

Senate Bill No. 307

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

[Introduced January 27, 2011; referred to the Committee on the Judiciary; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §51-1B-1, §51-1B-2, §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8, §51-1B-9, §51-1B-10, §51-1B-11, §51-1B-12, §51-1B-13 and §51-1B-14, all relating to authorizing a new court to be known as the Intermediate Court of Appeals; and delineating the structure and duties thereof.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §51-1B-1, §51-1B-2, §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8, §51-1B-9, §51-1B-10, §51-1B-11, §51-1B-12, §51-1B-13 and §51-1B-14, all to read as follows:

ARTICLE 1B. INTERMEDIATE COURT OF APPEALS.

1 **§51-1B-1. Judges; their qualifications; how selected.**

2 An Intermediate Court of Appeals is established which shall
3 consist of rotating panels of three judges. A judge may not be
4 permanently assigned to this court, but each judge shall be
5 assigned to hear cases before the court by designation. Two of the
6 three judges of each panel of the Intermediate Court of Appeals
7 shall be selected from sitting or retired circuit court judges and
8 one shall be a sitting justice of the West Virginia Supreme Court
9 of Appeals. The Supreme Court of Appeals shall establish a process
10 for determining the members of each Intermediate Appeals Court
11 panel by random method.

12 **§51-1B-2. Jurisdiction.**

13 The Intermediate Court of Appeals does not have original
14 jurisdiction. It has appellate jurisdiction in civil cases where
15 the matter in controversy, exclusive of costs, is of greater value
16 or amount than \$100; in controversies concerning the title or
17 boundaries of land, the probate of wills, the appointment or
18 qualification of a personal representative, guardian, committee or
19 curator, or concerning a mill, road, way, ferry or landing or the
20 right of a corporation or county to levy tolls or taxes; in cases
21 of quo warranto, habeas corpus, mandamus, certiorari and
22 prohibition and in cases involving freedom or the constitutionality
23 of law. It has appellate jurisdiction in criminal cases where
24 there has been a conviction for felony or misdemeanor in a circuit
25 court and where a conviction has been had in any inferior court and
26 been affirmed in a circuit court and, in cases relating to the

1 public revenue, the right of appeal belongs to the state, as well
2 as the defendant, and such other appellate jurisdiction, in both
3 civil and criminal cases, as may be prescribed by law. It has
4 appellate jurisdiction in all cases involving appeals of worker's
5 compensation cases. Appeal to the Intermediate Court of Appeals is
6 an appeal of right upon an assignment of error in the judgment or
7 proceedings of a circuit court; it does not have discretion to
8 reject any appeal.

9 **§51-1B-3. Regulation of pleading, practice and procedure.**

10 The Supreme Court of Appeals may, from time to time, make and
11 promulgate general rules governing pleading, practice and procedure
12 in the Intermediate Court of Appeals as in all other courts of
13 record of this state.

14 **§51-1B-4. Regular terms.**

15 Two terms of the Intermediate Court of Appeals shall be held
16 every year, at such place as each of the Intermediate Courts of
17 Appeals shall sit; the first commencing on the second Tuesday in
18 January, the second on the first Wednesday in September, and shall
19 continue until the business is dispatched. But when, in the
20 judgment of the court, extraordinary circumstances require, the
21 term or terms may be held at such other place or places within the
22 state as the court may designate, such times and places to be fixed
23 in the manner provided in this article for holding special terms of
24 said court.

25 **§51-1B-5. Special terms.**

26 Special terms of the Intermediate Court of Appeals may be held

1 for the trial and decision of causes at the place for holding the
2 regular terms thereof, and under extraordinary circumstances at
3 such other times and places as the court may designate by an order
4 entered of record at a regular or special term of said court.

5 **§51-1B-6. Warrant of judges appoint special term.**

6 The judges of the court, or a majority of them, may, by
7 warrant signed by them, directed to the clerk, appoint a special
8 term to be held for the trial and decision of causes at their
9 regular place of sitting or, under extraordinary circumstances, at
10 any other point within the state designated by them, or which may
11 hereafter be designated by law for holding regular terms thereof.
12 The clerk shall enter the warrant in the order book of the court.

13 **§51-1B-7. Hearing of cases at special term.**

14 At any special term of the court, any cause, the record of
15 which has been previously printed may, in the discretion of the
16 court, be heard and decided by consent of parties or their counsel,
17 entered of record, or upon at least thirty days notice in writing,
18 given by the party desiring the hearing to the opposite party or
19 that party's counsel, of that party's intention to insist on a
20 hearing, when the same may, in the discretion of the court, be
21 heard and determined at any such special term.

22 **§51-1B-8. What cases may be decided at regular or special term.**

23 The court may, at any regular or special term, decide any
24 cause or proceeding which may have been previously heard by the
25 court at any regular or special term thereof.

26 **§51-1B-9. Adjournment.**

1 The court may, at any regular or special term, adjourn from
2 day to day or from time to time, as the court may order, until its
3 close.

4 **§51-1B-10. Salary of judges.**

5 The salary of each of the judges appointed to serve as members
6 of an Intermediate Court of Appeals shall be their regular salary
7 in their elected capacity.

8 **§51-1B-11. Clerk; deputy, associate and assistant clerks;
9 proofreader; other clerical assistants;
10 compensation.**

11 The Intermediate Court of Appeals shall appoint one chief
12 clerk. The annual compensation of the chief clerk shall be fixed
13 by the court and shall be in lieu of all other fees, costs,
14 allowances, compensation, perquisites and income of whatever kind
15 by virtue of his or her office. The Intermediate Court of Appeals
16 may appoint one deputy clerk, one assistant clerk and such other
17 full-time and part-time clerical assistants as are considered
18 necessary and reasonable to perform properly the functions and
19 duties of the office of the clerk. The Supreme Court of Appeals
20 shall fix their compensation which shall be payable out of
21 appropriations made by the Legislature of West Virginia, personal
22 service account, for the spending unit of the Supreme Court of
23 Appeals, by requisitions drawn against the State Auditor according
24 to law. All of these officers are removable at the pleasure of the
25 court. Vacancies in the office of the clerk occurring during
26 vacation may be filled by appointment, in writing, made by the

1 judges of the court or a majority thereof.

2 **§51-1B-12. Duties of clerk.**

3 The Clerk of the Intermediate Court of Appeals shall attend in
4 person, or by deputy, all the sessions of the court, obey its
5 orders and directions in term time and in vacation, take care of
6 and preserve in an office, kept for the purpose, all records and
7 papers of the court and perform such other duties as may be
8 prescribed by law or required of him or her by the court.

9 **§51-1B-13. Budget of the Intermediate Court of Appeals.**

10 The budget for the payment of the salaries and benefits of the
11 clerical and secretarial staff of the Intermediate Court of Appeals
12 shall be included in the appropriation for the Supreme Court of
13 Appeals.

14 **§51-1B-14. Supreme Court of Appeals review.**

15 A final decision rendered by the intermediate court may be
16 appealed by any aggrieved party in interest to the Supreme Court of
17 Appeals by writ of certiorari pursuant to the rules promulgated by
18 the Supreme Court of Appeals.

NOTE: The purpose of this bill is to create and provide structures and standards for a new Intermediate Court of Appeals.

This article is new; therefore, strike-throughs and underscoring have been omitted.