

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3537

By Delegate Butler

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §51-11-4 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §58-5-8, all relating to
 3 granting the intermediate court of appeals jurisdiction to hear certified questions; relating to
 4 a party’s right to have the intermediate court of appeals answer a certified question on the
 5 constitutionality of statute, rule, or executive order of this state that is drawn into question in
 6 a case; and subjecting such certified questions to the rules of appellate procedure.

Be it enacted by the Legislature of West Virginia:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-4. Jurisdiction; limitations.

- 1 (a) The Intermediate Court of Appeals has no original jurisdiction.
- 2 (b) Unless specifically provided otherwise in this article, appeals of the following matters
- 3 shall be made to the Intermediate Court of Appeals, which has appellate jurisdiction over such
- 4 matters:
- 5 (1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022:
- 6 *Provided*, That the Supreme Court of Appeals may, on its own accord, obtain jurisdiction over any
- 7 civil case filed in the Intermediate Court of Appeals;
- 8 (2) Final judgments or orders of a family court, entered after June 30, 2022, except for final
- 9 judgments or final orders issued by a family court in any domestic violence proceeding pursuant to
- 10 W. Va. Code §48-27-1 *et seq.* of this code, which appeals shall first be made to a circuit court;
- 11 (3) Final judgments or orders of a circuit court concerning guardianship or conservatorship
- 12 matters, entered after June 30, 2022, pursuant to §44A-1-1 *et seq.* of this code;
- 13 (4) Final judgments, orders, or decisions of an agency or an administrative law judge
- 14 entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County
- 15 pursuant to §29A-5-4 or any other provision of this code;

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

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

21 (7) Final orders or decisions of the Workers' Compensation Board of Review pursuant to
22 §23-5-1 *et seq.* of this code, entered after June 30, 2022.

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

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

28 (1) Judgments or final orders issued in any criminal proceeding in this state: Provided, That
29 if the West Virginia Supreme Court of Appeals should adopt a policy of discretionary review of
30 criminal appeals then the Intermediate Court of Appeals shall have appellate jurisdiction of such
31 judgments or final orders;

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

34 (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to
35 §49-4-601 *et seq.* of this code;

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

37 (5) Any proceedings of the Lawyer Disciplinary Board;

38 (6) Any proceedings of the Judicial Investigation Commission;

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

41 (8) Interlocutory appeals;

42 (9) Certified questions of law except as provided in §58-5-8 of this code.

43 (10) Extraordinary remedies, as provided in §53-1-1 *et seq.* of this code, and any appeal of
44 a decision or order of another court regarding an extraordinary remedy; and

45 (11) Judgments or final orders issued by circuit court upon its review of a family court
46 judgment or final order in any domestic violence proceeding pursuant to §48-27-101 *et seq.* of this
47 code.

CHAPTER 58. APPEAL AND ERROR.

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

§58-5-8. Certification to Intermediate Court of Appeals.

1 (a) The Legislature finds:

2 (1) That the Supreme Court of Appeals has repeatedly held that the courts of this state
3 must presume that the acts of the Legislature are constitutional;

4 (2) That judicial determinations of the constitutionality of state statutes, rules, and
5 executive orders are of state-wide concern;

6 (3) That the public has a substantial interest in having judges elected in a state-wide
7 election decide constitutional issues of state-wide concern; and

8 (4) That the public has a substantial interest in having such issues of state-wide concern
9 determined by the intermediate court of appeals as soon as practicable after the constitutionality of
10 state statutes, rules, and executive orders is drawn into question in a case.

11 (b) A party to any case and controversy in a circuit court of this state shall have the right to
12 an expeditious answer from the intermediate court of appeals of an immediate certified question
13 on the constitutionality of any statute, rule, or executive order of this state that is drawn into
14 question in the case.

15 (c) To exercise this right, a party shall file a motion, in writing, to the intermediate court of

16 appeals, within 60 days after the constitutional issue is raised, containing:

17 (1) A concise statement of each constitutional question of law in the case; and

18 (2) An answer to each constitutional question proposed by the party filing the motion.

19 (d) The party filing a motion under subsection (c) shall serve a copy on all parties to the
20 case and on the clerk and judge of the circuit court from which the certified question is taken.

21 (e) If the state or an officer, agency or employee thereof is not a party to the case, the party
22 filing a motion under subsection (c) shall also serve a copy on the attorney general of this state and
23 the attorney general shall have the right to appear on behalf of the state before the intermediate
24 court of appeals and in any subsequent proceedings.

25 (f) Upon receipt of a motion under subsection (c) of this section, the circuit court shall take
26 no further action in the case until the intermediate court of appeals answers the question(s) therein
27 except by specific leave of the intermediate court of appeals.

28 (g) The intermediate court of appeals shall answer the certified question as soon as
29 practicable after receipt of a motion under subsection (c). But nothing in this section shall prohibit
30 the intermediate court from remanding the case to the circuit court for development of specific
31 facts necessary to answer the certified question or issuing such orders or instructions to the
32 parties and circuit court as required to answer the question(s) certified.

33 (h) A party may appeal any adverse answer given by the intermediate court of appeals to
34 the supreme court of appeals.

35 (i) The answer to the certified question given by the intermediate court of appeals or, on
36 appeal, by the supreme court of appeals shall be binding on the parties and the circuit court from
37 which the certified question is taken.

38 (j) The procedure for filing, briefing, answering, and appealing constitutional questions
39 certified under this section shall be governed by the rules of appellate procedure promulgated by
40 the supreme court of appeals.

NOTE: The purpose of this bill is to allow a party to a civil action to seek an expeditious answer to a certified question on the constitutionality of any statute, rule, or executive order from the Intermediate Court of Appeals while pending in circuit court.

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