

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 3273**

By Delegates Akers, Leavitt, Flanigan, Funkhouser,  
and Kelly

[Introduced March 10, 2025; referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §51-9-10 of the Code of West Virginia, 1931, as amended, relating to  
2 senior judges and justices; and recognizing authority of Supreme Court of Appeals to recall  
3 senior judges and justices in specified circumstances.

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

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

### **§51-9-10. Services of senior judges and justices.**

1 (a) The Legislature finds that:

2 (1) Section seven, article VIII of the Constitution of West Virginia expressly requires the  
3 Legislature to fix judicial salaries by statute, providing that: "[j]ustices, judges and magistrates  
4 shall receive the salaries fixed by law".

5 (2) Occasionally, circumstances may require the extended assignment of senior judges  
6 and justices, necessitating the Legislature to prescribe such circumstances when the limitations  
7 on compensation of senior judges and justices receiving retirement benefits may be exceeded.

8 (b) The Legislature recognizes and acknowledges the authority of the West Virginia  
9 Supreme Court of Appeals to recall retired circuit court judges, family court judges, judges of the  
10 Intermediate Court of Appeals, and justices of the Supreme Court of Appeals for temporary  
11 assignment and to create a panel of such senior judges and justices ~~to utilize the talent and~~  
12 ~~experience of former intermediate court, circuit court, family court judges, and supreme court~~  
13 ~~justices of this state:~~ to serve temporarily in the event of a protracted illness or medical condition,  
14 lengthy suspension, or other unfilled vacancy, to serve temporarily in a circuit to assist with an  
15 excess of pending matters identified by the administrative director through statistical analysis, or  
16 to mentor or assist a sitting judge as directed by the administrative director: *Provided*, That  
17 extended assignment of retired judges and justices must not be utilized in such a way as to  
18 threaten the qualified status of the Judges' Retirement System under applicable provisions of the  
19 Internal Revenue Code, including Treasury Regulation section 1.401(a)-1(b)(1) requiring that a  
20 qualified plan must be established primarily to provide payment of definitely determinable benefits

21 to its employees after retirement or attainment of normal retirement age.

22 (c) Senior intermediate court judges, circuit court judges, and justices recalled and  
23 assigned to service shall receive per diem compensation set by the Supreme Court of Appeals,  
24 but not to exceed \$430 for each day actually served: *Provided*, That the combined total of per diem  
25 compensation and retirement benefits paid to a senior judge or justice during a single calendar  
26 year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection  
27 (d) of this section.

28 (d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial  
29 efficacy and continuity in judicial decision making, a senior judge or justice may continue to receive  
30 per diem compensation after the combined total of per diem compensation and retirement benefits  
31 paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting  
32 circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order  
33 certifying there are certain extraordinary circumstances involving the necessary absence of a  
34 sitting judicial officer because of a protracted, but temporary, illness or medical condition, or a  
35 lengthy suspension which necessitate the extended assignment of the senior judge or justice.  
36 Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the  
37 State Auditor and the State Treasurer.

38 (e) In addition to the per diem compensation authorized by this section, senior judges and  
39 justices recalled to service may be reimbursed for their actual and necessary expenses incurred in  
40 the performance of their duties.

41 (f) Senior family court judges recalled and assigned to service shall receive per diem  
42 compensation set by the Supreme Court of Appeals, but not to exceed \$325 for each day actually  
43 served: *Provided*, That the combined total per diem compensation and retirement benefits paid to  
44 a senior family court judge during a single calendar year may not exceed the annual salary of a  
45 sitting family court judge, except as set forth in subsection (d) of this section. In addition to the per  
46 diem compensation authorized by this section, senior family court judges recalled to service may

- 47 be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

NOTE: The purpose of this bill is to specify the circumstances in which senior judges and justices may be recalled to service.

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