

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Originating

House Bill 5684

By Delegates Akers, Maynor, Butler, Heckert,
Holstein, Phillips, B. Ward, D. Cannon, and
Burkhammer

[Originating in the Committee on the Judiciary;

Reported on February 27, 2026]

1 A BILL to amend and reenact §5-10-48, §49-1-207, and §51-9-10 of the Code of West Virginia,
2 1931, as amended; and to amend the code by adding a new section, designated §49-4-
3 118, relating to authorizing the Supreme Court of Appeals to create child protection
4 commissioners; specifying retirement benefits applicable to certain retired public
5 employees employed as child protection commissioners; defining child protection
6 commissioner; requesting Supreme Court of Appeals to create program of child protection
7 commissioners; providing for appointment, removal, and oversight; providing
8 qualifications; authorizing multi-circuit child protection commissioner regions; setting forth
9 powers and duties; providing for compensation and employment terms; and authorizing
10 senior judges and justices to serve as child protection commissioners.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.
§5-10-48. Reemployment after retirement; options for holder of elected public office.**

1 (a) The Legislature finds that a compelling state interest exists in maintaining an actuarially
2 sound retirement system and that this interest necessitates that certain limitations be placed upon
3 an individual's ability to retire from the system and to then later return to state employment as an
4 employee with a participating public employer while contemporaneously drawing an annuity from
5 the system. The Legislature hereby further finds and declares that the interests of the public are
6 served when persons having retired from public employment are permitted, within certain
7 limitations, to render post-retirement employment in positions of public service, either in elected or

8 appointed capacities. The Legislature further finds and declares that it has the need for qualified
9 employees and that in many cases an employee of the Legislature will retire and be available to
10 return to work for the Legislature as a per diem employee. The Legislature further finds and
11 declares that in many instances these employees have particularly valuable expertise which the
12 Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying
13 these persons on a limited per diem basis after they have retired is not only in the best interests of
14 this state but has no adverse effect whatsoever upon the actuarial soundness of this particular
15 retirement system.

16 (b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means
17 employment of an individual by a participating public employer, in a position other than as an
18 elected or appointed public official, which normally requires 12 months per year service and at
19 least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or
20 "temporary part-time employment" means employment of an individual on a temporary or
21 provisional basis by a participating public employer, other than as an elected or appointed public
22 official, in a position which does not otherwise render the individual as regularly employed; (3)
23 "former employee of the Legislature" means any person who has retired from employment with the
24 Legislature and who has at least 10 years' contributing service with the Legislature; and (4)
25 "reemployed by the Legislature" means a former employee of the Legislature who has been
26 reemployed on a per diem basis not to exceed 175 days per calendar year.

27 (c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly
28 employed on a full-time basis by a participating public employer, payment of his or her annuity
29 shall be suspended during the period of his or her reemployment and he or she shall become a
30 contributing member to the retirement system. If his or her reemployment is for a period of one
31 year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased
32 annuity due to the additional employment, the annuity to be computed according to §5-10-22 of
33 this code. If his or her reemployment is for a period less than one year, he or she may request in

34 writing that the employee and employer retirement contributions submitted during reemployment
35 be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her
36 previous annuity shall be reinstated effective the first day of the month following termination of
37 reemployment and the board's receipt of written notice thereof. Subject to the provisions of
38 subsection (i) of this section, a retirant may accept legislative per diem, temporary full-time, or
39 temporary part-time employment from a participating employer without suspending his or her
40 retirement annuity so long as he or she does not receive annual compensation in excess of
41 \$25,000.

42 (d) Senior judges, justices, and magistrates. —

43 (1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate
44 court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to
45 temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may
46 receive per diem compensation pursuant to the requirements of §51-9-10 of this code while
47 continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

48 (2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate
49 who is recalled and assigned to temporary service as a senior magistrate by the West Virginia
50 Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of
51 §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of
52 subsection (i) of this section.

53 (e) Subject to the provisions of subsection (i) of this section, if a member retires and is then
54 subsequently elected to a public office, or is subsequently appointed to hold an elected public
55 office, or is a former employee of the Legislature who has been reemployed by the Legislature, he
56 or she has the option, notwithstanding subsection (c) of this section, to either:

57 (1) Continue to receive payment of his or her annuity while holding public office, or during
58 any reemployment of a former employee of the Legislature on a per diem basis, in addition to the
59 salary he or she may be entitled to as an office holder, or as a per diem reemployed former

60 employee of the Legislature; or

61 (2) Suspend the payment of his or her annuity and become a contributing member of the
62 retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of
63 this subsection, a member who is participating in the system as an elected public official may not
64 retire from his or her elected position and commence to receive an annuity from the system and
65 then be elected or reappointed to the same position unless and until a continuous 12-month period
66 has passed since his or her retirement from the position: *Provided*, That a former employee of the
67 Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days
68 after the employee has retired: *Provided, however*, That the limitation on compensation provided
69 by subsection (c) of this section does not apply to the reemployed former employee: *Provided*
70 *further*, That in no event may reemployment by the Legislature of a per diem employee exceed
71 175 days per calendar year.

72 (f) Subject to the provisions of subsection (i) of this section, a member who is participating
73 in the system simultaneously as both a regular, full-time employee of a participating public
74 employer, and as an elected or appointed member of the legislative body of the state or any
75 political subdivision, may, upon meeting the age and service requirements of this article, elect to
76 retire from his or her regular full-time state employment and may commence to receive an annuity
77 from the system without terminating his or her position as a member of the legislative body of the
78 state or political subdivision: *Provided*, That the retired member shall not, during the term of his or
79 her retirement and continued service as a member of the legislative body of a political subdivision,
80 be eligible to continue his or her participation as a contributing member of the system and shall not
81 continue to accrue any additional service credit or benefits in the system related to the continued
82 service.

83 (g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member
84 of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House
85 of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement

86 distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the
87 member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided*,
88 *however*, That the member elects to stop actively contributing to the system while receiving the in-
89 service distributions.

90 (h) The Legislature hereby finds and declares that a severe shortage of child protective
91 services workers and adult protective services workers exists throughout the state, and therefore,
92 a compelling state interest exists in expanding the use of retired employees to serve this critical
93 need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person
94 receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the
95 provisions of this chapter, may accept employment as a child protective services worker or an
96 adult protective services worker on a full-time or part-time basis without having payment of his or
97 her retirement annuity suspended and without reentering the retirement system as a contributing
98 member. This subsection is only applicable if the retired employee meets the minimum
99 qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing
100 child protective services or adult protective services vacancy. The retired employee may continue
101 to work under this subsection only as long as that position remains vacant. The vacant position
102 shall be posted until it is filled by a regularly employed person meeting the minimum qualifications
103 to serve as a child protective service worker or an adult protective service worker. The provisions
104 of this subsection shall expire July 1, 2025.

105 (i) Notwithstanding any provision of this article to the contrary, a retirant who becomes
106 employed by a participating public employer after the effective date of his or her retirement must
107 have a bona fide separation from service upon retirement to be eligible for an annuity under the
108 retirement system. If a retirant fails to have a bona fide separation from service upon retirement or
109 if such retirant or his or her participating public employer fails to comply with §5-10-19 in a manner
110 satisfactory to the board, then the member's retirement shall be voided and the member shall
111 repay to the system the gross amount of all annuity payments received related to such voided

112 retirement. The board may take any actions necessary or appropriate in accordance with the
113 provisions of §5-10-44 to recover such annuity payments so that an in-service distribution is not
114 deemed to have been made.

115 (j) The Legislature hereby finds and declares that a severe shortage of attorneys to
116 represent children in child welfare matters exists throughout the state, and therefore, a compelling
117 state interest exists in expanding the use of retired employees to serve as child protection
118 commissioners or circuit court law clerks. Notwithstanding any provision of subsection (c) of this
119 section to the contrary, a licensed attorney receiving retirement benefits or who is eligible to
120 receive retirement benefits pursuant to the provisions of this chapter, may accept employment
121 from the Supreme Court of Appeals as a child protection commissioner or circuit court law clerk on
122 a full-time or part-time basis without having payment of his or her retirement annuity suspended
123 and without reentering the retirement system as a contributing member. This subsection is only
124 applicable if the retired employee meets the minimum qualifications of the position and has been
125 retired for at least 60 days. The retired employee may continue to work under this subsection only
126 as long as that position remains vacant. The vacant position shall be posted until it is filled by a
127 regularly employed person meeting the minimum qualifications to serve as a child protection
128 commissioner or circuit court law clerk.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-207. Definitions related to court actions.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, court actions, except in those instances where a different
3 meaning is provided or the context in which the word is used clearly indicates that a different
4 meaning is intended.

5 "Court" means the circuit court of the county with jurisdiction of the case or the judge in

6 vacation unless otherwise specifically provided.

7 “Court appointed special advocate (CASA) program” means a community organization
8 that screens, trains, and supervises CASA volunteers to advocate for the best interests of children
9 who are involved in abuse and neglect proceedings pursuant to §49-3-102 of this code.

10 “Extrajudicial Statement” means any utterance, written or oral, which was made outside of
11 court.

12 “Juvenile referee” means a magistrate appointed by the circuit court to perform the
13 functions expressly prescribed for a referee under the provisions of this chapter.

14 “Multidisciplinary team” means a group of professionals and paraprofessionals
15 representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose
16 and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are
17 not limited to, medical, educational, childcare and law-enforcement personnel, social workers,
18 psychologists, and psychiatrists. Their goal is to pool their respective skills in order to formulate
19 accurate diagnoses and to provide comprehensive coordinated treatment with continuity and
20 follow-up for both parents and children.

21 “Community team” means a multidisciplinary group which addresses the general problem
22 of child abuse and neglect in a given community and may consist of several multidisciplinary
23 teams with different functions.

24 “Child protection commissioner” means an individual appointed by the Supreme Court of
25 Appeals to manage portions of a court case filed pursuant to this chapter.

26 “Res gestae” means a spontaneous declaration made by a person immediately after an
27 event and before the person has had an opportunity to conjure a falsehood.

28 “Valid court order” means an order issued by a court of competent jurisdiction relating to a
29 child brought before the court and who is the subject of that order. Prior to the entry of the order the
30 child shall receive the full due process rights guaranteed to that child or juvenile by the
31 Constitutions of the United States and the State of West Virginia.

32 “Violation of a traffic law of West Virginia” means a violation of chapter 17A, 17B, 17C, or
33 17D of this code, except a violation of §17C-4-1 or §17C-4-2 of this code relating to hit and run, or
34 §17C-5-1, §17C-5-2, or §17C-5-3 of this code, relating, respectively, to vehicular homicide,
35 aggravated vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a
36 construction zone, driving under the influence of alcohol, controlled substances or drugs and
37 reckless driving.

ARTICLE 4. COURT ACTIONS.

§49-4-118. Child protection commissioner created; powers and duties.

1 (a) The Supreme Court of Appeals is requested to create a pilot project utilizing child
2 protection commissioners to encourage efficiency and ensure accountability in court actions filed
3 pursuant to this chapter.

4 (b) A child protection commissioner is a judicial officer and shall be appointed, and may be
5 removed, by the Supreme Court of Appeals for a two-year term that may be renewed, and is
6 subject to the administrative oversight, training, and standards established by the Supreme Court
7 of Appeals.

8 (c) A child protection commissioner shall be an attorney licensed to practice law in this
9 state and possess experience or training in juvenile law, as determined by rules of the Supreme
10 Court of Appeals.

11 (d) The Administrative Director of the Supreme Court of Appeals may designate multi-
12 circuit child protection commissioner regions to carry out the purpose of this section, and a child
13 protection commissioner may serve in that capacity in more than one circuit simultaneously.

14 (e) Subject to the direction and oversight of the chief circuit judge, a child protection
15 commissioner may authorize emergency removals as permitted by law, monitor diversion and pre-
16 petition matters, conduct evidentiary and status hearings, compel witnesses to testify and place
17 them under oath, order services and visitation, determine child-support, custody, sibling visitation,
18 grandparent visitation, and post termination-visititation in matters pending in circuit court under

19 Rule 6 of the Rules of Procedure for Child Abuse and Neglect Proceedings, facilitate multi-
20 disciplinary team meetings, manage discovery, oversee improvement periods and case plans,
21 remove individuals from treatment court programs, and perform all other duties authorized by rules
22 promulgated by the Supreme Court of Appeals.

23 (f) The child protection commissioner may issue a non-binding report and
24 recommendations to the presiding circuit judge regarding findings of fact and conclusions of law
25 for a preliminary, adjudication, disposition, or permanency hearing, contempt, termination of an
26 improvement period, placement, or referral to a treatment court; however, the circuit court shall
27 retain the sole authority to enter orders on these matters. A child protection commissioner shall not
28 exercise independent contempt authority. Any party may object to a child protection
29 commissioner's report and recommendations within 10 days of their entry and filing, and the circuit
30 judge shall review the record made before the child protection commissioner, the recommended
31 decision of the child protection commissioner, and the objections and exceptions which have been
32 filed, and the court shall enter an order.

33 (g) A child protection commissioner shall be paid by the Supreme Court of Appeals at the
34 rate it establishes and may also receive travel reimbursement as provided by Supreme Court of
35 Appeals policy. The Supreme Court of Appeals shall provide all necessary equipment for a child
36 protection commissioner to perform his or her duties, and may, at its discretion, acquire or lease
37 the necessary facilities as required. A child protection commissioner may be either a full-time
38 employee or paid hourly depending on workload necessities as determined by the Administrative
39 Director.

CHAPTER 51. COURTS AND THEIR OFFICERS.

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 serve in certain
12 circumstances including, but not limited to, serving temporarily in the event of a protracted illness
13 or medical condition, lengthy suspension, or other unfilled vacancy; serving temporarily in a circuit
14 to assist with an excess of pending matters identified by the administrative director through
15 statistical analysis; mentoring or assisting a sitting judge as directed by the administrative director;
16 serving temporarily in a circuit in the event of a recusal or disqualification of a judge or justice;
17 serving as a child protection commissioner pursuant to §49-4-118 of this code; serving as a law
18 clerk for a circuit judge, a judge of the intermediate court of appeals, or a justice of the Supreme
19 Court of Appeals; or presiding over cases as a member of the mass litigation or business court:
20 *Provided*, That extended assignment of retired judges and justices must not be utilized in such a
21 way as to threaten the qualified status of the Judges' Retirement System under applicable
22 provisions of the Internal Revenue Code, including Treasury Regulation §1.401(a)-1(b)(1)
23 requiring that a qualified plan must be established primarily to provide payment of definitely
24 determinable benefits to its employees after retirement or attainment of normal retirement age.

25 (c) Senior intermediate court judges, circuit court judges, and justices recalled and
26 assigned to service shall receive per diem compensation set by the Supreme Court of Appeals,
27 but not to exceed \$430 for each day actually served: *Provided*, That the combined total of per diem

28 compensation and retirement benefits paid to a senior judge or justice during a single calendar
29 year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection
30 (d) of this section.

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

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

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

51 (g) Notwithstanding any provision of this article to the contrary, a retirant who becomes
52 employed by the Supreme Court after the effective date of his or her retirement must have a bona
53 fide separation from service upon retirement to be eligible for an annuity under the retirement

54 system. If a retirant fails to have a bona fide separation from service upon retirement or if such
55 retirant or the participating public employer fails to comply with subsection (h) of this section in a
56 manner satisfactory to the board, then the member's retirement shall be voided and the member
57 shall repay to the system the gross amount of all annuity payments received related to such voided
58 retirement. The board may take any actions necessary or appropriate in accordance with the
59 provisions of § 51-9-18 to recover such annuity payments so that an in-service distribution is not
60 deemed to have been made.

61 (h) Prior to any retirant subsequently becoming reemployed by the Supreme Court,
62 whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee
63 basis, the Supreme Court shall notify the board and the retirant, in writing, if and when any such
64 potential employment will negatively impact the retirant's retired status or benefits. Upon the
65 retirant's acceptance of such employment, the participating public employer shall notify the board,
66 in writing, of the retirant's subsequent employment. The retirement board may also require of
67 retirants and the Supreme Court such reports, forms and verifications as it deems necessary to
68 ensure that a bona fide separation from service from retirement has occurred.

NOTE: The purpose of this bill is to authorize the Supreme Court to create program of child protection commissioners.

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