

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### Senate Bill 2

FISCAL  
NOTE

BY SENATORS TRUMP, BOSO, TAKUBO, WELD, AND CLINE

[Introduced January 9, 2019; Referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §23-5-10 of said code; to amend said code by adding thereto a new section,  
3 designated §23-5-11a; to amend and reenact §29A-5-4 of said code; to amend and  
4 reenact §29A-6-1 of said code; to amend said code by adding thereto a new section,  
5 designated §51-2A-24; to amend and reenact §51-9-1a of said code; to amend said code  
6 by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-  
7 11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-  
8 13, and §51-11-14; and to amend and reenact §58-5-1 of said code, all relating generally  
9 to the West Virginia Appellate Reorganization Act of 2019; terminating the Workers'  
10 Compensation Board of Review and transferring duties to the Intermediate Court of  
11 Appeals; requiring board to dispose of cases by a certain date; requiring contested cases  
12 under State Administrative Procedures Act to go to the Intermediate Court of Appeals;  
13 transferring jurisdiction for review of family court final orders from circuit courts to  
14 Intermediate Court of Appeals; placing judges of Intermediate Court of Appeals under the  
15 judicial retirement system; altering the residency requirements for membership on the  
16 Judicial Vacancy Advisory Commission; creating the Intermediate Court of Appeals;  
17 providing a short title; providing legislative findings; defining terms; establishing and  
18 defining two geographical districts of the Intermediate Court of Appeals; requiring three-  
19 judge panels for proceedings; authorizing jurisdiction of the Intermediate Court of Appeals  
20 over certain matters; specifically excluding certain matters from jurisdiction of the  
21 Intermediate Court of Appeals; providing eligibility criteria for judges of the Intermediate  
22 Court of Appeals; providing that no two judges of the Intermediate Court of Appeals may  
23 be residents of the same state senatorial district or of the same county; providing a process  
24 for appointment of judges to the Intermediate Court of Appeals to staggered judicial terms;  
25 providing that the Governor's appointments are subject to Senate confirmation; providing  
26 that judges of the Intermediate Court of Appeals may not be candidates for any elected

27 office during judicial term; providing for temporary filling of judicial vacancy occurring  
28 before the expiration of an appointed judge's term; establishing certain requirements for  
29 the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond  
30 may be required before appeal to the Intermediate Court of Appeals may take effect;  
31 requiring the chief judge of each Intermediate Court of Appeals district to publish and  
32 submit certain reports to the Legislature and Supreme Court of Appeals regarding pending  
33 cases; authorizing filing fees; providing for deposit of filing fees in a special revenue  
34 account to fund the State Police Forensic Laboratory; recognizing the constitutional  
35 authority of the Supreme Court of Appeals to exercise administrative authority of the  
36 Intermediate Court of Appeals; providing that procedures and operations of the  
37 Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court  
38 of Appeals; requiring that appeals to the Intermediate Court of Appeals be filed with the  
39 Clerk of the Supreme Court of Appeals; providing that Intermediate Court of Appeals  
40 proceedings take place in publicly available facilities across the state; granting the  
41 Intermediate Court of Appeals discretion to require oral argument; authorizing the  
42 Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate  
43 Court of Appeals operations; providing that the budget for Intermediate Court of Appeals  
44 operations shall be included in the appropriation for the Supreme Court of Appeals;  
45 authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for  
46 respective districts; providing for discretionary review of Intermediate Court of Appeals  
47 decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits,  
48 and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing  
49 for reimbursement of expenses of Intermediate Court of Appeals staff; providing for sunset  
50 of the Intermediate Court of Appeals on certain date unless continued by the Legislature;  
51 and providing that certain appeals are reviewed and a written decision issued by either  
52 the Intermediate Court of Appeals or the Supreme Court of Appeals, as a matter of right.

*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 ~~ninety~~ 90 days of the occurrence of a vacancy, or  
4 the formal announcement of the justice or judge by letter to the Governor of an upcoming  
5 resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of  
6 the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, judge of a circuit  
7 court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as  
8 required by this article, within ~~thirty~~ 30 days following the receipt of the list of qualified candidates  
9 or within ~~thirty~~ 30 days following the vacancy, whichever occurs later.

10           (b) The commission ~~shall consist~~ consists of eight appointed members, four of whom are  
11 public members ~~shall be appointed by the Governor for six-year terms, except for the initial~~  
12 ~~appointments which shall be staggered in accordance with subsection (c) of this section. Four~~  
13 and four of whom are attorney members. The Governor shall appoint attorney members ~~shall be~~  
14 ~~appointed by the Governor for six-year terms, except as provided in subsection (c) of this section,~~  
15 from a list of nominees provided by the Board of Governors of the West Virginia State Bar. When  
16 filling a vacancy on the commission, the Governor shall appoint a member for a six-year term.  
17 The Board of Governors of the West Virginia State Bar shall nominate no more than ~~twenty~~ 20  
18 nor ~~less~~ fewer than ~~ten~~ 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 (c) No more than two appointed members of the commission may be residents of the same  
32 state senatorial district, as provided in §1-2-1 of this code at the time of appointment: *Provided,*  
33 That the members of the commission appointed prior to the enactment of this subsection and  
34 serving on the commission upon the effective date of this subsection are not disqualified from  
35 service for the remainder of the member's term based on the residency requirements of this  
36 subsection.

37 (d) The Governor, or his or her designee, the President of the West Virginia State Bar,  
38 and the Dean of the West Virginia University College of Law shall serve as ex officio members of  
39 the commission.

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

47 (f) The commission shall adopt written policies that formalize and standardize all operating

48 procedures and ethical practices of its members including, but not limited to, procedures for  
49 training commission members, publishing notice of judicial vacancies, recruiting qualified  
50 individuals for consideration by the commission, receiving applications from qualified individuals,  
51 notifying the public of judicial vacancies, notifying state or local groups and organizations of  
52 judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the  
53 commission are not subject to the provisions of chapter 29A of this code but shall be filed with the  
54 Secretary of State.

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

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

62 (i) The commission shall make available to the public copies of any applications and any  
63 letters of recommendation written on behalf of any applicants. All other documents or materials  
64 created or received by the commission ~~shall be~~ are confidential and exempt from the provisions  
65 of §29B-1-1 *et seq.* of this code, except for the list of best qualified persons or accompanying  
66 memoranda submitted to the Governor in accordance with the provisions of §3-10-3a(j) of this  
67 code, which shall be available for public inspection, and the written policies required to be filed  
68 with the Secretary of State in accordance with §3-10-3a(f) of this code.

69 (j) The commission shall submit its list of best qualified persons to the Governor in  
70 alphabetical order. A memorandum may accompany the list of best qualified persons and state  
71 facts concerning each of the persons listed. The commission shall make copies of any list of best  
72 qualified persons and accompanying memoranda it submits to the Governor available for public  
73 inspection.

**CHAPTER 23. WORKERS' COMPENSATION.**

**ARTICLE 5. REVIEW.**

**§23-5-10. Appeal from administrative law judge decision to appeal board; appeals to Intermediate Court of Appeals after certain date.**

1           (a) The employer, claimant, Workers' Compensation Commission, the successor to the  
 2 commission, other private insurance carriers, and self-insured employers, whichever is  
 3 applicable, may appeal to the appeal board created in §23-5-11 of this code for a review of a  
 4 decision by an administrative law judge: Provided, That the appeal board created in §23-5-11 of  
 5 this code has no jurisdiction to hear an appeal of a decision by an administrative law judge entered  
 6 after June 30, 2020. No appeal or review shall ~~may~~ lie unless application therefor be made within  
 7 ~~thirty~~ 30 days of receipt of notice of the administrative law judge's final action or in any event  
 8 within ~~sixty~~ 60 days of the date of such final action, regardless of notice and, unless the application  
 9 for appeal or review is filed within the time specified, no such appeal or review shall be allowed,  
 10 such time limitation being hereby declared to be a condition of the right of such appeal or review  
 11 and hence jurisdictional.

12           (b) An appeal of a final order or decision by the Office of Judges, entered after June 30,  
 13 2020, shall be made to the Intermediate Court of Appeals, pursuant to §51-11-1 et seq. of this  
 14 code.

**§23-5-11a. Transfer of jurisdiction of appeals to Intermediate Court of Appeals; termination of board of review.**

1           (a) The Workers' Compensation Board of Review, created in §23-5-11 of this code, has  
 2 no jurisdiction to review a decision issued by the Office of Judges after June 30, 2020.

3           (b) The Intermediate Court of Appeals, created in §51-11-1 et seq. of this code, has  
 4 exclusive appellate jurisdiction over all final orders or decisions issued by the Office of Judges  
 5 after June 30, 2020.

6 (c) On or before June 30, 2020, the Workers' Compensation Board of Review shall issue  
7 a final decision in, or otherwise dispose of, each and every appeal pending before the board.

8 (d) Upon the Workers' Compensation Board of Review's disposition of all appeals filed  
9 with the board on or before June 30, 2020, the Workers' Compensation Board of Review is  
10 terminated.

## 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, proceedings for review shall be instituted by filing a petition, at the election of the petitioner,  
6 in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county  
7 in which the petitioner or any one of the petitioners resides or does business, or with the judge  
8 thereof in vacation, within thirty 30 days after the date upon which such party received notice of  
9 the final order or decision of the agency. Notwithstanding any provision of this code to the  
10 contrary, proceedings for judicial review of any final order or decision issued after June 30, 2020,  
11 must be instituted by filing an appeal, at the election of a party desiring appeal, to the Intermediate  
12 Court of Appeals as provided in §51-11-1 et seq. of this code. A copy of the petition shall be  
13 served upon the agency and all other parties of record by registered or certified mail. The petition  
14 shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal  
15 bond shall be required to effect any 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 ~~fifteen~~ 15 days after receipt of a copy of the petition by the agency, or within  
22 such further time as the court may allow, the agency shall transmit to such circuit court the original  
23 or 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 ~~ten~~ 10 days after the filing of the petition,  
39 and 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 shall be final unless reversed, vacated, or modified  
 57 on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of  
 58 §29A-6-1 of this code.

**ARTICLE 6. APPEALS.**

**§29A-6-1. Supreme Court of Appeals.**

1 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 appeal of a final order, decision, or judgment of the Intermediate Court of Appeals must  
 6 comply with 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 pursuant to §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 under the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5  
7 of this code.

8        (c) Upon the sunset of the Intermediate Court of Appeals, pursuant to §51-11-14 of this  
9 code, the provisions of this section are of no force and effect.

**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 the judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals.  
4 For 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 ~~thirty-six~~ 36 consecutive  
16 months' 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 ~~twelve~~ 12 month period commencing on July 1 of any  
21 designated year 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 1/2; or (ii) The calendar year in which the  
24 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 2018.**

**§51-11-1. Short title.**

1 This article is known and may be cited as the West Virginia Appellate Review  
2 Reorganization Act of 2018.

**§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 any potential 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; geographical districts.**

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 or before July 1, 2020.

4           (b) The Intermediate Court of Appeals is composed of two geographical districts: The  
 5 Intermediate Court of Appeals for the Northern District and the Intermediate Court of Appeals for  
 6 the Southern District. Each district has jurisdiction over appeals of final decisions, judgments, or  
 7 orders entered within the district’s designated counties, as follows:

8           (1) The Intermediate Court of Appeals for the Northern District has jurisdiction over  
 9 appeals of decisions, judgments, or orders entered within the following counties: Barbour,  
 10 Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion,  
 11 Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston,  
 12 Randolph, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood.

13           (2) The Intermediate Court of Appeals for the Southern District has jurisdiction over  
 14 appeals of decisions, judgments, or orders entered within the following counties: Boone, Braxton,  
 15 Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan,  
 16 Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Putnam, Raleigh, Roane, Summers,  
 17 Upshur, Wayne, Webster, Wirt, and Wyoming.

18           (c) Each district of the Intermediate Court of Appeals shall convene, conduct proceedings,  
 19 and issue decisions, rulings and opinions of the court in panels comprised of three judges.

20           (d) The proceedings of the Intermediate Court of Appeals may take place in any location  
 21 geographically located within the district the court serves that is convenient to litigants, in a facility  
 22 provided by the clerk, 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 those  
 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 Office of Judges pursuant to §23-5-  
11 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 challenging election practices or  
24 procedures, including, but not limited to, actions challenging election results, actions challenging  
25 or asserting a candidate's eligibility to run for office, and actions asserting an individual's right to  
26 vote;

27 (7) Interlocutory appeals;

28 (8) Certified questions of law, as provided in §58-5-2 of this code; and

29 (9) 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;

8 (4) The person must be a resident of the district of the Intermediate Court of Appeals in  
9 which he or she serves; and

10 (5) The person must not be engaged in the practice of law.

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

1 (a) Each district of the Intermediate Court of Appeals shall be comprised of three judges,  
2 each appointed to serve staggered judicial terms, as provided in §51-11-7(b) of this code. No two  
3 judges may be residents of the same county or of the same state senatorial district, as those  
4 districts are provided in §1-2-1 of this code at the time of a judge's appointment.

5 (b) The procedure for the appointment of a judge to the Intermediate Court of Appeals is  
6 as follows:

7 (1) For the initial nomination of judges following the creation of the Intermediate Court of  
8 Appeals, the Judicial Vacancy Advisory Commission shall compile and certify a list to the  
9 Governor of the eight most qualified persons to serve as judge for each district of the Intermediate  
10 Court of Appeals no later than January 1, 2020: *Provided*, That no more than three candidates on  
11 the list may reside in the same county or in the same state senatorial district as those districts are  
12 provided in §1-2-1 of this code at the time of a candidate's inclusion on the list: *Provided, however*,  
13 That each person on the list must meet the requirements of §51-11-6 of this code. After the initial  
14 appointment of judges to the Intermediate Court of Appeals, the Judicial Vacancy Advisory  
15 Commission shall assist the Governor in filling any vacancy arising upon the expiration of a  
16 judge's term, in the manner required by §3-10-3a of this code.

17 (2) The Governor shall appoint, with the advice and consent of the West Virginia Senate,



18 an appropriate number of candidates to fill vacancies in the Intermediate Court of Appeals. The  
19 Governor shall make his or her nominations without regard to political partisanship or affiliation.  
20 No two judicial candidates may be residents of the same county or of the same state senatorial  
21 district, as those districts are provided in §1-2-1 of this code, at the time of a candidate's  
22 nomination. The Governor shall nominate candidates for appointment to serve judicial terms  
23 within each district of the Intermediate Court of Appeals, as follows:

24 (A) For the initial nomination of judges following the creation of the Intermediate Court of  
25 Appeals, the Governor shall nominate three candidates for each judicial district. Of the three  
26 candidates nominated per district, the Governor shall nominate one candidate to serve a 10-year  
27 term, one candidate to serve an eight-year term, and one candidate to serve a six-year term. The  
28 terms of each judge initially appointed to the Intermediate Court of Appeals shall commence on  
29 July 1, 2020.

30 (B) After the initial appointments described in §51-11-7(b)(2)(A) of this code, judges of the  
31 Intermediate Court of Appeals will be appointed to fill judicial vacancies in the Intermediate Court  
32 of Appeals as judicial vacancies arise upon the expiration of judicial terms. After the initial  
33 appointments described in §51-11-7(b)(2)(A) of this code, judges of the Intermediate Court of  
34 Appeals shall be appointed to serve 10-year terms.

35 (c) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a  
36 judge for the Intermediate Court of Appeals will take an oath of office, and will commence his or  
37 her duties thereafter.

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

40 (e) The three judges of each district of the Intermediate Court of Appeals shall select a  
41 member of the Intermediate Court of Appeals to serve as chief judge, pursuant to rules  
42 promulgated by the Supreme Court of Appeals.

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

45 (g) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court  
46 of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals  
47 pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that an  
48 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 filed in connection with an appeal  
6 to 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 A court may order the payment of an appeal bond before an appeal to the Intermediate  
16 Court of Appeals may take effect, in accordance with the requirements of §58-5-14 of this code  
17 and rules promulgated by the Supreme Court of Appeals.

**§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 throughout the  
8 court's respective districts in locations that are convenient to litigants. The Administrative Director  
9 of the West Virginia Supreme Court of Appeals shall arrange for the availability of suitable public  
10 facilities where proceedings of the Intermediate Court of Appeals will take place. Facilities for  
11 proceedings may include, but are not limited to, courtrooms in county courthouses, courtrooms in  
12 federal courthouses, county commission rooms in county courthouses, rooms or facilities at  
13 institutions of higher education, and other suitable spaces in federal, state, county, or municipal  
14 buildings 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 each district of the Intermediate Court of Appeals shall prepare a  
2 biannual report, available to the public, that contains the following information, as it pertains to  
3 the justice's district:

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

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

9           (b) The chief justice of each district of the Intermediate Court of Appeals shall submit and  
10 certify the list required by this section to the Supreme Court of Appeals and Joint Committee on  
11 Government 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 opinion, 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 that  
5 lie within the court's district unless such decision is overruled or modified by the Supreme Court  
6 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 is stayed pending action of the Supreme Court  
6 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.

**§51-11-14. Sunset.**

1           The Intermediate Court of Appeals sunsets on July 1, 2030, unless continued by act of  
 2 the Legislature.

**CHAPTER 58. APPEAL AND ERROR.**

**ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE AND 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 the West Virginia Supreme Court of Appeals or the Intermediate
- 16 Court of Appeals, and a written decision on the merits shall be issued, as a matter of right.

NOTE: The purpose of this bill is to create an Intermediate Court of Appeals and create the West Virginia Appellate Review Reorganization Act of 2018. The bill terminates The Workers' Compensation Board of Review and transferring duties to the Intermediate Court of Appeals. The bill requires election of Judges of the Intermediate Court of Appeals be on nonpartisan basis. The bill requires elections be on a division basis when more than one judge is to be elected. The bill provides for timing and frequency of election. The bill provides for commencement of terms of office. The bill establishes ballot design and printing. The bill provides that elections be held on same date as primary election. The bill requires nonpartisan ballots. The bill establishes filing announcement of candidacies, including timing, location and necessary information. The bill provides for order of appearance of offices on the ballot. The bill establishes ballot content. The bill provides procedures for filling of vacancies. The bill provides occasions for special elections to be held to fill vacancies. The bill requires Intermediate Court of Appeals be operational by July 1, 2020. The bill establishing northern and southern districts. The bill provides three judges for each district. The bill establishes qualifications for judges. The bill designates the Clerk of the Supreme Court as the Clerk of the Intermediate Court of Appeals. The bill provides that certain appeals to be reviewed as a matter of right and those matters in which the appeals are discretionary. The bill establishes court jurisdiction. The bill provides for defunctive review. The bill provides West Virginia Supreme Court of Appeals will either keep an appeal or transfer it to Intermediate Court. The bill provides appeals in certain administrative cases are discretionary. The bill authorizes appeals from Intermediate Court to Supreme Court. The bill authorizes Governor to make initial appointments by January 1, 2020. The bill creates staggered terms. The bill provides for elections for ten-year terms after initial appointments. The bill authorizes a Chief Judge. The bill authorizes staff for court and judges. The bill provides for compensation and expenses of judges and staff. The bill provides for temporary assignment of circuit court judges. The bill authorizes Supreme Court to provide facilities, furniture, fixtures and equipment for Intermediate Court. The bill establishes precedential effect of Intermediate Court orders and decisions. The bill provides budget of Intermediate Court be part of Supreme Court budget. The bill provides for sunset of the 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.