuant according to the rules of practice and  
45 procedure promulgated pursuant to ~~section eight of this article~~ §23-5-11(n) of this code. If a  
46 hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review  
47 process, submit the designated record to the member of the Workers' Compensation Board of  
48 Review to whom the objection is assigned, along with the hearing examiner's recommendation of

49 a decision affirming, reversing, or modifying the action that was subject to the objection. Upon  
50 consideration of the designated record and, if applicable, the recommendation of the hearing  
51 examiner, the chief administrative law judge or other authorized adjudicator within the office of  
52 judges member of the Workers' Compensation Board of Review assigned to the objection shall,  
53 based on the determination of the facts of the case and applicable law, render a decision affirming,  
54 reversing, or modifying the action ~~protested~~ that was subject to the objection. The decision shall  
55 contain findings of fact and conclusions of law, shall be signed by the member of the Workers'  
56 Compensation Board of Review rendering the decision, and shall be mailed to all parties.

57 (e) ~~(f)~~ The ~~office of judges~~ Workers' Compensation Board of Review may remand a claim  
58 to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable,  
59 for further development of the facts or administrative matters as, in the opinion of the  
60 ~~administrative law judge~~ member of the Board of Review assigned to the objection, may be  
61 necessary for a full and complete disposition of the case. The ~~administrative law judge~~ member  
62 of the Workers' Compensation Board of Review assigned to the objection shall establish a time  
63 within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is  
64 applicable, ~~must~~ shall report back to the ~~administrative law judge~~ Board of Review.

65 (f) ~~(g)~~ The decision of the ~~office of judges~~ Workers' Compensation Board of Review  
66 regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-  
67 insured employer, whichever is applicable, is final, and benefits shall be paid or denied in  
68 accordance with the decision, unless an order staying the payment of benefits is specifically  
69 entered by ~~the Workers' Compensation Board of Review, created in §23-5-11 of this code~~ a court  
70 with appellate jurisdiction over the decision or by the ~~administrative law judge~~ member of the  
71 Board of Review who granted the benefits. No stay with respect to any medical treatment or  
72 rehabilitation authorized by the ~~office of judges~~ Workers' Compensation Board of Review may be  
73 granted. If the decision is subsequently appealed and reversed in accordance with the procedures  
74 set forth in this article, and any overpayment of benefits occurs as a result of such reversal, any

75 such overpayment may be recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of  
76 this code, as applicable.

**§23-5-10. Appeal from ~~administrative law judge~~ a Workers' Compensation Board of Review  
decision to appeal board the Intermediate Court of Appeals.**

1        (a) The employer, claimant, ~~Workers' Compensation Commission, the successor to the~~  
2 ~~commission~~ Insurance Commissioner, other private insurance carriers, and self-insured  
3 employers, whichever is applicable, may appeal to the ~~appeal board created in §23-5-11 of this~~  
4 ~~code~~ West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq., for a review of a  
5 decision by ~~an administrative law judge~~ the Workers' Compensation Board of Review. No appeal  
6 or review shall lie unless application therefor be made within 30 days of receipt of notice of the  
7 ~~administrative law judge's~~ Workers' Compensation Board of Review's final action or in any event  
8 within 60 days of the date of such final action, regardless of notice and, unless the application for  
9 appeal or review is filed within the time specified, no such appeal or review shall be allowed, such  
10 time limitation being hereby declared to be a condition of the right of such appeal or review and  
11 hence jurisdictional.

12        (b) The amendments to this section made during the 2021 Regular Session of the  
13 Legislature shall become effective on July 1, 2022.

**§23-5-11. Workers' Compensation Board of Review generally; administrative powers and  
duties of the board.**

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

3        ~~(b) (a) There is created the~~ The "Workers' Compensation Board of Review", which may  
4 also be referred to as "the Board of Review" or "the board", is hereby continued and granted  
5 ~~Effective February 1, 2004, the board of Review shall exercise~~ exclusive jurisdiction over all  
6 ~~appeals from the Workers' Compensation Office of Judges~~ objections to decisions of the  
7 Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable,

8 including any and all ~~appeals~~ matters pending ~~with the board of Appeals on January 31, 2004~~  
9 before the Office of Judges after September 30, 2022.

10 ~~(e)~~ (b) The board consists of three members.

11 ~~(d)~~ (c) The Governor shall appoint, from names submitted by the "Workers' Compensation  
12 Board of Review Nominating Committee", with the advice and consent of the Senate, three  
13 qualified attorneys to serve as members of the Board of Review. If the Governor does not select  
14 a nominee for any vacant position from the names provided by the nominating committee, he or  
15 she shall notify the nominating committee of that circumstance, and the committee shall provide  
16 additional names for consideration by the Governor. A member of the Board of Review may be  
17 removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality,  
18 or malfeasance and then, only after notice and opportunity to respond and present evidence. No  
19 more than two of the members of the board may be of the same political party. ~~The members of~~  
20 ~~the board of Review shall be paid an annual salary of \$85,000: *Provided, That* on and after July~~  
21 ~~1, 2008 the Governor shall set the salary of the members of the board: *Provided, however, That*~~  
22 ~~the annual salary of a member of the Board of Review shall not exceed \$110,000~~ \$125,000.  
23 Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the  
24 discharge of official duties in a manner consistent with the guidelines of the Travel Management  
25 Office of the Department of Administration.

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

33 ~~(f)~~ (e) The nominating committee is responsible for reviewing and evaluating candidates

34 for possible appointment to the Board of Review by the Governor. In reviewing candidates, the  
35 nominating committee may accept comments from, and request information from, any person or  
36 source.

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

43 ~~(h)~~ (g) Of the initial appointments, one member shall be appointed for a term ending  
44 December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and  
45 one member shall be appointed for a term ending December 31, 2010. Thereafter, the  
46 appointments shall be for six-year terms.

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

54 ~~(j)~~ (i) No member of the Board of Review may hold any other office, or accept any  
55 appointment or public trust, nor may he or she become a candidate for any elective public office  
56 or nomination thereto. Violation of this subsection requires the member to vacate his or her office.  
57 No member of the Board of Review may engage in the practice of law during his or her term of  
58 office.

59 ~~(k)~~ (j) A vacancy occurring on the board other than by expiration of a term shall be filled in



60 the manner original appointments were made, for the unexpired portion of the term.

61 ~~(h)~~ (j) The board shall designate one of its members in rotation to be chairman of the board  
62 for as long as the board may determine by order made and entered of record. In the absence of  
63 the chairman, any other member designated by the members present shall act as chairman.

64 ~~(m)~~ (k) The Board of Review shall meet as often as necessary to ~~hold review hearings~~  
65 conduct the Board's administrative business and make rules of practice and procedure, at such  
66 times and places as the chairman may determine. Two members shall be present in order to  
67 conduct ~~review hearings or other~~ administrative business and make rules of practice and  
68 procedure. All decisions of the board upon administrative matters, pursuant to this section, shall  
69 be determined by a majority of the members of the board.

70 ~~(n)~~ (l) The Board of Review shall, ~~make general rules regarding the pleading, including the~~  
71 ~~form of the petition and any responsive pleadings, practice and procedure to be used by the board~~  
72 from time to time, promulgate rules of practice and procedure for the review and determination of  
73 all objections filed with the board. The board does not have the power to initiate or to promulgate  
74 legislative rules as that phrase is defined in §29A-3-1 et seq. of this code. Any rules adopted  
75 pursuant to this section which are applicable to the provisions of this article are not subject to  
76 §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of  
77 chapter 29A of this code for giving notice to the public of its actions and the holding of hearings  
78 or receiving of comments on the rules.

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

86 Personnel: Provided, That for the purpose of any applicable Division of Personnel Class  
87 Specifications, hearing examiners shall be classified under a class with “attorney” in the class  
88 title. All personnel of the Board of Review are under the supervision of the chairman of the Board  
89 of Review.

90 (n) The administrative expenses of the Board of Review shall be included within the annual  
91 budget of the Insurance Commissioner, and the Insurance Commissioner shall have  
92 administrative authority and oversight over the Board of Review.

93 (o) The amendments to this section made during the 2021 Regular Session of the  
94 Legislature shall become effective on July 1, 2022: Provided, That the board is authorized to  
95 promulgate rules and hire staff, pursuant to subsection (n) and (o) of this section respectively,  
96 prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that  
97 shall become effective on that date.

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

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

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

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

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

110 ~~(u) The board shall report monthly to the Industrial Council on the status of all claims on~~  
111 ~~appeal.~~

112 ~~(v) Effective upon termination of the commission, the board of Review shall be transferred~~  
 113 ~~to The Insurance Commissioner which shall have the oversight and administrative authority~~  
 114 ~~heretofore provided to the executive director and the board of managers.~~

**§23-5-12. Appeal ~~to~~ of board decisions to the Intermediate Court of Appeals; procedure;  
 remand and supplemental hearing.**

1 (a) Any employer, employee, claimant, or dependent who shall feel aggrieved ~~at any final~~  
 2 ~~action of the administrative law judge taken after a hearing held in accordance with the provisions~~  
 3 ~~of section nine of this article~~ by a decision of the Workers' Compensation Board of Review shall  
 4 ~~have the right to~~ may appeal to the board ~~created in §23-5-11 of this code~~ the West Virginia  
 5 Intermediate Court of Appeals, created by §5-11-1 et seq. of this code, for a review of such action.  
 6 ~~The Workers' Compensation Commission, the successor to the commission~~ Insurance  
 7 Commissioner, other private insurance carriers, and self-insured employers, whichever is  
 8 applicable, shall ~~likewise have the right to~~ may appeal to the board Intermediate Court of Appeals  
 9 any final action taken by the ~~administrative law judge~~ Workers' Compensation Board of Review.  
 10 The aggrieved party shall file a written notice of appeal with the ~~board of review~~ Intermediate  
 11 Court of Appeals, with a copy to the ~~office of judges~~ Workers' Compensation Board of Review,  
 12 within 30 days after receipt of notice of the action complained of or, in any event, regardless of  
 13 notice, within 60 days after the date of the action complained of: ~~and~~ Provided, That unless the  
 14 notice of appeal is filed within the time specified, no appeal shall ~~may~~ may be allowed: Provided,  
 15 however, That the time limitation is a condition of the right to appeal and hence jurisdictional. The  
 16 board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of  
 17 appeal shall state the ~~ground~~ grounds for review and whether oral argument is requested. The  
 18 ~~office of judges~~ Workers' Compensation Board of Review, after receiving a copy of the notice of  
 19 appeal, shall forthwith make up a transcript of ~~the~~ any proceedings before the ~~office of judges~~  
 20 Board of Review and certify and transmit it to the ~~board~~ Intermediate Court of Appeals. The  
 21 certificate shall incorporate a brief recital of the proceedings in the ~~case~~ matter and recite each

22 order entered or decision issued and the date thereof.

23 (b) The ~~board~~ Intermediate Court of Appeals shall set a time and place for the hearing of  
24 arguments on each claim and shall notify the interested parties thereof. The review by the ~~board~~  
25 court shall be based upon the record submitted to it and such oral argument as may be requested  
26 and received. The ~~board~~ Intermediate Court of Appeals may affirm, reverse, modify, or  
27 supplement the decision of the ~~administrative law judge~~ Workers' Compensation Board of Review  
28 and make such disposition of the case as it determines to be appropriate. Briefs may be filed by  
29 the interested parties in accordance with the rules of procedure prescribed by the ~~board~~ court.  
30 The ~~board~~ Intermediate Court of Appeals may affirm the order or decision of the ~~administrative~~  
31 ~~law judge~~ Workers' Compensation Board of Review or remand the case for further proceedings.  
32 It shall reverse, vacate, or modify the order or decision of the ~~administrative law judge~~ Workers'  
33 Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been  
34 prejudiced because the ~~administrative law judge's~~ Board of Review's findings are:

35 (1) In violation of statutory provisions; ~~or~~

36 (2) In excess of the statutory authority or jurisdiction of the ~~administrative law judge~~ Board  
37 of Review; ~~or~~

38 (3) Made upon unlawful procedures; ~~or~~

39 (4) Affected by other error of law; ~~or~~

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

42 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
43 exercise of discretion.

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

46 (1) All decisions, findings of fact, and conclusions of law of the ~~board of review~~  
47 Intermediate Court of Appeals shall be in writing and state with specificity the laws and facts relied

48 upon to sustain, reverse, or modify the ~~administrative law judge's~~ Board of Review's decision.

49 ~~(2) Decisions of the board of review shall be made by a majority vote of the board of~~  
50 ~~review.~~

51 ~~(3) (2)~~ A decision of the ~~board of review~~ Intermediate Court of Appeals is binding upon the  
52 ~~executive director and the commission and the successor to the commission~~ Insurance  
53 Commissioner, other private insurance carriers, and self-insured employers, whichever is  
54 applicable, with respect to the parties involved in the particular appeal. The ~~executive director,~~  
55 ~~the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and  
56 self-insured employers, whichever is applicable, ~~shall have the right to~~ may seek judicial review  
57 of a ~~board of review decision~~ final decision of the Intermediate Court of Appeals, pursuant to §51-  
58 11-13 of this code, irrespective of whether ~~or not he or she~~ such party appeared or participated  
59 in the appeal to the ~~board of review~~ Intermediate Court of Appeals.

60 (d) Instead of affirming, reversing, or modifying the decision of the ~~administrative law judge~~  
61 Workers' Compensation Board of Review, the ~~board~~ Intermediate Court of Appeals may, upon  
62 motion of any party or upon its own motion, for good cause shown, to be set forth in the order of  
63 the ~~board~~ court, remand the case to the ~~chief administrative law judge~~ Board of Review for the  
64 taking of such new, additional, or further evidence as in the opinion of the ~~board~~ court may be  
65 necessary for a full and complete development of the facts of the case. In the event the ~~board~~  
66 Intermediate Court of Appeals shall remand the case to the ~~chief administrative law judge~~  
67 Workers' Compensation Board of Review for the taking of further evidence, the ~~administrative law~~  
68 ~~judge~~ Board of Review shall proceed to take new, additional, or further evidence in accordance  
69 with any instruction given by the ~~board~~ court within 30 days after receipt of the order remanding  
70 the case. The ~~chief administrative law judge~~ Workers' Compensation Board of Review shall give  
71 to the interested parties at least 10 days written notice of the supplemental hearing, unless the  
72 taking of evidence is postponed by agreement of parties, or by the ~~administrative law judge~~ Board  
73 of Review for good cause. After the completion of a supplemental hearing, the ~~administrative law~~

74 ~~judge~~ Workers' Compensation Board of Review shall, within 60 days, render ~~his or her~~ its decision  
 75 affirming, reversing, or modifying the former action of the ~~administrative law judge~~ Workers'  
 76 Compensation Board of Review. The decision shall be appealable to, and proceeded with, by  
 77 the ~~board of review~~ Intermediate Court of Appeals in the same manner as other appeals. In  
 78 addition, upon a finding of good cause, the ~~board~~ court may remand the case to the ~~Workers'~~  
 79 ~~Compensation Commission, the successor to the commission~~ Insurance Commissioner, other  
 80 private insurance carriers, ~~and~~ or self-insured employers, whichever is applicable, for further  
 81 development. Any decision made by the ~~commission, the successor to the commission~~ Insurance  
 82 Commissioner, other private insurance carriers, ~~and~~ or self-insured employers, whichever is  
 83 applicable, following a remand, shall be subject to objection to the ~~office of judges~~ Workers'  
 84 Compensation Board of Review and not to the ~~board~~ Intermediate Court of Appeals. The ~~board~~  
 85 Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for  
 86 a full development and just decision of the case.

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

90 ~~(f)~~ (e) In all proceedings before the ~~board~~ Intermediate Court of Appeals, any party may  
 91 be represented by counsel.

92 (f) The amendments to this section made during the 2021 Regular Session of the  
 93 Legislature shall become effective on July 1, 2022.

**§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.**

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 Workers’ Compensation Board of Review and its authorized representatives to prevent delay  
8 when granting or denying continuances and supplemental hearings. It is also the policy of this  
9 chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on  
10 technicalities.

11 (b) The amendments to this section made during the 2021 Regular Session of the  
12 Legislature shall become 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 §23-5-8a 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, other private insurance carriers, and self-insured employers, whichever is  
6 applicable, to the Supreme Court of Appeals within 30 days from the date of the final order by  
7 filing a petition therefor with the court against the board and the adverse party or parties as  
8 respondents. Unless the petition for review is filed within the 30-day period, no appeal or review  
9 ~~shall~~ may be allowed, such time limitation is a condition of the right to such appeal or review and  
10 hence jurisdictional. The clerk of the Supreme Court of Appeals shall notify each of the  
11 respondents and the Workers’ Compensation Commission, the successor to the commission,  
12 other private insurance carriers, and self-insured employers, whichever is applicable, of the filing  
13 of such petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the  
14 court the record of the proceedings had before it, including all the evidence. The court or any  
15 judge thereof in vacation may thereupon determine whether or not a review shall be granted. If  
16 review is granted to a nonresident of this state, he or she shall be required to execute and file with

17 the clerk before an order or review shall become effective, a bond, with security to be approved  
18 by the clerk, conditioned to perform any judgment which may be awarded against him or her. The  
19 board may certify to the court and request its decision of any question of law arising upon the  
20 record, and withhold its further proceeding in the case, pending the decision of court on the  
21 certified question, or until notice that the court has declined to docket the same. If a review is  
22 granted or the certified question is docketed for hearing, the clerk shall notify the board and the  
23 parties litigant or their attorneys and the Workers' Compensation Commission, the successor to  
24 the commission, other private insurance carriers, and self-insured employers, whichever is  
25 applicable, of that fact by mail. If a review is granted or the certified question docketed, the case  
26 shall be heard by the court in the same manner as in other cases, except that neither the record  
27 nor briefs need be printed. Every review granted or certified question docketed prior to 30 days  
28 before the beginning of the term, shall be placed upon the docket for that term. The Attorney  
29 General shall, without extra compensation, represent the board in such cases. The court shall  
30 determine the matter brought before it and certify its decision to the board and to the commission.  
31 The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding \$30  
32 to the claimant's attorney, shall be fixed by the court, and taxed against the employer if the latter  
33 is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review)  
34 is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission,  
35 payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the  
36 discretion of the court: But there shall be no cost taxed upon a certified question.

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

40 ~~(e)~~ (d) If the decision of the board represents an affirmation of a prior ruling by both the  
41 commission and the Office of Judges that was entered on the same issue in the same claim, the  
42 decision of the board may be reversed or modified by the Supreme Court of Appeals only if the



43 decision is in clear violation of Constitutional or statutory provision, is clearly the result of  
44 erroneous conclusions of law, or is based upon the board's material misstatement or  
45 mischaracterization of particular components of the evidentiary record. The court may not conduct  
46 a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the  
47 board pursuant to this subsection, it shall state with specificity the basis for the reversal or  
48 modification and the manner in which the decision of the board clearly violated Constitutional or  
49 statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's  
50 material misstatement or mischaracterization of particular components of the evidentiary record.

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

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

64 (a) An attorney's fee in excess of 20% percent of any award granted may not be charged  
65 or received by an attorney for a claimant or dependent. In no case may the fee received by the  
66 attorney of the claimant or dependent be in excess of 20% percent of the benefits, to be paid  
67 during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this

68 chapter, may not be considered as part of the award in determining the attorney's fee. However,  
69 any contract entered into in excess of 20% percent of the benefits to be paid during a period of  
70 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of  
71 this state and any fee charged or received by an attorney in violation thereof is an unlawful  
72 practice and renders the attorney subject to disciplinary action.

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

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

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

94 submit a claim for attorney fees and costs within 30 days following a decision in which the claimant  
95 prevails, and the order becomes final.

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

103 (3) In determining the reasonableness of the attorney fees to be awarded, the Insurance  
104 Commission, arbitrator, mediator, ~~Office of Judges~~ Workers' Compensation Board of Review, or  
105 court shall consider the experience of the attorney, the complexity of the issue, the hours  
106 expended, and the contingent nature of the fee.

107 (d) The amendments to this section made during the 2021 Regular Session of the  
108 Legislature shall become 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 shall be instituted by filing an appeal, at  
11 the election of a party desiring appeal, to the Intermediate Court of Appeals as provided in §51-  
12 11-1 et seq. of this code. A copy of the petition shall be served upon the agency and all other  
13 parties of record by registered or certified mail. The petition shall state whether the appeal is taken  
14 on questions of law or questions of fact, or both. No appeal bond shall be required to effect any  
15 such appeal.

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

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

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

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

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

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

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

50 (3) Made upon unlawful procedures; ~~or~~

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

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

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

56 (h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is  
57 applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court  
58 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.****§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 shall be made to the Intermediate Court of  
 3           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           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  
 3           courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of

4 Appeals. For purposes of this article, the terms do not mean, refer to, or include family  
5 court judges.

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

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

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

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

18 “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been  
19 amended.

20 “Member” means a judge participating in this system.

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

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

26 “Retirement system” or “system” means the Judges’ Retirement System created and  
27 established by this article. Notwithstanding any other provision of law to the contrary, the  
28 provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of  
29 Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No

30 service as a family court judge may be construed to qualify a person to participate in the Judges'  
31 Retirement System or used in any manner as credit toward eligibility for retirement benefits under  
32 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 six, article VIII of the Constitution of West Virginia acknowledges that appellate  
5 jurisdiction "may be conferred by law exclusively upon an intermediate appellate court" and  
6 numerous additional references to the potential creation of an intermediate appellate court by the  
7 Legislature appear throughout the Constitution; and

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

### **§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 West Virginia Supreme Court of Appeals, as provided in  
4 §51-1-11 of this code.



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

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

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

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

1 (a) In accordance with section 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 is composed of two geographical districts: The  
5 Intermediate Court of Appeals for the Northern District and the Intermediate Court of Appeals for  
6 the Southern District. Each district has jurisdiction over appeals of final decisions, judgments, or  
7 orders entered within the district’s designated counties, as follows:

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

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

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

20 (d) The proceedings of the West Virginia Intermediate Court of Appeals may take place in

21 any location geographically located within the district the court serves that is convenient to  
22 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 a civil case, 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, 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 Healthcare 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, pursuant to §27-5-1 et seq. of this code;  
30 (5) Final decisions of the Public Service Commission, pursuant to §24-5-1 of this code;  
31 (6) Interlocutory appeals;  
32 (7) Certified questions of law; and  
33 (8) Extraordinary remedies, as provided in chapter 53 of this code, and any appeal of a  
34 decision or order of another court regarding an extraordinary remedy.
- 35 §51-11-6. Motion for direct review by Supreme Court of Appeals.(a) Within 10 days after  
36 a petition for appeal is properly filed in the Intermediate Court of Appeals, a party to the petition  
37 may file a motion to the West Virginia Supreme Court of Appeals for direct review of a final  
38 judgment or order that is otherwise within the appellate jurisdiction of the Intermediate Court of  
39 Appeals pursuant to §51-11-5 of this code, if both of the following extraordinary circumstances  
40 exist:
- 41 (1) The appeal involves a question of fundamental public importance; and  
42 (2) The appeal involves exigencies, in which time is of the essence, necessitating direct  
43 review of the appeal by the Supreme Court of Appeals.
- 44 (b) Notwithstanding any other provision of this code, if the Supreme Court of Appeals  
45 grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction  
46 over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules  
47 of the court: *Provided*, That the Intermediate Court of Appeals shall have jurisdiction over any  
48 matter remanded to the jurisdiction of the Intermediate Court of Appeals by the Supreme Court of  
49 Appeals.

50 (c) The Legislature requests that the Supreme Court of Appeals develop and adopt rules  
51 permitting parties to file a motion for direct appeal to the Supreme Court of Appeals, as described  
52 in this section, and that such rules provide for the granting of such motions only in the  
53 extraordinary circumstances described in subsection (a) of this section.

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

1 A person shall meet the following eligibility criteria to serve as a judge of the Intermediate  
2 Court of Appeals:

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

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

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

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

10 (5) The person may not be engaged in the practice of law while serving as a judge of the  
11 Intermediate Court of Appeals.

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

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

5 (b) *Nomination and election to fill initial vacancies.* — The Governor shall appoint, with  
6 advice and consent of the Senate, three judges to serve in each district of the Intermediate Court  
7 of Appeals from July 1, 2023 until June 30, 2024. The judges shall be nominated and appointed  
8 according to the following procedure:

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

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

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

21           (c) *Initial election of judges to stagger terms.* — The initial election of judges to the  
22 Intermediate Court of Appeals shall take place during the primary election of 2024. One judge  
23 shall be elected to serve a 10-year term in each district, one judge shall be elected to serve a six-  
24 year term in each district, and one judge shall be elected to serve a four-year term in each district.  
25 For the purposes of the initial election of judges pursuant to this subsection, the Secretary of State  
26 shall, in each district, establish three separate divisions corresponding to the judicial terms on the  
27 ballot. The candidates for election in each numbered division shall be tallied separately, and the  
28 eligible candidate receiving the highest numbers of votes cast within a numbered division in his  
29 or her district shall be elected to serve the corresponding judicial term.

30           (d) *Regular election of judges.* — Following the initial election of judges pursuant to  
31 subsection (c) of this section, during the primary election in every year during which a sitting  
32 judge's term will expire, a judge shall be elected to each district of the Intermediate Court of  
33 Appeals to serve a 10-year term commencing on July 1 of that year.

34           (e) *Vacancies.* — If a vacancy arises before the expiration of a judicial term, the vacancy

35 shall be filled by the same nomination and appointment process provided in subsection (b) of this  
36 code, subject to the following requirements:

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

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

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

47 (f) The judges of each district of the West Virginia Intermediate Court of Appeals shall  
48 periodically select one judge to serve as chief judge for their respective district, pursuant to rules  
49 promulgated by the Supreme Court of Appeals.

50 (g) No person sitting as a judge of the Intermediate Court of Appeals may retain his or her  
51 position as judge upon becoming a candidate for any elected public office, judicial or nonjudicial.

52 (h) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court  
53 of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals  
54 pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge  
55 is temporarily unable to serve on the court.

**§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 West Virginia Supreme Court of Appeals may charge a party appealing  
10 to the 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 West Virginia Supreme Court of Appeals.

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

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

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

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

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

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

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

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

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

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

**§51-11-12. Written opinions; precedential effect.**

1 (a) The Intermediate Court of Appeals is a court of record and shall issue, as appropriate  
2 in each appeal, written opinions, orders, and decisions: *Provided*, That a written decision on the  
3 merits shall be issued as a matter of right in each appeal that is within the jurisdiction of the



4 Intermediate Court of Appeals and properly filed therein.

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

**§51-11-13. 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 may grant or deny the petition for appeal or certiorari  
8 of a decision by the Intermediate Court of Appeals.

**§51-11-14. 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 such guidelines as may be  
6 prescribed 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.