

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 341

FISCAL  
NOTE

BY SENATORS FERNS AND RUCKER

[Introduced January 23, 2018; Referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

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  
8 to creating a new court to be known as West Virginia Intermediate Court of Appeals;  
9 requiring election of judges of the Intermediate Court of Appeals be on nonpartisan basis;  
10 requiring elections be on a division basis when more than one judge is to be elected;  
11 providing for timing and frequency of election; providing for commencement of terms of  
12 office; establishing ballot design and printing; providing that elections be held on same  
13 date as primary election; requiring nonpartisan ballots; establishing filing announcement  
14 of candidacies, including timing, location, and necessary information; providing for order  
15 of appearance of offices on the ballot; establishing ballot content; providing procedures  
16 for 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, 2019; 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 of Appeals; designating the Clerk of the Supreme Court of Appeals  
22 as the Clerk of the Intermediate Court of Appeals; providing that certain appeals be  
23 reviewed as a matter of right and those matters in which the appeals are discretionary;  
24 providing appeals in certain administrative cases are discretionary; authorizing appeals  
25 from Intermediate Court of Appeals to Supreme Court of Appeals; authorizing Governor  
26 make initial appointments by July 1, 2018; creating staggered terms; providing for

27 elections for 10-year terms after initial appointments; authorizing a chief judge; authorizing  
 28 staff for court and judges; providing for compensation and expenses of judges and staff;  
 29 providing for temporary assignment of circuit court judges; authorizing Supreme Court of  
 30 Appeals to provide facilities, furniture, fixtures, and equipment for Intermediate Court of  
 31 Appeals; establishing precedential effect of Intermediate Court of Appeals' orders and  
 32 decisions; providing budget of Intermediate Court of Appeals be part of Supreme Court of  
 33 Appeals budget; and providing for severability.

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

**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 §3-5-1 *et seq.* of this code.

18 (d) At the time of the primary election to be held in the year 2020, 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 to be held in 2022, 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 2024, 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 2020, 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 §3-5-1 *et seq.* of this code.

#### **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 §3-5-13 and §3-5-13a of this code.

8 (2) For the general election, the heading of the ballot, the type faces, the names and  
 9 arrangement of offices and the printing of names and the arrangement of candidates within each  
 10 office are to conform as nearly as possible to §3-6-2 of this code, except as otherwise provided  
 11 in this article.

12 (3) Effective with the primary election held in 2016 and thereafter, the following

13 nonpartisan elections are to be separated from the partisan ballot and separately headed in  
14 display type with a title clearly identifying the purpose of the election and constituting a separate  
15 ballot wherever a separate ballot is required under this chapter:

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

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

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

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

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

21 ~~(iv)~~ (v) Magistrate;

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

23 (C) Any question to be voted upon.

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

28 (5) The arrangement of candidates within each office is to be determined in the same  
29 manner as for other electronic voting systems, as prescribed in this chapter. On the general  
30 election ballot for all offices, and on the primary election ballot only for those offices to be filled by  
31 election, except delegate to national convention, lines for entering write-in votes are to be  
32 provided below the names of candidates for each office, and the number of lines provided for any  
33 office shall equal the number of persons to be elected, or three, whichever is fewer. The words  
34 "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The  
35 lines are to be opposite a position to mark the vote.

36 (c) Except for electronic voting systems that utilize screens upon which votes may be  
37 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed

38 in the color of ink specified by the Secretary of State for the various political parties, and the  
39 general election ballot is to be printed in black ink. For electronic voting systems that utilize  
40 screens upon which votes may be recorded by means of a stylus or by means of touch, the  
41 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be  
42 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a  
43 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the  
44 same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the  
45 electronic voting system upon which votes are recorded by means of a stylus or touch. The  
46 number of ballots printed and the packaging of ballots for the precincts are to conform to the  
47 requirements for paper ballots provided in this chapter.

48 (d) In addition to the official ballots, the ballot commissioners shall provide all other  
49 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  
5 shall be by numbered division corresponding to the number of judges being elected. Each judge  
6 shall be elected at large from the entire district as set forth in §51-1B-1 of this code.

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

11 (c) In case of a tie vote under this section and §3-6-12 of this code control in breaking the  
12 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~~ Justice of the Supreme Court of Appeals,  
21 Judge of the Intermediate Court of Appeals, circuit court judge, family court judge, and magistrate,

22 which 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 §3-5-13 of this code.

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 §3-9-3 of this code.

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 §3-5-19 of this code 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 §3-5-11 of this code, from all but one office prior to the  
77 close of the filing period may not be certified by the Secretary of State or placed on the ballot for  
78 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 §3-5-13a of this code.

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 §3-5-13 of this code and  
52 under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages,  
53 columns or rows, where applicable, may be modified to meet the limitations of ballot size and  
54 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 §3-  
87 5-13a of this code.

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, Justices judges, and magistrates.**

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 §3-10-1 of this code.

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, if the unexpired term be for a period of more than  
8 two years, by a subsequent election to fill the remainder of the term, as required by subsection  
9 (d) of this section. If an election is required under subsection (d) of this section, the Governor,  
10 circuit court or the chief judge thereof in vacation, is responsible for the proper proclamation by  
11 order and notice required by §3-10-1 of this code.

12 (c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-  
13 1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent  
14 election to fill the remainder of the term, as required by subsection (d) of this section.

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

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

24 (3) When the vacancy occurs after the close of candidate filing for the primary election  
25 and not later than 84 days before the general election, and, if the unexpired term be for a period  
26 of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election  
27 held concurrently with the general election, and the appointment shall continue until a successor  
28 is elected and certified.

29 (e) When an election to fill a vacancy is required to be held at the general election  
30 according to the provisions of subsection (d) of this section, a special candidate filing period shall  
31 be established. Candidates seeking election to any unexpired term for Justice of the Supreme  
32 Court of Appeals, Judge of the Intermediate Court of Appeals, judge of a circuit court, judge of  
33 the family court or magistrate shall file a certificate of announcement and pay the filing fee no  
34 earlier than the first Monday in August and no later than 77 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 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. 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, ~~(c) of this~~  
14 ~~section~~, from a list of nominees provided by the Board of Governors of the West Virginia State  
15 Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 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 29A of this code, but shall be filed with  
45 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 §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial  
49 meeting to discuss the commission's procedures and requirements for a judicial vacancy. The  
50 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 §6-9A-1 *et seq.* of this code.

52 (i) The commission shall make available to the public copies of any applications and any  
53 letters of recommendation written on behalf of any applicants. All other documents or materials  
54 created or received by the commission shall be confidential and exempt from the provisions of

55 chapter 29B of this code, except for the list of best-qualified persons or accompanying  
 56 memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this  
 57 section, which shall be available for public inspection, and the written policies required to be filed  
 58 with the Secretary of State in accordance with subsection (f) of this section.

59 (j) The commission shall submit its list of best-qualified persons to the Governor in  
 60 alphabetical order. A memorandum may accompany the list of best-qualified persons and state  
 61 facts concerning each of the persons listed. The commission shall make copies of any list of best-  
 62 qualified persons and accompanying memoranda it submits to the Governor available for public  
 63 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  
 7 circuit courts, the judges of the family and other inferior courts, the county commissioners,  
 8 prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior  
 9 courts, clerks 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 3 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 one, 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, 2019. 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  
11 following judicial circuits: Sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth,  
12 fourteenth, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and  
13 thirty-first.

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

17           (e) The Clerk of the Supreme Court shall act as clerk of the Intermediate Court of Appeals.  
18 The clerk shall keep a complete record of the cases and proceedings of the Intermediate Court  
19 of Appeals. The clerk, subject to the approval of the Supreme Court, may employ additional staff  
20 for the performance of duties relating to the court of appeals and designate a deputy clerk to  
21 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 §51-1B-5 of this code.

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; deflective 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  
5 of 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 §23-5-11  
14 of this code.

15 (2) Appeals from orders of the Public Service Commission established by §24-11-1 et seq.  
16 of this code;

17 (3) Appeals from decisions of circuit courts of administrative appeals of an agency as  
18 defined in §29A-11-1 et seq. of this code; and

19 (4) Appeals of misdemeanor convictions.

20 (e) Within 30 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 curium 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, 2019, the Judicial Vacancy Advisory Commission, established pursuant to  
3 §3-10-3a of this code, shall publish notice of the judicial vacancies for the Intermediate Court of  
4 Appeals and begin accepting applications from qualified individuals for the position of Judge of  
5 the Intermediate Court of Appeals. The committee shall recommend three qualified nominees for  
6 each position for Intermediate Court of Appeals Judge. The Governor shall, on or before July 1,  
7 2019, appoint the initial judges from names submitted by the Judicial Vacancy Advisory  
8 Committee pursuant to §3-10-3a of this code. If the Governor does not select a nominee for the  
9 position of judge from the names provided by the committee, he or she shall notify the committee

10 of that circumstance and the committee shall provide additional names for consideration by the  
11 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 he or she to be qualified for  
15 the judgeships. The committee may accept comments from and request information from any  
16 person 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, 2020, one judge shall be appointed for a term set to expire on  
19 December 31, 2022, and one judge shall be appointed for a term set to expire on December 31,  
20 2024.

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 §3-5-1 et seq. of this code.

24 (e) If a vacancy occurs in the office of Intermediate Court Judge, the Governor shall fill the  
25 vacancy by appointment as provided in §3-10-3 and §3-10-3a of this code.

26 (f) One Judge of the Intermediate Court of Appeals shall be chosen Chief Judge. The  
27 manner of choosing the Chief Judge and providing for periodic rotation of the position of Chief  
28 Judge 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  
7 duties of both districts. The compensation of the staff of the Intermediate Court of Appeals shall  
8 be established by the Judges of the Intermediate Court of Appeals with the approval of the  
9 Supreme 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  
5 judge or circuit judge of any judicial circuit that is not from the same circuit as the appeal before  
6 the 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  
2 physical facilities, furniture, fixtures and equipment necessary for the efficient operation of the  
3 Intermediate 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 Intermediate Court of Appeals.

**§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 §23-5-11  
13 of this code;

14           **(2)** Appeals from orders of the Public Service Commission established by §24-11-1 et seq.  
15 of this code;

16           **(3)** Appeals from decisions of circuit courts of administrative appeals of an agency as  
17 defined in §29A-1-1 et seq. 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, 2019. 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 deflative 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 to make initial appointments by July 1, 2018. 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.