

WEST VIRGINIA LEGISLATURE
2021 THIRD EXTRAORDINARY SESSION

Introduced

House Bill 334

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

BY REQUEST OF THE EXECUTIVE

[Introduced October 11, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §23-5-12a of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §51-2A-24 of said code; to amend and reenact §51-11-3, §51-11-4,
3 §51-11-6, and §51-11-8 of said code; and to amend and reenact §58-5-1 of said code, all
4 relating to updating provisions establishing the Intermediate Court of Appeals; correcting
5 a citation respecting right to seek review by the Supreme Court of Appeals of a final
6 decision of the Intermediate Court of Appeals with respect to workers' compensation
7 claims; providing that appeals of judgements or final orders entered by family courts in
8 domestic violence proceedings must first be made to circuit court; providing for circuit court
9 jurisdiction over appeals of judgements or final orders entered by family courts in domestic
10 violence proceedings; removing language establishing Intermediate Court of Appeals as
11 a court of record; modifying prohibition on sitting Intermediate Court of Appeals Judges to
12 retain seat upon becoming a candidate or pre-candidate for any nonjudicial, elected public
13 office; authorizing Intermediate Court of Appeals to be located in a fixed or virtual location;
14 providing an exception to appellate jurisdiction of the Intermediate Court of Appeals with
15 respect to final judgments or final orders issued by family courts in domestic violence
16 proceedings; excluding from the appellate jurisdiction of the Intermediate Court of Appeals
17 all appeals of judgments or final orders issued by family courts in domestic violence
18 proceedings; authorizing individuals appointed to serve as judges of the Intermediate
19 Court of Appeals to take oath and commence duties on or before July 1, 2022; authorizing
20 contractual arrangements for use of facilities by Intermediate Court of Appeals to include
21 physical or virtual spaces; correcting a citation respecting right to seek review by the
22 Supreme Court of Appeals of a final decision of the Intermediate Court of Appeals; and
23 making other technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 5. REVIEW.**§23-5-12a. Appeal of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing; effective July 1, 2022.**

1 (a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a
2 decision of the Workers' Compensation Board of Review shall have the right to appeal to the West
3 Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of
4 such action. The Insurance Commissioner, other private insurance carriers, and self-insured
5 employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate
6 Court of Appeals any final action taken by the Workers' Compensation Board of Review. The
7 aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a
8 copy to the Workers' Compensation Board of Review, within 30 days after receipt of notice of the
9 action complained of or, in any event, regardless of notice, within 60 days after the date of the
10 action complained of: *Provided*, That unless the notice of appeal is filed within the time specified,
11 no appeal shall be allowed: *Provided, however*, That the time limitation is a condition of the right
12 to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the
13 filing of a notice of appeal. The notice of appeal shall state the grounds for review and whether
14 oral argument is requested. The Workers' Compensation Board of Review, after receiving a copy
15 of the notice of appeal, shall forthwith make up a transcript of any proceedings before the board
16 of review and certify and transmit it to the Intermediate Court of Appeals. The certificate shall
17 incorporate a brief recital of the proceedings in the matter and recite each order entered or
18 decision issued and the date thereof.

19 (b) The Intermediate Court of Appeals shall set a time and place for the hearing of
20 arguments on each claim and shall notify the interested parties thereof. The review by the court
21 shall be based upon the record submitted to it and such oral argument as may be requested and
22 received. The Intermediate Court of Appeals may affirm, reverse, modify, or supplement the
23 decision of the Workers' Compensation Board of Review and make such disposition of the case

24 as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with
25 the rules of procedure prescribed by the court. The Intermediate Court of Appeals may affirm the
26 order or decision of the Workers' Compensation Board of Review or remand the case for further
27 proceedings. It shall reverse, vacate, or modify the order or decision of the Workers'
28 Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been
29 prejudiced because the Board of Review's findings are:

30 (1) In violation of statutory provisions;

31 (2) In excess of the statutory authority or jurisdiction of the Board of Review;

32 (3) Made upon unlawful procedures;

33 (4) Affected by other error of law;

34 (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole
35 record; or

36 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
37 exercise of discretion.

38 (c) After a review of the case, the Intermediate Court of Appeals shall issue a written
39 decision and send a copy by mail to the parties.

40 (1) All decisions, findings of fact, and conclusions of law of the Intermediate Court of
41 Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain,
42 reverse, or modify the Board of Review's decision.

43 (2) A decision of the Intermediate Court of Appeals is binding upon the Insurance
44 Commissioner, other private insurance carriers, and self-insured employers, whichever is
45 applicable, with respect to the parties involved in the particular appeal. The Insurance
46 Commissioner, other private insurance carriers, and self-insured employers, whichever is
47 applicable, shall have the right to seek judicial review of a final decision of the Intermediate Court
48 of Appeals, pursuant to ~~§51-11-13~~ §51-11-10 of this code, irrespective of whether the party
49 appeared or participated in the appeal to the Intermediate Court of Appeals.

50 (d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation
51 Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its
52 own motion, for good cause shown, to be set forth in the order of the court, remand the case to
53 the Board of Review for the taking of such new, additional, or further evidence as in the opinion
54 of the court considers necessary for a full and complete development of the facts of the case. In
55 the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the
56 taking of further evidence, the Board of Review shall proceed to take new, additional, or further
57 evidence in accordance with any instruction given by the court within 30 days after receipt of the
58 order remanding the case. The Workers' Compensation Board of Review shall give to the
59 interested parties at least 10 days' written notice of the supplemental hearing, unless the taking
60 of evidence is postponed by agreement of parties, or by the Board of Review for good cause.
61 After the completion of a supplemental hearing, the Workers' Compensation Board of Review
62 shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the
63 Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded
64 with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon
65 a finding of good cause, the court may remand the case to the Insurance Commissioner, other
66 private insurance carriers, or self-insured employers, whichever is applicable, for further
67 development. Any decision made by the Insurance Commissioner, other private insurance
68 carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject
69 to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of
70 Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is
71 necessary for a full development and just decision of the case.

72 (e) In all proceedings before the Intermediate Court of Appeals, any party may be
73 represented by counsel.

74 (f) This section becomes effective on July 1, 2022.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

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

1 (a) Notwithstanding any provision of this code to the contrary, an appeal of a final order
2 or decision entered by a family court after June 30, 2022, must be made to the Intermediate Court
3 of Appeals, as provided in §51-11-1 *et seq.* of this code: Provided, That any appeal of a judgement
4 or final order entered by a family court in a domestic violence proceeding pursuant to §48-27-1 et
5 seq. shall first be made to a circuit court.

6 (b) Notwithstanding any provision of this code to the contrary, a circuit court has no
7 jurisdiction to review a final order or decision entered by a family court after June 30, 2022, if
8 review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals,
9 as provided in §51-11-5 of this code: Provided, That a circuit court retains jurisdiction to review
10 judgements or final orders issued by a family court in a domestic violence proceeding pursuant to
11 §48-27-1 et seq. of this code.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-3. West Virginia Intermediate Court of Appeals; constitutional authority; court created; judges; qualifications of judges; location; clerk.

12 (a) The Legislature finds that:

13 (1) Section one, article VIII of the Constitution of West Virginia explicitly recognizes the
14 power of the Legislature to establish an intermediate court of appeals.

15 (2) Section six, article VIII of the Constitution of West Virginia acknowledges that appellate
16 jurisdiction “may be conferred by law exclusively upon an intermediate appellate court” and
17 numerous additional references to the potential creation of an intermediate appellate court by the
18 Legislature appear throughout the Constitution.

19 (b) In accordance with section one, Article VIII of the West Virginia Constitution, the West
20 Virginia Intermediate Court of Appeals is created. The Intermediate Court is ~~a court of record and~~
21 shall issue, as appropriate in each appeal, written opinions, orders, and decisions. The court shall
22 be established and operable on or before July 1, 2022.

23 (c) The Intermediate Court of Appeals shall convene, conduct proceedings, and issue
24 decisions, rulings, and opinions of the court.

25 (d) The Intermediate Court of Appeals shall consist of three judges, initially appointed by
26 the Governor in accordance with §51-11-6 of this code.

27 (1) An Intermediate Court of Appeals Judge must be a member in good standing of the
28 West Virginia State Bar and admitted to practice law in this state for at least 10 years prior to
29 appointment or election to the Intermediate Court of Appeals.

30 (2) An Intermediate Court of Appeals Judge must have been a resident of the State of
31 West Virginia for five years prior to election to the Intermediate Court of Appeals.

32 (3) An Intermediate Court of Appeals Judge may not engage in any other business,
33 occupation, or employment inconsistent with the expeditious, proper and impartial performance
34 of his or her duties as a judicial officer. An Intermediate Court of Appeals Judge is not permitted
35 to engage in the outside practice of law and shall devote full time to his or her duties as a judicial
36 officer.

37 (4) A person sitting as an Intermediate Court of Appeals Judge may not retain his or her
38 position as judge upon becoming a pre-candidate or candidate ~~for any other elected public office,~~
39 ~~judicial or nonjudicial~~ for any nonjudicial, elected public office.

40 (e) The Intermediate Court of Appeals may be located in any seat of county government
41 within the state, or in any other place which is convenient to litigants designated by the
42 Intermediate Court of Appeals for the purpose of hearing oral argument, or may be located in a
43 fixed or virtual location, in a facility provided by the ~~Clerk~~ Administrative Director pursuant to §51-
44 11-8 of this code.

45 (f) The Clerk of the Supreme Court shall act as clerk of the Intermediate Court of Appeals.
46 The Clerk shall keep a complete record of the cases and proceedings of the Intermediate Court
47 of Appeals. The Clerk, subject to the approval of the Supreme Court, may employ additional staff
48 for the performance of duties relating to the court of appeals and designate a deputy clerk to
49 oversee the administration of the Intermediate Court of Appeals.

§51-11-4. Jurisdiction; limitations.

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

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

54 (1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022;
55 *Provided*, that the Supreme Court of Appeals may, on its own accord, obtain jurisdiction over any
56 civil case filed in the Intermediate Court;

57 (2) Final judgments or orders of a family court, entered after June 30, 2022, except for
58 final judgments or final orders issued by a family court in any domestic violence proceeding
59 pursuant to W. Va. Code §48-27-1 et seq. of this code, which appeals shall first be made to a
60 circuit court;

61 (3) Final judgments or orders of a circuit court concerning guardianship or conservatorship
62 matters, entered after June 30, 2022, pursuant to §44A-1-1 et seq. of this code;

63 (4) Final judgments, orders, or decisions of an agency or an administrative law judge
64 entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County
65 pursuant to §29A-5-4 or any other provision of this code;

66 (5) Final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in
67 a certificate of need review, but transferred to the jurisdiction of the Intermediate Court of Appeals
68 upon termination of the Office of Judges pursuant to §16-2D-16a of this code;

69 (6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior

70 to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

71 (7) Final orders or decisions of the Workers' Compensation Board of Review pursuant to
72 §23-5-1 *et seq.* of this code, entered after June 30, 2022.

73 (c) In appeals properly filed pursuant to subsection (b) of this section, the parties shall be
74 afforded a full and meaningful review on the record of the lower tribunal and an opportunity to be
75 heard.

76 (d) The Intermediate Court of Appeals does not have appellate jurisdiction over the
77 following matters:

78 (1) Judgments or final orders issued in any criminal proceeding in this state: *Provided*, that
79 if the West Virginia Supreme Court of Appeals should adopt a policy of discretionary review of
80 criminal appeals then the Intermediate Court of Appeals shall have appellate jurisdiction of such
81 judgments or final orders;

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

84 (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to
85 §49-4-601 *et seq.* of this code;

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

87 (5) Any proceedings of the Lawyer Disciplinary Board;

88 (6) Any proceedings of the Judicial Investigation Commission;

89 (7) Final decisions of the Public Service Commission, issued pursuant to §24-5-1 of this
90 code;

91 (8) Interlocutory appeals;

92 (9) Certified questions of law; ~~and~~

93 (10) Extraordinary remedies, as provided in §53-1-1 *et seq.* of this code, and any appeal
94 of a decision or order of another court regarding an extraordinary remedy; and

95 (11) Judgments or final orders issued by a family court in any domestic violence

96 proceeding pursuant to §48-27-101, et seq. of this code.

§51-11-6. Election of judges; initial appointment and election; vacancies; length and conditions of judicial terms.

97 (a) The three Judges of the Intermediate Court of Appeals shall be elected on a
98 nonpartisan basis to serve 10-year terms, subject to the exceptions for initial appointments and
99 elections contained in subsection (b) and subsection (c) of this section.

100 (b) *Nomination and election to fill initial vacancies.* — The Judges shall be nominated and
101 appointed according to the following procedure:

102 (1) (A) On or before January 1, 2022, the Judicial Vacancy Advisory Commission,
103 established pursuant to §3-10-3a of this code, shall publish notice of the judicial vacancies for the
104 Intermediate Court of Appeals and begin accepting applications from qualified individuals for the
105 position of Judge of the Intermediate Court of Appeals. The commission is responsible for
106 reviewing and evaluating candidates for possible appointment to the Intermediate Court of
107 Appeals by the Governor. In reviewing candidates, the commission may accept applications from
108 any attorney who believes he or she to be qualified for the judgeships. The commission may
109 accept comments from and request information from any person or source.

110 (B) The commission shall recommend three qualified nominees for each position for
111 Intermediate Court of Appeals Judge: *Provided*, That each person on the list must meet the
112 requirements of §51-11-3(d) of this code at the time such person will begin his or her term on the
113 court.

114 (2) The Governor shall review the list certified by the Judicial Vacancy Advisory
115 Commission and nominate three qualified candidates to serve as judge. The Governor shall make
116 his or her nominations without regard to political partisanship or affiliation. If the Governor does
117 not select a nominee for the position of judge from the names provided by the commission, he or
118 she shall notify the committee of that circumstance and the Commission shall provide additional
119 names for consideration by the Governor.

120 (3) The initial appointment term for each of the judges, at the discretion of the Governor,
121 shall be as follows: one judge shall be selected to serve a two and one-half year term set to expire
122 on December 31, 2024, one judge shall be selected to serve a four and one-half year term set to
123 expire on December 31, 2026, and one judge shall be elected to serve a six and one-half year
124 term set to expire on December 31, 2028.

125 (4) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a
126 Judge of the Intermediate Court of Appeals pursuant to this subsection shall take an oath of office
127 and commence his or her duties on or before July 1, 2022.

128 (c) After the initial appointment, the Judges of the Intermediate Court of Appeals shall be
129 elected on a nonpartisan basis by division during the primary election in every year during which
130 a sitting judge's term will expire for a 10 year term of office, and the judge's term shall commence
131 on January 1 of the year following, as set forth in §3-5-1 *et seq.* of this code.

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

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

136 (f) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court
137 of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals
138 pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge
139 is temporarily unable to serve on the court.

140 **§51-11-8. Administration of court.**

141 (a) In accordance with section three, article VIII of the Constitution of West Virginia, the
142 Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight
143 of the Supreme Court of Appeals. Under that same provisions, the Chief Justice of the Supreme
144 Court of Appeals is the "administrative head" of all West Virginia courts, empowering the chief
145 justice to exercise supervisory control over an intermediate court of appeals.

146 (b) The Administrative Director of the Supreme Court shall provide for the requisite
147 physical facilities, furniture, fixtures, and equipment necessary for the efficient operation of the
148 Intermediate Court of Appeals.

149 (c) (1) In order to minimize any costs associated with the necessary facilities for the
150 Intermediate Court of Appeals, the Administrative Director of the Supreme Court shall make
151 existing courtrooms throughout the state, including the courtroom of the Supreme Court of
152 Appeals, available for use by the Intermediate Court of Appeals at times convenient both to the
153 Intermediate Court of Appeals and the local court.

154 (2) The Administrative Director of the Supreme Court may also contract with the
155 Department of Administration, county commissions, and private parties to provide for space that
156 is suitable for the Intermediate Court of Appeals. Facilities may include, but are not limited to,
157 courtrooms in county courthouses, courtrooms in federal courthouses, county commission rooms
158 in county courthouses, rooms or facilities at institutions of higher education, and other suitable
159 physical or virtual spaces in federal, state, county, or municipal buildings throughout the state.

160 (d) *Chief Judge*. — One Judge of the Intermediate Court of Appeals shall be chosen Chief
161 Judge. The manner of choosing the Chief Judge and providing for periodic rotation of the position
162 of Chief Judge shall be determined by rules to be established by the Supreme Court.

163 (e) *Staff*. — The Administrative Director of the Supreme Court of Appeals shall provide
164 administrative support and may employ additional staff, as necessary, for the efficient operation
165 of the Intermediate Court of Appeals. The budget for the payment of compensation and expenses
166 of the Intermediate Court of Appeals staff shall be included in the appropriation to the Supreme
167 Court of Appeals.

168 (f) The budget for the payment of the salaries and benefits for the Intermediate Court of
169 Appeals Judges and staff, facilities, furniture, fixtures, and equipment shall be included in the
170 appropriation for the Supreme Court. To the extent possible, the Supreme Court shall designate
171 existing facilities and existing staff members for use by the Intermediate Court of Appeals to

172 minimize the costs for establishing and operating the Intermediate 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, 2022, 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 ~~§51-11-13~~ §51-11-10 of this code, a party in interest may petition the
9 Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of
10 Appeals in 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.

NOTE: The purpose of this bill is to update the Intermediate Appellate Reorganization Act.

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