

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3040

BY DELEGATE C. MILLER

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §3-4A-11a of said code; to amend said code by adding thereto a new section,
3 designated §3-5-6e; to amend and reenact §3-5-7 and §3-5-13 of said code; to amend
4 and reenact §3-10-3 and §3-10-3a of said code; to amend and reenact §6-5-1 of said
5 code; to amend said code by adding thereto a new article, designated §51-1B-1, §51-1B-
6 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,
7 §51-1B-11 and §51-1B-12; and to amend and reenact §58-5-1 of said code, all relating to
8 creating a new court to be known as West Virginia Intermediate Court of Appeals; requiring
9 election of judges of the intermediate court of appeals be on nonpartisan basis; requiring
10 elections be on a division basis when more than one judge is to be elected; providing for
11 timing and frequency of election; providing for commencement of terms of office;
12 establishing ballot design and printing; providing that elections be held on same date as
13 primary election; requiring nonpartisan ballots; establishing filing announcement of
14 candidacies, including timing, location and necessary information; providing for order of
15 appearance of offices on the ballot; establishing ballot content; providing procedures for
16 filling of vacancies; providing occasions for special elections to be held to fill vacancies;
17 requiring intermediate court of appeals be operational by July 1, 2018; establishing
18 northern and southern districts; providing three judges for each district; establishing
19 qualifications for judges; establishing court jurisdiction; providing for deflection review;
20 providing West Virginia Supreme Court of Appeals will either keep an appeal or transfer it
21 to intermediate court; designating the clerk of the supreme court as the clerk of the
22 intermediate court of appeals; providing that certain appeals to be reviewed as a matter
23 of right and those matters in which the appeals are discretionary; providing appeals in
24 certain administrative cases are discretionary; authorizing appeals from intermediate court
25 to supreme court; authorizing Governor make initial appointments by July 1, 2017; creating
26 staggered terms; providing for elections for ten-year terms after initial appointments;

27 authorizing a chief judge; authorizing staff for court and judges; providing for
28 compensation and expenses of judges and staff; providing for temporary assignment of
29 circuit court judges; authorizing supreme court to provide facilities, furniture, fixtures and
30 equipment for intermediate court; establishing precedential effect of intermediate court
31 orders and decisions; providing budget of intermediate court be part of supreme court
32 budget; and providing for severability.

Be it enacted by the Legislature of West Virginia:

1 That §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §3-4A-11a of said code be amended and reenacted; that said code be amended
3 by adding thereto a new section, designated §3-5-6e; that §3-5-7 and §3-5-13 of said code be
4 amended and reenacted; that §3-10-3 and §3-10-3a of said code be amended and reenacted;
5 that §6-5-1 of said code be amended and reenacted; that said code be amended by adding thereto
6 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 7, §51-1B-8, §51-1B-9, §51-1B-10, §51-1B-11 and §51-1B-12; and that §58-5-1 of said code be
8 amended and reenacted, all to read as follows:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-17. Election of circuit judges; county and district officers; magistrates.

1 (a) There shall be elected, at the time of the primary election to be held in 2016, and every
2 eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge,
3 and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to
4 two or more circuit judges; and at the time of the primary election to be held in 2016, and in every
5 fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with
6 the election held in the year 2016, an election for the purpose of electing judges of the circuit
7 court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot

8 printed for the purpose.

9 (b) There shall be elected, at the general election to be held in 1992, and every fourth year
10 thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors
11 prescribed by law for the county; and at the general election to be held in 1990, and every second
12 year thereafter, a commissioner of the county commission for each county; and at the general
13 election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and
14 a clerk of the circuit court for each county.

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in
16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and
17 by division as set forth more fully in article five of this chapter.

18 (d) At the time of the primary election to be held in the year 2018, and every tenth year
19 thereafter, there shall be elected one judge to each district of the intermediate court of appeals;
20 at the time of the primary election is to be held in 2020, and every tenth year thereafter, one judge
21 to each district of the intermediate court of appeals; and at the time of the primary election to be
22 held in 2022, and every tenth year thereafter, one judge to each district of the intermediate court
23 of appeals. Effective with the primary election held in the year 2018, the election of judges of the
24 intermediate court of appeals shall be on a nonpartisan basis and by division as set forth more
25 fully in article five of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using ballots upon which votes may be
2 recorded by means of marking with electronically sensible ink or pencil and which marks are
3 tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the
4 electronic voting system for use in elections.

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and

6 arrangement of offices and the printing of names and arrangement of candidates within each
7 office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this
8 chapter.

9 (2) For the general election, the heading of the ballot, the type faces, the names and
10 arrangement of offices and the printing of names and the arrangement of candidates within each
11 office are to conform as nearly as possible to section two, article six of this chapter, except as
12 otherwise provided in this article.

13 (3) Effective with the primary election held in 2016 and thereafter, the following
14 nonpartisan elections are to be separated from the partisan ballot and separately headed in
15 display type with a title clearly identifying the purpose of the election and constituting a separate
16 ballot wherever a separate ballot is required under this chapter:

17 (A) Nonpartisan elections for judicial offices, by division, of:

18 (i) Justice of the Supreme Court of Appeals;

19 (ii) Judge of the Intermediate Court of Appeals;

20 ~~(ii)~~ (iii) Judge of the circuit court;

21 ~~(iii)~~ (iv) Family court judge; and

22 ~~(iv)~~ (v) Magistrate;

23 (B) Nonpartisan elections for board of education; and

24 (C) Any question to be voted upon.

25 (4) Both the face and the reverse side of the ballot may contain the names of candidates
26 only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the
27 poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box
28 and upon which marks do not interfere with the proper tabulation of the votes.

29 (5) The arrangement of candidates within each office is to be determined in the same
30 manner as for other electronic voting systems, as prescribed in this chapter. On the general

31 election ballot for all offices, and on the primary election ballot only for those offices to be filled by
32 election, except delegate to national convention, lines for entering write-in votes are to be
33 provided below the names of candidates for each office, and the number of lines provided for any
34 office shall equal the number of persons to be elected, or three, whichever is fewer. The words
35 "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The
36 lines are to be opposite a position to mark the vote.

37 (c) Except for electronic voting systems that utilize screens upon which votes may be
38 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed
39 in the color of ink specified by the Secretary of State for the various political parties, and the
40 general election ballot is to be printed in black ink. For electronic voting systems that utilize
41 screens upon which votes may be recorded by means of a stylus or by means of touch, the
42 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be
43 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a
44 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the
45 same manner as provided in section thirteen, article five of this chapter, or are to be displayed on
46 the screens of the electronic voting system upon which votes are recorded by means of a stylus
47 or touch. The number of ballots printed and the packaging of ballots for the precincts are to
48 conform to the requirements for paper ballots provided in this chapter.

49 (d) In addition to the official ballots, the ballot commissioners shall provide all other
50 materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6e. Election of Judges of the Intermediate Court of Appeals.

1 (a) An election for the purpose of electing a judge or judges of the intermediate court of
2 appeals shall be held on the same date as the primary election, as provided by law, upon a

3 nonpartisan ballot by division printed for this purpose. For election purposes, in each election at
4 which shall be elected more than one judge of the intermediate court of appeals, the election shall
5 be by numbered division corresponding to the number of judges being elected. Each judge shall
6 be elected at large from the entire district as set forth in section one, article one-b, chapter fifty-
7 one of this code.

8 (b) In each nonpartisan election by division for a judge of the Intermediate Court of
9 Appeals, the candidates for election in each numbered division shall be tallied separately and the
10 board of canvassers shall declare and certify the election of the eligible candidate receiving the
11 highest number of votes cast within a numbered division to fill any full terms.

12 (c) In case of a tie vote under this section, section twelve, article six of this chapter controls
13 in breaking the tie vote.

**§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates
when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office or political party position to be
2 filled by election in any primary or general election held under the provisions of this chapter shall
3 file a certificate of announcement declaring his or her candidacy for the nomination or election to
4 the office.

5 (b) The certificate of announcement shall be filed as follows:

6 (1) Candidates for the House of Delegates, the State Senate, judge of the Intermediate
7 Court of Appeals, circuit judge, family court judge, and any other office or political position to be
8 filled by the voters of more than one county shall file a certificate of announcement with the
9 Secretary of State.

10 (2) Candidates for an office or political position to be filled by the voters of a single county
11 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,
12 circuit judge or family court judge, shall file a certificate of announcement with the clerk of the

13 county commission.

14 (3) Candidates for an office to be filled by the voters of a municipality shall file a certificate
15 of announcement with the recorder or city clerk.

16 (c) The certificate of announcement shall be filed with the proper officer not earlier than
17 the second Monday in January before the primary election day and not later than the last Saturday
18 in January before the primary election day and must be received before midnight, eastern
19 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service
20 before that hour. This includes the offices of justice of the Supreme Court of Appeals, judge of
21 the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which
22 are to be filled on a nonpartisan and division basis at the primary election.

23 (d) The certificate of announcement shall be on a form prescribed by the Secretary of
24 State on which the candidate shall make a sworn statement before a notary public or other officer
25 authorized to administer oaths, containing the following information:

26 (1) The date of the election in which the candidate seeks to appear on the ballot;

27 (2) The name of the office sought; the district, if any; and the division, if any;

28 (3) The legal name of the candidate and the exact name the candidate desires to appear
29 on the ballot, subject to limitations prescribed in section thirteen of this article; ~~five of this chapter~~

30 (4) The county of residence and a statement that the candidate is a legally qualified voter
31 of that county; and the magisterial district of residence for candidates elected from magisterial
32 districts or under magisterial district limitations;

33 (5) The specific address designating the location at which the candidate resides at the
34 time of filing, including number and street or rural route and box number and city, state and zip
35 code;

36 (6) For partisan elections, the name of the candidate's political party and a statement that
37 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the

38 candidate's current registration as a voter affiliated with that party; and (B) has not been registered
39 as a voter affiliated with any other political party for a period of sixty days before the date of filing
40 the announcement;

41 (7) For candidates for delegate to national convention, the name of the presidential
42 candidate to be listed on the ballot as the preference of the candidate on the first convention
43 ballot; or a statement that the candidate prefers to remain "uncommitted";

44 (8) A statement that the person filing the certificate of announcement is a candidate for
45 the office in good faith;

46 (9) The words "subscribed and sworn to before me this _____ day of _____,
47 20____" and a space for the signature of the officer giving the oath.

48 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
49 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
50 certified copy of the voter's registration record of the candidate showing that the candidate was
51 registered as a voter in a party other than the one named in the certificate of announcement during
52 the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed
53 formal complaint of violation of this section and the certified copy of the voter's registration record
54 of the candidate are filed with the officer receiving that candidate's certificate of announcement
55 no later than ten days following the close of the filing period, the candidate may not be refused
56 certification for this reason.

57 (f) The certificate of announcement shall be subscribed and sworn to by the candidate
58 before some officer qualified to administer oaths, who shall certify the same. Any person who
59 knowingly provides false information on the certificate is guilty of false swearing and shall be
60 punished in accordance with section three, article nine of this chapter.

61 (g) Any candidate for delegate to a national convention may change his or her statement
62 of presidential preference by notifying the Secretary of State by letter received by the Secretary

63 of State no later than the third Tuesday following the close of candidate filing. When the rules of
64 the political party allow each presidential candidate to approve or reject candidates for delegate
65 to convention who may appear on the ballot as committed to that presidential candidate, the
66 presidential candidate or the candidate's committee on his or her behalf may file a list of approved
67 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any
68 candidate for delegate who is disapproved by the presidential candidate.

69 (h) A person may not be a candidate for more than one office or office division at any
70 election: *Provided*, That a candidate for an office may also be a candidate for President of the
71 United States, for membership on political party executive committees or for delegate to a political
72 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan
73 office in an election held concurrently with the primary election may be appointed under the
74 provisions of section nineteen of this article to fill a vacancy on the general ballot.

75 (i) A candidate who files a certificate of announcement for more than one office or division
76 and does not withdraw, as provided by section eleven of this article, ~~five of this chapter~~ from all
77 but one office prior to the close of the filing period may not be certified by the Secretary of State
78 or placed on the ballot for any office by the Board of Ballot Commissioners.

§3-5-13. Form and contents of ballots.

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain
5 a ballot title, the name of the county, the state, the words "Primary Election" and the month, day
6 and year of the election. The ballot title of the political party ballots is to contain the words "Official
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting
10 machine ballot for all judicial ~~officer~~ officers shall commence with the words "Nonpartisan Ballot
11 of Election of Judicial Officers" and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the
15 candidates for the Supreme Court of Appeals shall be printed by division without references to
16 political party affiliation or registration.

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting
18 machine ballot for all judges of the Intermediate Court of Appeals shall contain the words
19 "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of
20 the candidates for the Intermediate Court of Appeals shall be printed by division without
21 references to political party affiliation or registration.

22 ~~(ii)~~ (iii) The ballot title of any separate paper ballot or portion of any electronic or voting
23 machine ballot for all circuit court judges in the respective circuits shall contain the words
24 "Nonpartisan Ballot of Election of circuit court Judge(s)". The names of the candidates for the
25 respective circuit court judge office shall be printed by division without references to political party
26 affiliation or registration.

27 ~~(iii)~~ (iv) The ballot title of any separate paper ballot or portion of any electronic or voting
28 machine ballot for all family court judges in the respective circuits shall contain the words
29 "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the
30 respective family court judge office shall be printed by division without references to political party
31 affiliation or registration.

32 ~~(iv)~~ (v) The ballot title of any separate paper ballot or portion of any electronic or voting
33 machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan

34 Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate
35 office shall be printed by division without references to political party affiliation or registration.

36 (B) The ballot title of any separate paper ballot or portion of any electronic or voting
37 machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election
38 of Members of the _____ County Board of Education". The districts for which less than
39 two candidates may be elected and the number of available seats are to be specified and the
40 names of the candidates are to be printed without reference to political party affiliation and without
41 designation as to a particular term of office.

42 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly
43 states the purpose of the election according to the statutory requirements for that question.

44 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the
45 ballot by heavy lines and the offices shall be arranged in columns with the following headings,
46 from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a
47 presidential election year, "National Convention" or, in a nonpresidential election year, "District
48 Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to
49 be arranged in the order prescribed in section thirteen-a of this article.

50 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic
51 means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this
52 article and under the same headings as prescribed in paragraph (A) of this subdivision. The
53 number of pages, columns or rows, where applicable, may be modified to meet the limitations of
54 ballot size and composition requirements subject to approval by the Secretary of State.

55 (C) The title of each office is to be separated from preceding offices or candidates by a
56 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed
57 the number of the district, if any, the number of the division, if any, and the words "Vote for
58 _____" with the number to be nominated or elected or "Vote For Not More Than _____"

59 in multicandidate elections. For offices in which there are limitations relating to the number of
60 candidates which may be nominated, elected or appointed to or hold office at one time from a
61 political subdivision within the district or county in which they are elected, there is to be a clear
62 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type
63 immediately preceding the names of the candidates for those offices on the ballot in every voting
64 system. For counties in which the number of county commissioners exceeds three and the total
65 number of members of the county commission is equal to the number of magisterial districts within
66 the county, the office of county commission is to be listed separately for each district to be filled
67 with the name of the magisterial district and the words "Vote for One" printed below the name of
68 the office: *Provided*, That the office title and applicable instructions may span the width of the
69 ballot so as it is centered among the respective columns.

70 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For
71 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a
72 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular
73 column of squares before each column of names.

74 (4) (A) The name of every candidate certified by the Secretary of State or the Board of
75 Ballot Commissioners is to be printed in capital letters in no smaller than eight point type on the
76 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,
77 the name of each candidate is to appear in the form set out by the candidate on the certificate of
78 announcement, but in no case may the name misrepresent the identity of the candidate nor may
79 the name include any title, position, rank, degree or nickname implying or inferring any status as
80 a member of a class or group or affiliation with any system of belief.

81 (B) The city of residence of every candidate, the state of residence of every candidate
82 residing outside the state, the county of residence of every candidate for an office on the ballot in
83 more than one county and the magisterial district of residence of every candidate for an office

84 subject to magisterial district limitations are to be printed in lower case letters beneath the names
85 of the candidates.

86 (C) The arrangement of names within each office must be determined as prescribed in
87 section thirteen-a of this article.

88 (D) If the number of candidates for an office exceeds the space available on a column or
89 ballot page and requires that candidates for a single office be separated, to the extent possible,
90 the number of candidates for the office on separate columns or pages are to be nearly equal and
91 clear instructions given the voter that the candidates for the office are continued on the following
92 column or page.

93 (5) When an insufficient number of candidates has filed for a party to make the number of
94 nominations allowed for the office or for the voters to elect sufficient members to the board of
95 education or to executive committees, the vacant positions on the ballot shall be filled with the
96 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to
97 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of
98 board of education or for election to any party executive committee. A line shall separate each
99 candidate from every other candidate for the same office. Notwithstanding any other provision of
100 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant
101 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced
102 with a brief detailed description, approved by the Secretary of State, indicating that there are no
103 candidates listed for the vacant positions.

104 (6) In presidential election years, the words "For election in accordance with the plan
105 adopted by the party and filed with the Secretary of State" is are to be printed following the names
106 of all candidates for delegate to national convention.

107 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the
108 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted

109 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens
110 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper
111 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using
112 electronically sensible ink are to meet minimum requirements of the tabulating systems and are
113 to conform in size and weight to ensure ease in tabulation.

114 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with
115 unique sequential numbers from one to the highest number representing the total number of
116 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth
117 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

118 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the
119 name of the county and the date of the election are to be printed. Beneath the date of the election
120 there are to be two blank lines followed by the words "Poll Clerks".

121 (10) The face of sample paper ballots and sample ballot labels are to be like other official
122 ballots or ballot labels except that the word "sample" is to be prominently printed across the front
123 of the ballot in a manner that ensures the names of candidates are not obscured and the word
124 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, United States Senators and judges.

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney
2 General, Commissioner of Agriculture, or in any office created or made elective to be filled by the
3 voters of the entire state, is filled by the Governor of the state by appointment and subsequent
4 election to fill the remainder of the term, if required by section one of this article.

5 (b) Any vacancy occurring in the offices of justice of the Supreme Court of Appeals, judge
6 of the Intermediate Court of Appeals, judge of a circuit court or judge of a family court is filled by

7 the Governor of the state by appointment and subsequent election to fill the remainder of the term,
8 as required by subsection (d) of this section. If an election is required under that subsection, ~~(d)~~
9 ~~of this section~~ the Governor, circuit court or the chief judge thereof in vacation, is responsible for
10 the proper proclamation by order and notice required by section one of this article.

11 (c) Any vacancy in the office of magistrate is appointed according to the provisions of
12 section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of
13 the term, as required by subsection (d) of this section.

14 (d) (1) When the vacancy in Justice of the Supreme Court of Appeals, Judge of the
15 Intermediate Court of Appeals, judge of the circuit court, judge of a family court or magistrate
16 occurs after the eighty-fourth day before a general election, and the affected term of office ends
17 on December 31 following the next election, the person appointed to fill the vacancy shall continue
18 in office until the completion of the term.

19 (2) When the vacancy occurs before the close of the candidate filing period for the primary
20 election, the vacancy shall be filled by election in the nonpartisan judicial election held
21 concurrently with the primary election, and the appointment shall continue until a successor is
22 elected and certified.

23 (3) When the vacancy occurs after the close of candidate filing for the primary election
24 and not later than eighty-four days before the general election, the vacancy shall be filled by
25 election in a nonpartisan judicial election held concurrently with the general election, and the
26 appointment shall continue until a successor is elected and certified.

27 (e) When an election to fill a vacancy is required to be held at the general election
28 according to the provisions of subsection (d) of this section, a special candidate filing period shall
29 be established. Candidates seeking election to any unexpired term for justice of the Supreme
30 Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the
31 family court or magistrate shall file a certificate of announcement and pay the filing fee no earlier

32 than the first Monday in August and no later than seventy-seven days before the general election.

§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
3 best qualified persons to the Governor within ninety 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 thirty days following the receipt of the list of qualified candidates or within thirty days
9 following the vacancy, whichever occurs later.

10 (b) The commission shall consist of eight appointed members. Four public members shall
11 be appointed by the Governor for six-year terms, except for the initial appointments which shall
12 be staggered in accordance with subsection (c) of this section. Four attorney members shall be
13 appointed by the Governor for six-year terms, except as provided in that subsection, ~~(e) of this~~
14 ~~section~~ from a list of nominees provided by the board of Governors of the West Virginia State Bar.
15 The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor
16 less than ten best-qualified attorneys for appointment to the commission whenever there is a
17 vacancy in the membership of the commission reserved for attorney members. The commission
18 shall choose one of its appointed members to serve as chair for a three-year term. No more than
19 four appointed members of the commission shall belong to the same political party. No more than
20 three appointed members of the commission shall be residents of the same congressional district.
21 All members of the commission shall be citizens of this state. Public members of the commission
22 may not be licensed to practice law in West Virginia or any other jurisdiction.

23 (c) Of the initial appointments made to the commission, two public members and two

24 attorney members shall be appointed for a term ending two years after the effective date of this
25 section, one public member and one attorney member shall be appointed for a term ending four
26 years after the effective date of this section, and one public member and one attorney member
27 shall be appointed for a term ending six years after the effective date of this section.

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

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

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

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

47 (h) All organizational meetings of the commission shall be open to the public and subject
48 to the requirements of article nine-a, chapter six of this code. An "organizational meeting" means

49 an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy.
 50 The commission shall hold at least one organizational meeting upon the occurrence of a judicial
 51 vacancy. All other meetings of the commission are exempt from the requirements of that article.
 52 ~~nine-a, chapter six of this code~~

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

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

1 The terms of officers, except when elected or appointed to fill vacancies, shall begin
 2 respectively as follows: That of Governor, Secretary of State, State Superintendent of Free
 3 Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first
 4 Monday after the second Wednesday of January next after their election; that of a member of the

5 Legislature, on December 1, next after his or her election; and that of the justices of the Supreme
 6 Court of Appeals, the judges of the Intermediate Court of Appeals, the judges of the several circuit
 7 courts, the judges of the family and other inferior courts, the county commissioners, prosecuting
 8 attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks
 9 of the county commissions, magistrates, on January 1, next after their election.

10 Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as
 11 prescribed by chapter three of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1B. THE WEST VIRGINIA INTERMEDIATE COURT OF APPEALS.

§51-1B-1. The West Virginia Intermediate Court of Appeals.

1 (a) In accordance with Section 1, Article VIII of the West Virginia Constitution, the West
 2 Virginia Intermediate Court of Appeals is created. The intermediate court is a court of record and
 3 shall issue, as appropriate in each appeal, written opinions, orders and decisions. The court shall
 4 be established and operable on or before July 1, 2018. The West Virginia Intermediate Court of
 5 Appeals shall be divided into two districts: The Intermediate Court of Appeals for the northern
 6 district and the Intermediate Court of Appeals for the southern district.

7 (b) The Intermediate Court of Appeals for the northern district is comprised of the following
 8 judicial circuits: first, second, third, fourth, fifth, fifteenth, sixteenth, seventeenth, eighteenth,
 9 nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-sixth.

10 (c) The Intermediate Court of Appeals for the southern district is comprised of the following
 11 judicial circuits: sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, twenty-
 12 fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and thirty-first.

13 (d) The Intermediate Court of Appeals may be located in any seat of county government
 14 located in the district it serves for the purpose of hearing oral argument or may be located in a

15 fixed location in the district it serves.

16 (e) The clerk of the supreme court shall act as clerk of the Intermediate Court of Appeals.
17 The clerk shall keep a complete record of the cases and proceedings of the Intermediate Court
18 of Appeals. The clerk, subject to the approval of the supreme court, may employ additional staff
19 for the performance of duties relating to the court of appeals and designate a deputy clerk to
20 oversee the administration of the Intermediate Court of Appeals.

§51-1B-2. Judges; qualifications.

1 (a) The Intermediate Court of Appeals shall consist of six judges, three judges in each
2 district, initially appointed by the Governor in accordance with section five of this article.

3 (b) An Intermediate Court of Appeals judge must be a resident of the district in which he
4 or she will preside, a member in good standing of the West Virginia State Bar and admitted to
5 practice law in this state for at least ten years prior to appointment or election to the Intermediate
6 Court of Appeals.

7 (c) An Intermediate Court of Appeals judge may not engage in any other business,
8 occupation or employment inconsistent with the expeditious, proper and impartial performance of
9 his or her duties as a judicial officer. An Intermediate Court of Appeals judge is not permitted to
10 engage in the outside practice of law and shall devote full time to his or her duties as a judicial
11 officer.

§51-1B-3. Jurisdiction; deflection rights of the West Virginia Supreme Court of Appeals;
discretionary appeals.

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

2 (b) A notice of appeal shall be filed with the West Virginia Supreme Court of Appeals in
3 accordance with Rule 5 of the West Virginia Rules of Appellate Procedure. After the proper filing
4 of a notice of appeal, the supreme court shall either transfer the case to the Intermediate Court of
5 Appeals or issue a scheduling order in accordance with Rule 5(d) of the West Virginia Rules of

6 Appellate Procedure.

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

10 (d) All appeals shall be reviewed, and a written decision on the merits shall be issued by
11 either the supreme court or the Intermediate Court of Appeals as a matter of right except for the
12 following appeals, which shall be discretionary with the courts:

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

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

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

19 (4) Appeals of misdemeanor convictions.

20 (e) Within thirty days after a decision by the Intermediate Court of Appeals, any aggrieved
21 party may file a notice of appeal with the supreme court as provided by the West Virginia Rules
22 of Appellate Procedure.

§51-1B-4. Precedential effect of Intermediate Court decisions.

1 Unless stated by the court to be per curiam or unpublished, all orders and decisions of the
2 Intermediate Court of Appeals shall have precedential effect.

§51-1B-5. Number of Intermediate Court Judges; initial appointment; election; term of
office; vacancy; Chief Judge.

1 (a) There shall be three judges for each district of the Intermediate Court of Appeals. On
2 or after February 1, 2018, the Judicial Vacancy Advisory Commission, established pursuant to
3 section three-a, article ten, chapter three of this code, shall publish notice of the judicial vacancies

4 for the Intermediate Court of Appeals and begin accepting applications from qualified individuals
5 for the position of judge of the Intermediate Court of Appeals. The committee shall recommend
6 three qualified nominees for each position for Intermediate Court of Appeals judge. The Governor
7 shall, on or before July 1, 2018, appoint the initial judges from names submitted by the Judicial
8 Vacancy Advisory Committee pursuant to section three-a, article ten, chapter three of this code.
9 If the Governor does not select a nominee for the position of judge from the names provided by
10 the committee, he or she shall notify the committee of that circumstance and the committee shall
11 provide additional names for consideration by the Governor.

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

17 (c) Of the initial appointments for each district, one judge shall be appointed for a term set
18 to expire on December 31, 2018, one judge shall be appointed for a term set to expire on
19 December 31, 2020, and one judge shall be appointed for a term set to expire on December 31,
20 2022.

21 (d) After the initial appointment, the judges of the Intermediate Court of Appeals for each
22 district shall be elected at large from the entire district on a nonpartisan basis by division for a ten-
23 year term of office as set forth in article five, chapter three of this code.

24 (e) If a vacancy occurs in the office of judge of the Intermediate Court of Appeals, the
25 Governor shall fill the vacancy by appointment as provided in sections three and three-a, article
26 ten, chapter three of this code.

27 (f) One judge of the Intermediate Court of Appeals shall be chosen chief judge. The
28 manner of choosing the chief judge and providing for periodic rotation of the position of chief judge

29 shall be determined by rules to be established by the Supreme Court.

**§51-1B-6. Compensation and expenses of Intermediate Court of Appeals Judges and
staffs.**

1 (a) The annual salary for judges on the Intermediate Court of Appeals shall be \$118,000.

2 Reimbursement for expenses shall be at a rate established by the supreme court.

3 (b) Each judge of the Intermediate Court of Appeals may employ two law clerks and one
4 secretary. The Intermediate Court of Appeals may employ a clerk and the necessary staff to carry
5 out the administrative duties of the court or, with the permission of the supreme court, the
6 administrative and other support staff of the supreme court may carry out the administrative duties
7 of both districts. The compensation of the staff of the Intermediate Court of Appeals shall be
8 established by the judges of the Intermediate Court of Appeals with the approval of the supreme
9 court.

§51-1B-7. Temporary assignment of circuit court judges.

1 Upon the occurrence of a vacancy in the office of an Intermediate Court of Appeals judge,
2 the disqualification of an Intermediate Court of Appeals judge or the inability of an Intermediate
3 Court of Appeals judge to attend to his or her duties because of illness, temporary absence or
4 any other reason, the chief justice of the supreme court may assign any senior status circuit judge
5 or circuit judge of any judicial circuit that is not from the same circuit as the appeal before the
6 Intermediate Court of Appeals to hear and determine any and all matters then or thereafter
7 pending in the Intermediate Court of Appeals to which the absent Intermediate Court of Appeals
8 judge is assigned.

§51-1B-8. Facilities.

1 (a) The administrative director of the supreme court shall provide for the requisite physical
2 facilities, furniture, fixtures and equipment necessary for the efficient operation of the Intermediate
3 Court of Appeals.

4 (b) In order to minimize any costs associated with the necessary facilities for the
5 Intermediate Court of Appeals, the director shall make existing courtrooms throughout the state
6 available for use by the Intermediate Court of Appeals at times convenient both to the Intermediate
7 Court of Appeals and the local court.

8 (c) The director may also contract with the Department of Administration, county
9 commissions and private parties to provide for space that is suitable for the Intermediate Court of
10 Appeals.

§51-1B-9. Rules of practice and procedure.

1 All pleadings, practice and procedure in matters before the Intermediate Court of Appeals
2 shall be governed by the rules promulgated by the supreme court.

§51-1B-10. Electronic filing of all documents.

1 All documents filed in connection with an appeal to the Intermediate Court of Appeals shall
2 be filed electronically.

§51-1B-11. Budget.

1 The budget for the payment of the salaries and benefits for the Intermediate Court of
2 Appeals judges and staff, facilities, furniture, fixtures and equipment shall be included in the
3 appropriation for the supreme court. To the extent possible, the supreme court shall designate
4 existing facilities and existing staff members for use by the Intermediate Court of Appeals to
5 minimize the costs for establishing and operating the court.

§51-1B-12. Severability.

1 The provisions of this article are severable. If any portion of this article is declared
2 unconstitutional or the application of any part of this article is held invalid, the remaining portions
3 of this article and their applicability shall remain valid and enforceable.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN 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.

6 (b) The defendant in a criminal action may appeal to the Supreme Court of Appeals from
7 a final judgment of any circuit court in which there has been a conviction or which affirms a
8 conviction obtained in an inferior court.

9 (c) All appeals pursuant to this section shall be reviewed as a matter of right, and a written
10 decision on the merits shall be issued, by either the supreme court or the Intermediate Court of
11 Appeals except for the following appeals, which shall be discretionary with the courts:

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

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

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

18 (4) Appeals of misdemeanor convictions.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals. The bill requires election of judges of the intermediate court of appeals be on nonpartisan basis. The bill requires elections be on a division basis when more than one judge is to be elected. The bill provides for timing and frequency of election. The bill provides for commencement of terms of office. The bill establishes ballot design and printing. The bill provides that

elections be held on same date as primary election. The bill requires nonpartisan ballots. The bill establishes filing announcement of candidacies, including timing, location and necessary information. The bill provides for order of appearance of offices on the ballot. The bill establishes ballot content. The bill provides procedures for filling of vacancies. The bill provides occasions for special elections to be held to fill vacancies. The bill requires Intermediate Court of Appeals be operational by July 1, 2018. The bill establishing northern and southern districts. The bill provides three judges for each district. The bill establishes qualifications for judges. The bill designates the clerk of the Supreme Court as the clerk of the Intermediate Court of Appeals. The bill provides that certain appeals to be reviewed as a matter of right and those matters in which the appeals are discretionary. The bill establishes court jurisdiction. The bill provides for deflected review. The bill provides West Virginia Supreme Court of Appeals will either keep an appeal or transfer it to intermediate court. The bill provides appeals in certain administrative cases are discretionary. The bill authorizes appeals from intermediate court to supreme court. The bill authorizes Governor make initial appointments by July 1, 2017. The bill creates staggered terms. The bill provides for elections for ten-year terms after initial appointments. The bill authorizes a Chief Judge. The bill authorizes staff for court and judges. The bill provides for compensation and expenses of judges and staff. The bill provides for temporary assignment of circuit court judges. The bill authorizes Supreme Court to provide facilities, furniture, fixtures and equipment for Intermediate Court. The bill establishes precedential effect of Intermediate Court orders and decisions. The bill provides budget of Intermediate Court be part of Supreme Court budget. The bill provides for severability.

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