

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 266

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO (BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

Reported on January 29, 2019]

1 A BILL to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §23-5-15 of said code; to amend and reenact §29A-5-4 of said code; to amend
3 and reenact §29A-6-1 of said code; to amend said code by adding thereto a new section,
4 designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code
5 by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-
6 11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, and
7 §51-11-13; and to amend and reenact §58-5-1 of said code, all relating generally to the
8 West Virginia Appellate Reorganization Act of 2019; creating an Intermediate Court of
9 Appeals in West Virginia; providing that the Judicial Vacancy Advisory Commission shall
10 assist the Governor in filling judicial vacancies in the Intermediate Court of Appeals;
11 providing that petitions for review of final decisions of the Workers' Compensation Board
12 of Review must be made to the Intermediate Court of Appeals and that petitioners have a
13 right to review in such court; providing that the Supreme Court of Appeals has discretion
14 to review final decisions of the Intermediate Court of Appeals in workers' compensation
15 claims; providing that the Workers' Compensation Board of Review may continue to certify
16 questions of law directly to the Supreme Court of Appeals; requiring that appeal of
17 contested cases under State Administrative Procedures Act be made to the Intermediate
18 Court of Appeals; transferring jurisdiction to review family court final orders from circuit
19 courts to the Intermediate Court of Appeals; placing judges of Intermediate Court of
20 Appeals under the judicial retirement system; establishing the Intermediate Court of
21 Appeals by a certain date; providing a short title; providing legislative findings; defining
22 terms; requiring a three-judge panel for proceedings; authorizing jurisdiction of the
23 Intermediate Court of Appeals over certain matters; specifically excluding certain matters
24 from jurisdiction of the Intermediate Court of Appeals; providing eligibility criteria for judges
25 of the Intermediate Court of Appeals; providing a process for initial appointment of judges
26 to the Intermediate Court of Appeals to staggered judicial terms, and to 10-year terms on

27 the expiration of terms thereafter; providing for the filling of vacancies in unexpired judicial
28 terms by appointment; providing that the Governor's appointments are subject to Senate
29 confirmation; providing that judges of the Intermediate Court of Appeals may not be
30 candidates for any elected public office during judicial term; establishing certain
31 requirements for the filing of appeals to the Intermediate Court of Appeals; clarifying that
32 an appeal bond may be required before appeal to the Intermediate Court of Appeals may
33 take effect; requiring the Chief Judge of the Intermediate Court of Appeals to publish and
34 submit certain reports to the Legislature and Supreme Court of Appeals regarding pending
35 cases; authorizing filing fees; providing for deposit of filing fees in a special revenue
36 account to fund the State Police Forensic Laboratory; recognizing the constitutional
37 authority of the Supreme Court of Appeals to exercise administrative authority over the
38 Intermediate Court of Appeals; providing that procedures and operations of the
39 Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court
40 of Appeals; requiring that appeals to the Intermediate Court of Appeals be filed with the
41 Clerk of the Supreme Court of Appeals; providing that Intermediate Court of Appeals
42 proceedings shall take place in publicly available facilities as arranged by the
43 Administrative Director of the Supreme Court of Appeals; granting the Intermediate Court
44 of Appeals discretion to require oral argument; authorizing the Administrative Director of
45 the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals
46 operations; providing that the budget for Intermediate Court of Appeals operations shall
47 be included in the appropriation for the Supreme Court of Appeals; authorizing the
48 Intermediate Court of Appeals to issue opinions as binding precedent for lower courts;
49 providing for discretionary review of Intermediate Court of Appeals decisions by Supreme
50 Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of
51 expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of
52 expenses of Intermediate Court of Appeals staff; providing that certain appeals are

53 reviewed and a written decision issued by either the Intermediate Court of Appeals or the
54 Supreme Court of Appeals, as a matter of right; removing obsolete language from the
55 code; and making technical corrections to the code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 10. FILLING VACANCIES.

§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 subsection (c) of this section,~~
14 The commission shall consist of eight appointed members, appointed by the Governor for six-
15 year terms, including four public members and four attorney members. The Governor shall
16 appoint attorney members from a list of nominees provided by the Board of Governors of the West
17 Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more
18 than 20 nor less than 10 best qualified attorneys for appointment to the commission whenever

19 there is a vacancy in the membership of the commission reserved for attorney members. The
20 commission shall choose one of its appointed members to serve as chair for a three-year term.
21 No more than four appointed members of the commission shall belong to the same political party.
22 No more than three appointed members of the commission shall be residents of the same
23 congressional district. All members of the commission shall be citizens of this state. Public
24 members of the commission may not be licensed to practice law in West Virginia or any other
25 jurisdiction.

26 ~~(c) Of the initial appointments made to the commission, two public members and two~~
27 ~~attorney members shall be appointed for a term ending two years after the effective date of this~~
28 ~~section, one public member and one attorney member shall be appointed for a term ending four~~
29 ~~years after the effective date of this section, and one public member and one attorney member~~
30 ~~shall be appointed for a term ending six years after the effective date of this section~~

31 ~~(d)~~ (c) The Governor, or his or her designee, the President of the West Virginia State Bar,
32 and the Dean of the West Virginia University College of Law shall serve as *ex officio* members of
33 the commission.

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

41 ~~(f)~~ (e) The commission shall adopt written policies that formalize and standardize all
42 operating procedures and ethical practices of its members including, but not limited to, procedures
43 for training commission members, publishing notice of judicial vacancies, recruiting qualified
44 individuals for consideration by the commission, receiving applications from qualified individuals,

45 notifying the public of judicial vacancies, notifying state or local groups and organizations of
46 judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the
47 commission are not subject to the provisions of chapter 29A of this code but shall be filed with the
48 Secretary of State.

49 ~~(g)~~ (f) A majority of the commission plus one ~~shall constitute~~ constitutes a quorum to do
50 business.

51 ~~(h)~~ (g) All organizational meetings of the commission shall be open to the public and
52 subject to the requirements of §6-9A-1 *et seq.* of this code. An “organizational meeting” means
53 an initial meeting to discuss the commission’s procedures and requirements for a judicial vacancy.
54 The commission shall hold at least one organizational meeting upon the occurrence of a judicial
55 vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

56 ~~(i)~~ (h) The commission shall make available to the public copies of any applications and
57 any letters of recommendation written on behalf of any applicants. All other documents or
58 materials created or received by the commission ~~shall be~~ are confidential and exempt from the
59 provisions of chapter 29B of this code, except for the list of best-qualified persons or
60 accompanying memoranda submitted to the Governor in accordance with the provisions of §3-
61 10-3a(j) of this code, which shall be available for public inspection, and the written policies
62 required to be filed with the Secretary of State in accordance with §3-10-3a(f) of this code.

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

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 5. REVIEW.

§23-5-15. Appeals from final decisions of Board to Supreme Court of Appeals; procedure; costs.

1 (a) Review of any final decision of the board, including any order of remand, may be
2 prosecuted by either party or by the Workers' Compensation Commission, the successor to the
3 commission, other private insurance carriers and self-insured employers, whichever is applicable,
4 to the Supreme Court of Appeals within 30 days from the date of the final order by filing a petition
5 therefor with the court against the board and the adverse party or parties as respondents;
6 Provided, That petition for review of any final decision of the board entered after June 30, 2020
7 shall be made to the Intermediate Court of Appeals as required by subsection (e) of this section.
8 Unless the petition for review is filed within the 30-day period, no appeal or review shall be
9 allowed, and such time limitation is a condition of the right to such appeal or review and hence
10 jurisdictional. The Clerk of the Supreme Court of Appeals shall notify each of the respondents,
11 ~~and~~ the Workers' Compensation Commission, the successor to the commission, other private
12 insurance carriers, and self-insured employers, whichever is applicable, of the filing of such
13 petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the court
14 the record of the proceedings ~~had~~ before it, including all the evidence. The court or any judge
15 thereof in vacation may thereupon determine whether or not a review shall be granted. If review
16 is granted to a nonresident of this state, he or she shall be required to execute and file with the
17 clerk before an order or review shall become effective, a bond, with security to be approved by
18 the clerk, conditioned to perform any judgment which may be awarded against him or her. The
19 board may certify to the court and request its decision of any question of law arising upon the
20 record, and withhold its further proceeding in the case, pending the decision of court on the
21 certified question, or until notice that the court has declined to docket the same. If a review is
22 granted or the certified question is docketed for hearing, the clerk shall notify the board, ~~and~~ the
23 parties ~~litigant~~ or their attorneys, ~~and~~ the Workers' Compensation Commission, the successor to
24 the commission, and other private insurance carriers and self-insured employers, whichever is

25 applicable, of that fact by mail. If a review is granted or the certified question docketed, the case
26 shall be heard by the court in the same manner as in other cases, except that neither the record
27 nor briefs need be printed. Every review granted or certified question docketed prior to 30 days
28 before the beginning of the term, shall be placed upon the docket for that term. The Attorney
29 General shall, without extra compensation, represent the board in such cases. The court shall
30 determine the matter brought before it and certify its decision to the board and to the commission.
31 The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding \$30
32 to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter
33 is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review)
34 is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission,
35 payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the
36 discretion of the court: ~~But~~ Provided, That there shall be no cost taxed upon a certified question.

37 (b) In reviewing a decision of the board of review, the Supreme Court of Appeals shall
38 consider the record provided by the board and give deference to the board's findings, reasoning
39 and conclusions, in accordance with subsections (c) and (d) of this section.

40 (c) If the decision of the board represents an affirmation of a prior ruling by both the
41 commission and the Office of Judges that was entered on the same issue in the same claim, the
42 decision of the board may be reversed or modified by the Supreme Court of Appeals only if the
43 decision is in clear violation of constitutional or statutory provision, is clearly the result of
44 erroneous conclusions of law, or is based upon the board's material misstatement or
45 mischaracterization of particular components of the evidentiary record. The court may not conduct
46 a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the
47 board pursuant to this subsection, it shall state with specificity the basis for the reversal or
48 modification and the manner in which the decision of the board clearly violated constitutional or
49 statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's
50 material misstatement or mischaracterization of particular components of the evidentiary record.

51 (d) If the decision of the board effectively represents a reversal of a prior ruling of either
52 the commission or the Office of Judges that was entered on the same issue in the same claim,
53 the decision of the board may be reversed or modified by the Supreme Court of Appeals only if
54 the decision is in clear violation of constitutional or statutory provisions, is clearly the result of
55 erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even
56 when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there
57 is insufficient support to sustain the decision. The court may not conduct a de novo reweighing of
58 the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this
59 subsection, it shall state with specificity the basis for the reversal or modification and the manner
60 in which the decision of the board clearly violated constitutional or statutory provisions, resulted
61 from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record
62 that even when all inferences are resolved in favor of the board's findings, reasoning and
63 conclusions, there is insufficient support to sustain the decision.

64 (e) Review of final decisions entered after June 30, 2020. —

65 (1) The Intermediate Court of Appeals shall have jurisdiction to review a final decision of
66 the board entered after June 30, 2020. A petition for review of a final order of the board shall be
67 made to the Intermediate Court of Appeals and must comply with the requirements of subsections
68 (a) through (d) of this section, when such requirements do not conflict with the provisions of §51-
69 11-1 et seq. of this code.

70 (2) All petitions for review pursuant to this section shall be afforded a full and meaningful
71 review and an opportunity to be heard by the Intermediate Court of Appeals, and a written decision
72 on the merits shall be issued as a matter of right. A party in interest may petition the Supreme
73 Court of Appeals for discretionary review of a final order or judgment of the Intermediate Court of
74 Appeals pursuant to this section, in accordance with rules promulgated by the Supreme Court of
75 Appeals.

76 (3) Notwithstanding the requirements of this subsection, the board may certify to the

77 Supreme Court of Appeals and request its decision of any question of law arising upon the record,
78 pursuant to the requirements of subsection (a) of this section.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

1 (a) Any party adversely affected by a final order or decision in a contested case is entitled
2 to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent
3 other means of review, redress or relief provided by law.

4 (b) Proceedings for review of any final order or decision issued on or before June 30,
5 2020, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit
6 Court of Kanawha County, West Virginia or in the circuit court of the county in which the petitioner
7 or any one of the petitioners resides or does business, or with the judge thereof in vacation, within
8 30 days after the date upon which such party received notice of the final order or decision of the
9 agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review
10 of any final order or decision issued after June 30, 2020, must be instituted by filing an appeal, at
11 the election of a party desiring appeal, to the Intermediate Court of Appeals as provided in §51-
12 11-1 et seq. of this code. A copy of the petition shall be served upon the agency and all other
13 parties of record by registered or certified mail. The petition shall state whether the appeal is taken
14 on questions of law or questions of fact, or both. No appeal bond shall be required to effect any
15 such appeal.

16 (c) The filing of the petition shall not stay enforcement of the agency order or decision or
17 act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at
18 any time after the filing of his or her petition, may apply to such circuit court for a stay of or
19 supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or
20 supersedeas upon such terms as it deems proper.

21 (d) Within 15 days after receipt of a copy of the petition by the agency, or within such
22 further time as the court may allow, the agency shall transmit to such circuit court the original or
23 a certified copy of the entire record of the proceeding under review, including a transcript of all
24 testimony and all papers, motions, documents, evidence and records as were before the agency,
25 all agency staff memoranda submitted in connection with the case, and a statement of matters
26 officially noted; but, by stipulation of all parties to the review proceeding, the record may be
27 shortened. The expense of preparing such record shall be taxed as a part of the costs of the
28 appeal. The appellant shall provide security for costs satisfactory to the court. Any party
29 unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional
30 costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of
31 the party requesting same, a copy of such record. In the event the complete record is not filed
32 with the court within the time provided for in this section, the appellant may apply to the court to
33 have the case docketed, and the court shall order such record filed.

34 (e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of
35 error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be
36 disregarded, but the court may consider and decide errors which are not assigned or argued. The
37 court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by
38 agreement of the parties, shall not be held sooner than 10 days after the filing of the petition, and
39 notice of such date and time shall be forthwith given to the agency.

40 (f) The review shall be conducted by the court without a jury and shall be upon the record
41 made before the agency, except that in cases of alleged irregularities in procedure before the
42 agency, not shown in the record, testimony thereon may be taken before the court. The court may
43 hear oral arguments and require written briefs.

44 (g) The court may affirm the order or decision of the agency or remand the case for further
45 proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the
46 substantial rights of the petitioner or petitioners have been prejudiced because the administrative

47 findings, inferences, conclusions, decision, or order are:

48 (1) In violation of constitutional or statutory provisions; ~~or~~

49 (2) In excess of the statutory authority or jurisdiction of the agency; ~~or~~

50 (3) Made upon unlawful procedures; ~~or~~

51 (4) Affected by other error of law; ~~or~~

52 (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole

53 record; or

54 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
55 exercise of discretion.

56 (h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is
57 applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court
58 of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

ARTICLE 6. APPEALS.

§29A-6-1. Supreme Court of Appeals.

1 (a) Any party adversely affected by the final judgment of the circuit court under this chapter
2 may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction
3 is hereby conferred upon such court to hear and entertain such appeals upon application made
4 therefor in the manner and within the time provided by law for civil appeals generally: Provided,
5 That a circuit court has no jurisdiction to review a final order or decision in a contested case issued
6 after June 30, 2020.

7 (b) Any party adversely affected by the final order, decision, or judgment of the
8 Intermediate Court of Appeals under this chapter may seek review thereof by petition to the
9 Supreme Court of Appeals, pursuant to the requirements of §51-11-1 et seq. of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit courts.

1 (a) Notwithstanding any provision of this code to the contrary, an appeal of a final order
2 by a family court, entered after June 30, 2020, must be made to the Intermediate Court of Appeals,
3 as provided in §51-11-1 et seq. of this code.

4 (b) Notwithstanding any provision of this code to the contrary, a circuit court has no
5 jurisdiction to review a final order by a family court entered after June 30, 2020, if review of the
6 final order is within the jurisdiction of the Intermediate Court of Appeals as provided in §51-11-5
7 of this code.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

1 (a) As used in this article, the term “judge”, “judge of any court of record”, or “judge of any
2 court of record of this state” means, refers to, and includes judges of the several circuit courts,
3 judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For
4 purposes of this article, the terms do not mean, refer to, or include family court judges.

5 (b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value
6 computed upon the basis of the mortality table and interest rates as set and adopted by the
7 retirement board in accordance with the provisions of this article: *Provided,* That when used in
8 the context of compliance with the federal maximum benefit requirements of Section 415 of the
9 Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and
10 interest rates required to comply with those requirements.

11 (c) “Beneficiary” means any person, except a member, who is entitled to an annuity or
12 other benefit payable by the retirement system.

13 (d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-
14 1 et seq. of this code.

15 (e) “Final average salary” means the average of the highest 36 consecutive months’

16 compensation received by the member as a judge of any court of record of this state.

17 (f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been
18 amended.

19 (g) "Member" means a judge participating in this system.

20 (h) "Plan year" means the 12-month period commencing on July 1 of any designated year
21 and ending the following June 30.

22 (i) "Required beginning date" means April 1 of the calendar year following the later of: (i)
23 The calendar year in which the member attains age 70 and one-half; or (ii) the calendar year in
24 which the member retires or otherwise separates from covered employment.

25 (j) "Retirement system" or "system" means the Judges' Retirement System created and
26 established by this article. Notwithstanding any other provision of law to the contrary, the
27 provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of
28 Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No
29 service as a family court judge may be construed to qualify a person to participate in the Judges'
30 Retirement System or used in any manner as credit toward eligibility for retirement benefits under
31 the Judges' Retirement System.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REVIEW REORGANIZATION ACT
OF 2019.

§51-11-1. Short title.

1 This article is known and may be cited as the West Virginia Appellate Review
2 Reorganization Act of 2019.

§51-11-2. Findings.

1 The Legislature finds that:

2 (1) Section one, article VIII of the Constitution of West Virginia explicitly recognizes the
3 power of the Legislature to establish an intermediate court of appeals;

4 (2) Section six, article VIII of the Constitution of West Virginia acknowledges that appellate
5 jurisdiction “may be conferred by law exclusively upon an intermediate appellate court” and
6 numerous additional references to the potential creation of an intermediate appellate court by the
7 Legislature appear throughout the Constitution; and

8 (3) Section three, article VIII of the Constitution of West Virginia grants the West Virginia
9 Supreme Court of Appeals supervisory control over all intermediate appellate courts in the state,
10 including the power to promulgate rules for the procedures of an intermediate appellate court
11 created by statute. The same constitutional provisions name the Chief Justice of the Supreme
12 Court of Appeals the “administrative head” of such courts, empowering the chief justice to
13 exercise supervisory control over an intermediate court of appeals.

§51-11-3. Definitions.

1 For the purpose of this article:

2 “Circuit court” means a circuit court of this state, as provided in §51-2-1 of this code.

3 “Clerk” means the Clerk of the West Virginia Supreme Court of Appeals, as provided in
4 §51-1-11 of this code.

5 “Intermediate Court of Appeals” means the Intermediate Court of Appeals created by this
6 article.

7 “Judge” means an individual appointed to serve as a judge for the Intermediate Court of
8 Appeals, pursuant to this article.

9 “Supreme Court of Appeals” means the West Virginia Supreme Court of Appeals.

§51-11-4. Intermediate Court of Appeals created.

1 (a) In accordance with section one, article VIII of the Constitution of West Virginia, the
2 Intermediate Court of Appeals is hereby created. The court shall be established and operable on
3 July 1, 2020.

4 (b) The Intermediate Court of Appeals shall convene; conduct proceedings; and issue
5 decisions, rulings, and opinions of the court in a panel of three judges, appointed to the court

6 pursuant to §51-11-7 of this code.

7 (c) The proceedings of the Intermediate Court of Appeals shall take place in a facility or in
8 facilities designated by the Administrative Director of the West Virginia Supreme Court of Appeals,
9 pursuant to §51-11-9 of this code.

§51-11-5. Jurisdiction; limitations.

1 (a) The Intermediate Court of Appeals has no original jurisdiction.

2 (b) Unless specifically provided otherwise in this article, appeals of the following matters
3 shall be made to the Intermediate Court of Appeals, which has appellate jurisdiction over such
4 matters:

5 (1) Final judgments or orders of a circuit court in a civil case, entered after June 30, 2020;

6 (2) Final judgments or orders of a family court, entered after June 30, 2020;

7 (3) Final judgments, orders, or decisions of an agency or an administrative law judge
8 entered after June 30, 2020, heretofore appealable to the Circuit Court of Kanawha County
9 pursuant to §29A-5-4 or any other provision of this code;

10 (4) Final judgments, orders, or determinations of the Workers' Compensation Board of
11 Review pursuant to §23-5-1 et seq. of this code, entered after June 30, 2020; and

12 (5) Final judgments or orders of a circuit court concerning guardianship or conservatorship
13 matters, pursuant to §44A-1-1 et seq. of this code.

14 (c) The Intermediate Court of Appeals does not have appellate jurisdiction over the
15 following matters:

16 (1) Judgments or final orders issued in any criminal proceeding in this state;

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

19 (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to
20 §49-4-601 et seq. of this code;

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

- 22 (5) Final decisions of the Public Service Commission, pursuant to §24-5-1 of this code;
23 (6) Judgments or final orders issued in a civil action involving a dispute between a surface
24 owner or royalty owner and an oil, gas, or natural gas well operator or developer regarding
25 property rights;
26 (7) Judgments or final orders issued in a civil action challenging election practices or
27 procedures, including, but not limited to, actions challenging election results, actions challenging
28 or asserting a candidate's eligibility to run for office, and actions asserting an individual's right to
29 vote;
30 (8) Interlocutory appeals;
31 (9) Certified questions of law, as provided in §23-5-15(e) and §58-5-2 of this code; and
32 (10) Extraordinary remedies, as provided in chapter 53 of this code.

§51-11-6. Qualifications of judges.

- 1 A person must meet the following eligibility criteria to serve as a judge of the Intermediate
2 Court of Appeals:
3 (1) The person must be a member, in good standing, of the West Virginia State Bar;
4 (2) The person must be admitted to practice law in the State of West Virginia for 10 years
5 prior to appointment to the Intermediate Court of Appeals;
6 (3) The person must be a resident of the State of West Virginia for five years prior to
7 appointment to the Intermediate Court of Appeals; and
8 (4) The person may not be engaged in the practice of law while serving as a judge of the
9 Intermediate Court of Appeals.

§51-11-7. Appointment of judges; procedure; term of service.

- 1 (a) The Intermediate Court of Appeals shall be comprised of three judges, each appointed
2 to serve staggered judicial terms, as provided in subsection (b) of this section.
3 (b) The Governor shall nominate, and with the advice and consent of the West Virginia
4 Senate appoint, an appropriate number of candidates to fill vacancies in the Intermediate Court

5 of Appeals. The Governor shall make his or her nominations without regard to political
6 partisanship or affiliation.

7 (c) Initial nomination procedure. — For the initial nomination of judges to the Intermediate
8 Court of Appeals following the court's creation:

9 (1) The Judicial Vacancy Advisory Commission shall, no later than January 1, 2020,
10 compile and certify a list to the Governor of the eight most qualified persons to serve as judge:
11 Provided, That each person on the list must meet the requirements of §51-11-6 of this code at
12 the time such person is appointed to the court.

13 (2) The Governor shall nominate three candidates to serve on the court including one
14 candidate to serve a 10-year term, one candidate to serve an eight-year term, and one candidate
15 to serve a six-year term.

16 (3) The terms of each judge shall commence on July 1, 2020.

17 (d) Regular appointment procedure. — After the initial nomination and appointment of
18 judges to the Intermediate Court of Appeals described in subsection (c) of this section:

19 (1) The Judicial Vacancy Advisory Commission shall assist the Governor in filling any
20 vacancy arising upon the expiration of a judge's term, in the manner required by §3-10-3a of this
21 code.

22 (2) Judges shall be nominated and appointed to serve 10-year terms.

23 (3) Judges will be nominated and appointed to fill judicial vacancies in the court as judicial
24 vacancies arise upon the expiration of judicial terms. If a vacancy arises before the expiration of
25 a judicial term, the vacancy shall be filled by the regular appointment procedure required by this
26 section, but the person appointed thereto shall be appointed for the length of the unexpired term.

27 (e) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a
28 judge for the Intermediate Court of Appeals may take an oath of office and commence his or her
29 duties thereafter.

30 (f) Upon the expiration of his or her term of office, a judge for the Intermediate Court of
31 Appeals may be reappointed through the regular appointment process provided in this section.

32 (g) The judges of the Intermediate Court of Appeals shall select a member of the
33 Intermediate Court of Appeals to serve as chief judge, pursuant to rules promulgated by the
34 Supreme Court of Appeals.

35 (h) No person sitting as a judge of the Intermediate Court of Appeals may retain his or her
36 position as judge upon becoming a candidate for any elected public office, judicial or nonjudicial.

37 (i) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court
38 of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals
39 pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that an
40 appointed judge is temporarily unable to serve on the court.

§51-11-8. Rules of practice and procedure; fees; deadlines.

1 (a) Unless specifically provided otherwise in this article, the pleadings, practice, and
2 procedure in all matters before the Intermediate Court of Appeals are governed by rules
3 promulgated by the Supreme Court of Appeals.

4 (b) Filing; records. —

5 All notices of appeal, petitions, documents, and records in connection with an appeal to
6 the Intermediate Court of Appeals shall be filed in accordance with rules promulgated by the
7 Supreme Court of Appeals.

8 (c) Fees. —

9 (1) The Clerk of the West Virginia Supreme Court of Appeals may charge a party appealing
10 to the Intermediate Court of Appeals a filing fee in the amount of \$200.

11 (2) All moneys collected pursuant to this subsection shall be deposited in the State Police
12 Forensic Laboratory Fund, created by §15-2-24d of this code, and all expenditures from the fund
13 shall comply with the requirements of that section.

14 (d) Appeal Bonds. —

15 The court may order the payment of an appeal bond before an appeal to the Intermediate
16 Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of
17 Appeals, and when applicable, the requirements of §58-5-14 of this code.

§51-11-9. Administration of court.

1 (a) In accordance with section three, article VIII of the Constitution of West Virginia, the
2 Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight
3 of the West Virginia Supreme Court of Appeals.

4 (b) Filing; records. — Appeals to the Intermediate Court of Appeals shall be filed with the
5 Clerk of the West Virginia Supreme Court of Appeals. All appeals and other related documents
6 shall be filed by electronic means, when available.

7 (c) Facilities. — The Intermediate Court of Appeals shall hear arguments in a location or
8 locations convenient to litigants. The Administrative Director of the West Virginia Supreme Court
9 of Appeals shall arrange for the availability of one or more suitable public facilities where
10 proceedings of the Intermediate Court of Appeals will take place. Facilities for proceedings may
11 include, but are not limited to, courtrooms in county courthouses, courtrooms in federal
12 courthouses, county commission rooms in county courthouses, rooms or facilities at institutions
13 of higher education, and other suitable spaces in federal, state, county, or municipal buildings
14 throughout the state.

15 (d) Oral Argument. — The Intermediate Court of Appeals has discretion to determine
16 whether appellate review of a case before the court requires oral argument.

17 (e) Staff. — The Administrative Director of the West Virginia Supreme Court of Appeals
18 shall provide administrative support and may employ additional staff, as necessary, for the
19 efficient operation of the Intermediate Court of Appeals. The budget for the payment of
20 compensation and expenses of Intermediate Court of Appeals staff shall be included in the
21 appropriation for the Supreme Court of Appeals.

§51-11-10. Reporting of judicial information.

1 (a) The chief justice of the Intermediate Court of Appeals shall prepare a biannual report,
2 available to the public, that contains the following information':

3 (1) The number of motions that have been pending before the court for more than three
4 months and the name and case number assigned to each case in which such motion has been
5 pending; and

6 (2) The number of cases that have not been disposed of within six months after filing and
7 the name and case number assigned to each case.

8 (b) The chief justice of the Intermediate Court of Appeals shall submit and certify the report
9 required by this section to the Supreme Court of Appeals and the Joint Committee on Government
10 and Finance on a biannual basis.

§51-11-11. Written opinions; precedential effect.

1 (a) The Intermediate Court of Appeals is a court of record and shall issue, as appropriate
2 in each appeal, written opinions, orders, and decisions.

3 (b) The written opinions, orders, and decisions of the Intermediate Court of Appeals are
4 binding precedent for the decisions of all circuit courts, family courts, and magistrate courts,
5 unless such decision is overruled or modified by the Supreme Court of Appeals.

§51-11-12. Discretionary review by Supreme Court of Appeals by petition.

1 (a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order
2 or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the
3 Supreme Court of Appeals.

4 (b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order
5 or judgment of the Intermediate Court of Appeals may be stayed pending the appeal, in
6 accordance with rules promulgated by the Supreme Court of Appeals.

7 (c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal
8 or certiorari of a decision by the Intermediate Court of Appeals.

§51-11-13. Judicial compensation and benefits; expenses.

1 (a) The annual salary of a judge of the Intermediate Court of Appeals is \$130,000. The
2 budget for the payment of compensation and expenses of Intermediate Court of Appeals judges
3 shall be included in the appropriation for the Supreme Court of Appeals.

4 (b) Intermediate Court of Appeals judges and staff shall be reimbursed for their actual and
5 necessary expenses incurred in the performance of their duties under such guidelines as may be
6 prescribed by the Administrative Director of the Supreme Court of Appeals.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS **AND THE 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: *Provided, That an appeal of a final order or judgment of a circuit*
6 *court entered after June 30, 2020, shall be to the Intermediate Court of Appeals, as required by*
7 *§51-11-1 et seq. of this code.*

8 (b) As provided in §51-11-12 of this code, a party in interest may petition the Supreme
9 Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in
10 accordance with rules promulgated by the Supreme Court of Appeals.

11 (c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from
12 a final judgment of any circuit court in which there has been a conviction, or which affirms a
13 conviction obtained in an inferior court.

14 (d) All appeals pursuant to this section shall be afforded a full and meaningful review and
15 an opportunity to be heard by either the West Virginia Intermediate Court of Appeals or the West

- 16 Virginia Supreme Court of Appeals, whichever is appropriate, and a written decision on the merits
17 shall be issued as a matter of right.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals.

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