

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 307**

6 (By Senators Kessler (Acting President), Hall, Unger, Jenkins,
7 Plymale, Foster, Minard, Prezioso, McCabe, Stollings, Browning,
8 Palumbo, Green, Beach, Boley, Nohe, K. Facemyer, Sypolt, Barnes,
9 Wells and Klempa)

10 _____
11 [Originating in the Committee on Finance;
12 reported February 28, 2011.]

13 _____
14
15
16 A BILL to amend the Code of West Virginia, 1931, as amended, by
17 adding thereto a new article, designated §51-1B-1, §51-1B-2,
18 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,
19 §51-1B-9 and §51-1B-10, all relating to authorizing a new
20 court to be known as the Intermediate Court of Appeals;
21 requiring the court to be operational by January 1, 2013;
22 providing three judges for the court; establishing
23 qualifications for judges; establishing jurisdiction of the
24 court; providing that all appeals will be reviewed and a
25 written decision on the merits issued; providing that all
26 appeals will be filed with Supreme Court of Appeals; providing
27 that Supreme Court will either keep the appeal or send it to
28 the Intermediate Court; providing that appeals in certain

1 administrative cases are discretionary; authorizing appeals
2 from Intermediate Court to the Supreme Court; authorizing
3 Governor to make initial appointments by July 1, 2012;
4 creating staggered terms; providing for elections for ten-year
5 terms after initial appointments; authorizing a Chief Judge of
6 the Intermediate Court; authorizing staff for the court and
7 the judges; providing for compensation and expenses of judges
8 and staff; providing for temporary assignment of circuit court
9 judges; providing that the Supreme Court will govern the
10 pleading, practice and procedure of the Intermediate Court
11 through rules; authorizing the Supreme Court to provide the
12 facilities, furniture, fixtures and equipment for the
13 Intermediate Court; providing for electronic filing of all
14 documents with the Intermediate Court; providing that
15 decisions of the court have precedential effect; requiring
16 written decision on the merits; and providing that the budget
17 of the Intermediate Court will be part of the Supreme Court
18 budget.

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

20 That the Code of West Virginia, 1931, as amended, be amended
21 by adding thereto a new article, designated §51-1B-1, §51-1B-2,
22 §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8,
23 §51-1B-9 and §51-1B-10, all to read as follows:

24 **ARTICLE 1B. INTERMEDIATE COURT OF APPEALS.**

25 **§51-1B-1. Intermediate Court of Appeals established; location.**

26 (a) In accordance with article VIII, section one of the West
27 Virginia Constitution, the West Virginia Intermediate Court of
28 Appeals is created. The court shall be established and operable on

1 or before January 1, 2013. The Intermediate Court shall be located
2 in Charleston, Kanawha County. The Intermediate Court of Appeals
3 is a court of record and shall issue, as appropriate in each appeal,
4 written opinions, orders and decisions.

5 (b) The Intermediate Court may, for the purposes of hearing
6 oral arguments, meet at the seat of state government or any county
7 seat.

8 **§51-1B-2. Judges; qualifications.**

9 (a) The Intermediate Court of Appeals shall consist of three
10 judges, initially appointed by the Governor in accordance with
11 section four of the article.

12 (b) An Intermediate Court of Appeals judge must be a resident
13 of the state, a member in good standing of the West Virginia State
14 Bar, and admitted to practice law in this state for at least ten
15 years prior to appointment or election.

16 (c) An Intermediate Court of Appeals judge may not engage in
17 any other business, occupation or employment inconsistent with the
18 expeditious, proper and impartial performance of his or her duties
19 as a judicial officer. An Intermediate Court of Appeals justice is
20 not permitted to engage in the outside practice of law and shall
21 devote full time to his or her duties as a judicial officer.

22 **§51-1B-3. Jurisdiction; defunctive rights of Supreme Court;**
23 **discretionary appeals.**

24 (a) The Intermediate Court of Appeals shall not have original
25 jurisdiction.

26 (b) Petitions for appeal shall be filed with the Supreme Court
27 of Appeals. Those cases for which the Supreme Court elects not to

1 grant petitions for appeal shall be transferred to the Intermediate
2 Court of Appeals.

3 (c) The Intermediate Court of Appeals has jurisdiction to hear
4 appeals from final judgments or orders entered by a circuit court
5 in any civil or criminal case, appeals from the Workers
6 Compensation Board of Review, and the Public Service Commission.

7 (d) All appeals shall be reviewed and a written decision on
8 the merits issued by either the Supreme Court of Appeals or
9 Intermediate Court of Appeals as a matter of right except for the
10 following appeals, which shall be discretionary with the Courts:

11 (1) Appeals from the Workers' Compensation Board of Review
12 established by section eleven, article five, chapter twenty-four of
13 this code;

14 (2) Appeals from orders of the Public Service Commission
15 established by article one, chapter twenty-four of this code;

16 (3) Appeals from decisions of circuit courts of administrative
17 appeals of an agency as defined in article one, chapter twenty-
18 nine-a of this code; and

19 (4) Appeals of misdemeanor convictions.

20 (e) Within thirty days after a decision by the Intermediate
21 Court, any aggrieved party may petition the Supreme Court of
22 Appeals by petition for writ of certiorari as provided by the West
23 Virginia Rules of Appellate Procedure.

24 **§51-1B-4. Number of Intermediate Court Judges; initial appointment;**
25 **election; term of office; vacancy; chief judge.**

26 (a) There shall be three judges of the Intermediate Court of
27 Appeals. The Governor shall, on or before July 1, 2012, appoint
28 the initial judges from names submitted by the Judicial Vacancy

1 Advisory Committee established pursuant to section three-a, article
2 ten, chapter three of the West Virginia Code. The committee shall
3 recommend three qualified nominees for each position for
4 Intermediate Court of Appeals judge. If the Governor does not
5 select a nominee for the position of judge from the names provided
6 by the committee, he or she shall notify the committee of that
7 circumstance and the committee shall provide additional names for
8 consideration by the Governor.

9 (b) The committee is responsible for reviewing and evaluating
10 candidates for possible appointment to the Intermediate Court of
11 Appeals by the Governor. In reviewing candidates, the committee
12 may accept applications from any attorney who believes himself or
13 herself qualified for the judgeships. The committee may accept
14 comments from and request information from any person or source.

15 (c) Of the initial appointments, one judge shall be appointed
16 for a term of four years, one judge shall be appointed for a term
17 of six years and one judge shall be appointed for a term of eight
18 years. Upon the expiration of each term, the judge's position
19 shall be filled by election, for a ten year term, in the same
20 manner as with the Supreme Court of Appeals.

21 (d) After the initial appointments are made, any vacancy in
22 office shall be filled in the same manner as vacancies on the
23 Supreme Court of Appeals.

24 (e) One judge of the Intermediate Court of Appeals shall be
25 chosen chief judge of the Intermediate Court. The manner of
26 choosing the chief judge and providing for periodic rotation of the
27 position of chief judge shall be determined by rules to be
28 established by the Supreme Court of Appeals.

1 **§51-1B-5. Compensation and expenses of Intermediate Court judges**
2 **and staffs.**

3 (a) The annual salary of an Intermediate Court of Appeals
4 judge shall be \$118,000. Reimbursement for expenses shall be at a
5 rate established by the Supreme Court of Appeals.

6 (b) Each judge of the Intermediate Court of Appeals may
7 employ two law clerks and one secretary. The Intermediate Court of
8 Appeals may employ a clerk and the necessary staff to carry out the
9 administrative duties of the court or, with the permission of the
10 Supreme Court of Appeals, the administrative and other support
11 staff of the Supreme Court of Appeals may carry out the
12 administrative duties of both courts. The compensation of the
13 staff of the Intermediate Court of Appeals shall be established by
14 the judges of the Intermediate Court of Appeals with the approval
15 of the Supreme Court of Appeals.

16 **§51-1B-6. Temporary assignment of circuit court judges.**

17 Upon the occurrence of a vacancy in the office of Intermediate
18 Court of Appeals judge, the disqualification of an Intermediate
19 Court of Appeals judge or the inability of an Intermediate Court of
20 Appeals judge to attend to his or her duties because of illness,
21 temporary absence, or any other reason, the Chief Justice of the
22 Supreme Court of Appeals may assign any senior status circuit judge
23 or circuit judge of any judicial circuit that is not from the same
24 circuit as the appeal before the Intermediate Court to hear and
25 determine any and all matters then or thereafter pending in the
26 Intermediate Court to which the absent Intermediate Court judge is
27 assigned.

1 **§51-1B-7. Rules of practice and procedure.**

2 Pleading, practice and procedure in matters before the
3 Intermediate Court of Appeals shall be governed by rules
4 promulgated by the Supreme Court of Appeals.

5 **§51-1B-8. Facilities.**

6 (a) The Administrative Director of the Supreme Court of
7 Appeals shall provide the necessary physical facilities, furniture,
8 fixtures and equipment necessary for the efficient operation of the
9 Intermediate Court of Appeals.

10 (b) In order to minimize costs, the director may (1) contract
11 with the Department of Administration, county commissions and
12 private parties to provide for space that is suitable for the
13 Intermediate Court of Appeals, and (2) shall make existing
14 courtrooms throughout the state available for use by the
15 Intermediate Court of Appeals at times convenient both to the
16 Intermediate Court of Appeals and the local court.

17 **§51-1B-9. Electronic filing of all documents and orders.**

18 All documents filed in connection with an appeal to the
19 Intermediate Court of Appeals shall be filed electronically. The
20 court shall electronically file and publish its orders and
21 decisions which shall, unless stated by the court to be per curiam
22 or unpublished, have precedential effect.

23 **§51-1B-10. Budget.**

24 The budget for the payment of the salaries and benefits for
25 the Intermediate Court of Appeals judges and staff, facilities,
26 furniture, fixtures and equipment shall be included in the
27 appropriation for the Supreme Court of Appeals. To the extent
28 possible, the Supreme Court shall designate existing facilities and

1 existing staff members for use by the Intermediate Court of Appeals
2 to minimize costs for establishing and operating the Intermediate
3 Court of Appeals.