

COMMITTEE SUBSTITUTE

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## **Senate Bill No. 307**

(By Senators Kessler (Acting President), Hall, Unger, Jenkins, Plymale, Foster, Minard, Prezioso, McCabe, Stollings, Browning, Palumbo, Green, Beach, Boley, Nohe, K. Facemyer, Sypolt, Barnes, Wells and Klempa)

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[Originating in the Committee on Finance;  
reported February 28, 2011.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §51-1B-1, §51-1B-2, §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8, §51-1B-9 and §51-1B-10, all relating to authorizing a new court to be known as the Intermediate Court of Appeals; requiring the court to be operational by January 1, 2013; providing three judges for the court; establishing qualifications

for judges; establishing jurisdiction of the court; providing that all appeals will be reviewed and a written decision on the merits issued; providing that all appeals will be filed with Supreme Court of Appeals; providing that Supreme Court will either keep the appeal or send it to the Intermediate Court; providing that appeals in certain administrative cases are discretionary; authorizing appeals from Intermediate Court to the Supreme Court; authorizing Governor to make initial appointments by July 1, 2012; creating staggered terms; providing for elections for ten-year terms after initial appointments; authorizing a chief judge of the Intermediate Court; authorizing staff for the court and the judges; providing for compensation and expenses of judges and staff; providing for temporary assignment of circuit court judges; providing that the Supreme Court will govern the pleading, practice and procedure of the Intermediate Court through rules; authorizing the Supreme Court to provide the facilities, furniture, fixtures and equipment for the Intermediate Court; providing for electronic filing of all documents with the Intermediate Court; providing that decisions of the court have precedential effect; requiring written decision on the merits; and providing that

the budget of the Intermediate Court will be part of the Supreme Court budget.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §51-1B-1, §51-1B-2, §51-1B-3, §51-1B-4, §51-1B-5, §51-1B-6, §51-1B-7, §51-1B-8, §51-1B-9 and §51-1B-10, all to read as follows:

**ARTICLE 1B. INTERMEDIATE COURT OF APPEALS.**

**§51-1B-1. Intermediate Court of Appeals established; location.**

1 (a) In accordance with article VIII, section one of the West  
2 Virginia Constitution, the West Virginia Intermediate Court  
3 of Appeals is created. The court shall be established and  
4 operable on or before January 1, 2013. The Intermediate  
5 Court shall be located in Charleston, Kanawha County. The  
6 Intermediate Court of Appeals is a court of record and shall  
7 issue, as appropriate in each appeal, written opinions, orders  
8 and decisions.

9 (b) The Intermediate Court may, for the purposes of  
10 hearing oral arguments, meet at the seat of state government  
11 or any county seat.

**§51-1B-2. Judges; qualifications.**

1 (a) The Intermediate Court of Appeals shall consist of three  
2 judges, initially appointed by the Governor in accordance  
3 with section four of the article.

4 (b) An Intermediate Court of Appeals judge must be a  
5 resident of the state, a member in good standing of the West  
6 Virginia State Bar, and admitted to practice law in this state  
7 for at least ten years prior to appointment or election.

8 (c) An Intermediate Court of Appeals judge may not engage  
9 in any other business, occupation or employment inconsis-  
10 tent with the expeditious, proper and impartial performance  
11 of his or her duties as a judicial officer. An Intermediate  
12 Court of Appeals justice is not permitted to engage in the  
13 outside practice of law and shall devote full time to his or her  
14 duties as a judicial officer.

**§51-1B-3. Jurisdiction; defunctive rights of Supreme Court; discre-  
tionary appeals.**

1 (a) The Intermediate Court of Appeals shall not have  
2 original jurisdiction.

3 (b) Petitions for appeal shall be filed with the Supreme  
4 Court of Appeals. Those cases for which the Supreme Court  
5 elects not to grant petitions for appeal shall be transferred to  
6 the Intermediate Court of Appeals.

7 (c) The Intermediate Court of Appeals has jurisdiction to  
8 hear appeals from final judgments or orders entered by a  
9 circuit court in any civil or criminal case, appeals from the  
10 Workers Compensation Board of Review, and the Public  
11 Service Commission.

12 (d) All appeals shall be reviewed and a written decision on  
13 the merits issued by either the Supreme Court of Appeals or  
14 Intermediate Court of Appeals as a matter of right except for  
15 the following appeals, which shall be discretionary with the  
16 Courts:

17 (1) Appeals from the Workers' Compensation Board of  
18 Review established by section eleven, article five, chapter  
19 twenty-four of this code;

20 (2) Appeals from orders of the Public Service Commission  
21 established by article one, chapter twenty-four of this code;

22 (3) Appeals from decisions of circuit courts of administra-  
23 tive appeals of an agency as defined in article one, chapter  
24 twenty-nine-a of this code; and

25 (4) Appeals of misdemeanor convictions.

26 (e) Within thirty days after a decision by the Intermediate  
27 Court, any aggrieved party may petition the Supreme Court

28 of Appeals by petition for writ of certiorari as provided by  
29 the West Virginia Rules of Appellate Procedure.

**§51-1B-4. Number of Intermediate Court Judges; initial appoint-  
ment; election; term of office; vacancy; chief judge.**

1 (a) There shall be three judges of the Intermediate Court of  
2 Appeals. The Governor shall, on or before July 1, 2012,  
3 appoint the initial judges from names submitted by the  
4 Judicial Vacancy Advisory Committee established pursuant  
5 to section three-a, article ten, chapter three of the West  
6 Virginia Code. The committee shall recommend three  
7 qualified nominees for each position for Intermediate Court  
8 of Appeals judge. If the Governor does not select a nominee  
9 for the position of judge from the names provided by the  
10 committee, he or she shall notify the committee of that  
11 circumstance and the committee shall provide additional  
12 names for consideration by the Governor.

13 (b) The committee is responsible for reviewing and evaluat-  
14 ing candidates for possible appointment to the Intermediate  
15 Court of Appeals by the Governor. In reviewing candidates,  
16 the committee may accept applications from any attorney  
17 who believes himself or herself qualified for the judgeships.

18 The committee may accept comments from and request  
19 information from any person or source.

20 (c) Of the initial appointments, one judge shall be ap-  
21 pointed for a term of four years, one judge shall be appointed  
22 for a term of six years and one judge shall be appointed for  
23 a term of eight years. Upon the expiration of each term, the  
24 judge's position shall be filled by election, for a ten year  
25 term, in the same manner as with the Supreme Court of  
26 Appeals.

27 (d) After the initial appointments are made, any vacancy in  
28 office shall be filled in the same manner as vacancies on the  
29 Supreme Court of Appeals.

30 (e) One judge of the Intermediate Court of Appeals shall be  
31 chosen chief judge of the Intermediate Court. The manner of  
32 choosing the chief judge and providing for periodic rotation  
33 of the position of chief judge shall be determined by rules to  
34 be established by the Supreme Court of Appeals.

**§51-1B-5. Compensation and expenses of Intermediate Court  
judges and staffs.**

1 (a) The annual salary of an Intermediate Court of Appeals  
2 judge shall be \$118,000. Reimbursement for expenses shall  
3 be at a rate established by the Supreme Court of Appeals.

4 (b) Each judge of the Intermediate Court of Appeals may  
5 employ two law clerks and one secretary. The Intermediate  
6 Court of Appeals may employ a clerk and the necessary staff  
7 to carry out the administrative duties of the court or, with  
8 the permission of the Supreme Court of Appeals, the admin-  
9 istrative and other support staff of the Supreme Court of  
10 Appeals may carry out the administrative duties of both  
11 courts. The compensation of the staff of the Intermediate  
12 Court of Appeals shall be established by the judges of the  
13 Intermediate Court of Appeals with the approval of the  
14 Supreme Court of Appeals.

**§51-1B-6. Temporary assignment of circuit court judges.**

1 Upon the occurrence of a vacancy in the office of Interme-  
2 diate Court of Appeals judge, the disqualification of an  
3 Intermediate Court of Appeals judge or the inability of an  
4 Intermediate Court of Appeals judge to attend to his or her  
5 duties because of illness, temporary absence, or any other  
6 reason, the Chief Justice of the Supreme Court of Appeals  
7 may assign any senior status circuit judge or circuit judge of  
8 any judicial circuit that is not from the same circuit as the  
9 appeal before the Intermediate Court to hear and determine  
10 any and all matters then or thereafter pending in the Inter-



11 mediate Court to which the absent Intermediate Court judge  
12 is assigned.

**§51-1B-7. Rules of practice and procedure.**

1 Pleading, practice and procedure in matters before the  
2 Intermediate Court of Appeals shall be governed by rules  
3 promulgated by the Supreme Court of Appeals.

**§51-1B-8. Facilities.**

1 (a) The Administrative Director of the Supreme Court of  
2 Appeals shall provide the necessary physical facilities,  
3 furniture, fixtures and equipment necessary for the efficient  
4 operation of the Intermediate Court of Appeals.

5 (b) In order to minimize costs, the director may (1) contract  
6 with the Department of Administration, county commissions  
7 and private parties to provide for space that is suitable for  
8 the Intermediate Court of Appeals, and (2) shall make  
9 existing courtrooms throughout the state available for use by  
10 the Intermediate Court of Appeals at times convenient both  
11 to the Intermediate Court of Appeals and the local court.

**§51-1B-9. Electronic filing of all documents and orders.**

1 All documents filed in connection with an appeal to the  
2 Intermediate Court of Appeals shall be filed electronically.  
3 The court shall electronically file and publish its orders and

4 decisions which shall, unless stated by the court to be per  
5 curiam or unpublished, have precedential effect.

**§51-1B-10. Budget.**

1 The budget for the payment of the salaries and benefits for  
2 the Intermediate Court of Appeals judges and staff, facilities,  
3 furniture, fixtures and equipment shall be included in the  
4 appropriation for the Supreme Court of Appeals. To the  
5 extent possible, the Supreme Court shall designate existing  
6 facilities and existing staff members for use by the Interme-  
7 diate Court of Appeals to minimize costs for establishing and  
8 operating the Intermediate Court of Appeals.