

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 275

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

[BY REQUEST OF THE EXECUTIVE]

[Passed April 1, 2021; in effect 90 days from passage]

1 AN ACT to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §3-4A-11a of said code; to amend said code by adding thereto a new section,
3 designated, §3-5-6e; to amend and reenact §3-5-7 and §3-5-13 of said code; to amend
4 and reenact §3-10-3 and §3-10-3a of said code; to amend and reenact §6-5-1 of said
5 code; to amend said code by adding thereto a new section, designated §16-2D-16a; to
6 amend said code by adding thereto a new section, designated §23-1-1h; to amend and
7 reenact §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-
8 11, §23-5-12, §23-5-13, §23-5-15, and §23-5-16 of said code; to amend said code by
9 adding thereto 12 new sections, designated §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-
10 5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, and §23-5-16a;
11 to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said
12 code; to amend said code by adding thereto a new section, designated §51-2A-24; to
13 amend and reenact §51-9-1a of said code; to amend said code by adding thereto a new
14 article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-
15 7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, and §51-11-13; and to amend
16 and reenact §58-5-1 of said code, all relating generally to creating an Intermediate Court
17 of Appeals; requiring the election of judges of the Intermediate Court of Appeals be on a
18 nonpartisan basis; requiring that elections to certain offices be on a division basis when
19 more than one judge of the Intermediate Court of Appeals is to be elected; providing for
20 the timing, day and frequency of election; providing for the commencement of terms of
21 office; establishing ballot design and printing; providing that election for Judge of the
22 Intermediate Court of Appeals is to be held on the same date as the primary election;
23 requiring nonpartisan ballots be used; establishing filing announcement of candidacies,
24 including the timing, location and information necessary thereto; providing for the order of
25 appearance of offices on the ballot; establishing ballot content; providing for the filling of
26 vacancies on the Intermediate Court of Appeals; defining terms; providing that the Judicial

Vacancy Advisory Commission assist initial and subsequent vacancies on the Intermediate Court of Appeals; clarifying meaning of quorum for Judicial Vacancy Advisory Commission; transferring jurisdiction over appeals of decisions of the Health Care Authority in certificate-of-need reviews from the Workers' Compensation Office of Administrative Law Judges and Circuit Court of Kanawha County to the Intermediate Court of Appeals; establishing procedures and time frames for transfer or disposition of unresolved appeals pending with the Office of Judges; transferring jurisdiction over all workers' compensation claims and transferring all powers and duties related thereto from the Office of Judges to the Workers' Compensation Board of Review by a date certain; providing for additional two members to Workers' Compensation Board of Review; providing for modified procedure to appoint members to Workers' Compensation Board of Review; conferring appellate jurisdiction over Office of Judges decisions and Board of Review decisions to the Intermediate Court of Appeals after a date certain; sunseting certain provisions relating to duties and procedures of the Office of Judges with respect to workers' compensation claims; modifying duties and procedures of Board of Review with respect to workers' compensation claims; terminating the Office of Judges by a date certain; authorizing the Board of Review to employ hearing examiners and other necessary personnel; establishing qualifications for hearing examiners hired by the Board of Review; setting forth powers of the Board of Review relating to workers' compensation claims; providing for reports requested by the Insurance Commissioner to be made by the chair of the Board of Review; providing for oversight and administrative authority of the Insurance Commissioner over the Board of Review; authorizing the Board of Review to promulgate procedural rules; granting due consideration and an interview to employees of the Office of Judges who apply for positions with the Board of Review on or before a date certain and directing the Board of Review that such consideration and interview prior to considering any other applicant; authorizing the Board of Review to hire attorneys as

53 hearing examiners; requiring that all orders and decisions of the Board of Review
54 pertaining to an objection be issued and signed by a single member of the Board of
55 Review, with certain exceptions; permitting the board of review member assigned to an
56 objection to delegate certain duties to a hearing examiner; establishing the administrative
57 powers and duties of the Board of Review; increasing the limit on the annual salary of a
58 Board of Review member; authorizing the Board of Review to promulgate rules of practice
59 and procedure, and establishing a process therefor; establishing duties of the chair of the
60 Board of Review; providing that the administrative expenses of the Board of Review shall
61 be included in annual budget of the Insurance Commissioner; providing that petitions for
62 review of final decisions of the Workers' Compensation Board of Review must be made to
63 the Intermediate Court of Appeals; establishing certain procedures and other requirements
64 for appeals of Board of Review decisions made to the Intermediate Court of Appeals;
65 providing that the Supreme Court of Appeals has discretion to review final decisions of the
66 Intermediate Court of Appeals in workers' compensation claims; requiring that appeal of
67 contested cases under the State Administrative Procedures Act be made to the
68 Intermediate Court of Appeals; transferring jurisdiction to review family court final orders
69 from circuit courts to the Intermediate Court of Appeals; creating an Intermediate Court of
70 Appeals in West Virginia to be established and operable by a date certain; providing a
71 short title; providing legislative findings; defining terms; establishing and defining an
72 Intermediate Court of Appeals of three judges; providing eligibility criteria for judges of the
73 Intermediate Court of Appeals; providing that judges of the Intermediate Court of Appeals
74 may not be candidates for any elected public office during the judicial term; providing for
75 the location of proceedings of the Intermediate Court of Appeals; providing for a Clerk of
76 the Intermediate Court of Appeals; authorizing jurisdiction of the Intermediate Court of
77 Appeals over certain matters; excluding certain matters from jurisdiction of the
78 Intermediate Court of Appeals; providing that parties to an appeal in the Intermediate

Court of Appeals shall have an opportunity for a full and meaningful review on the record of the lower tribunal and an opportunity to be heard; forbidding jurisdiction of the Intermediate Court of Appeals over certain matters; establishing a procedure by which parties to an appeal in the Intermediate Court of Appeals may file a motion for direct review of an appeal by the Supreme Court of Appeals in certain extraordinary circumstances; providing a process for initial appointment of judges to the Intermediate Court of Appeals to fill vacancies in the Intermediate Court of Appeals upon its creation; providing for the regular election of a judge of the Intermediate Court of Appeals upon the expiration of a sitting judge's term; establishing a procedures for the filling of vacancies in unexpired judicial terms by appointment and, in certain circumstances, subsequent election; providing that the Governor's judicial appointments must be made from a list of candidates submitted by the Judicial Vacancy Advisory Commission and are subject to advice and consent of the Senate; providing that procedures and operations of the Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of Appeals and related filings be filed with the Clerk of the Supreme Court of Appeals; establishing certain requirements for the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond may be required before appeal to the Intermediate Court of Appeals may take effect; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the Ryan Brown Addiction Prevention and Recovery Fund; granting the Intermediate Court of Appeals discretion to require oral argument; recognizing the constitutional authority of the Supreme Court of Appeals to exercise administrative authority over the Intermediate Court of Appeals; providing that Intermediate Court of Appeals proceedings shall take place in publicly available facilities as arranged by the Administrative Director of the Supreme Court of Appeals; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing for a Chief Judge

of the Intermediate Court of Appeals; providing that the budget for Intermediate Court of Appeals operations shall be included in the appropriation for the Supreme Court of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for lower courts; providing that the Intermediate Court of Appeals shall issue written decisions as a matter of right; providing for discretionary review of Intermediate Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals staff; authorizing the Attorney General to appear as Counsel for the State before the Intermediate Court of Appeals; providing for severability of any unconstitutional provisions; clarifying when appeal lies before the Intermediate Court of Appeals and the Supreme Court of Appeals; providing internal effective dates; removing obsolete language from the code; and making technical corrections to the code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every 12th year thereafter, two justices of the

9 Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every
10 twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary
11 election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be
12 on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

13 (c) At the time of the primary election to be held in the year 2024, and every tenth year
14 thereafter, there shall be elected one judge to a seat of the Intermediate Court of Appeals; at the
15 time of the primary election to be held in 2026, and every 10th year thereafter, one judge to a seat
16 of the Intermediate Court of Appeals; and at the time of the primary election to be held in 2028,
17 and every 10th year thereafter, one judge to a seat of the Intermediate Court of Appeals. Effective
18 with the primary election held in the year 2024, the election of Judges of the Intermediate Court
19 of Appeals shall be on a nonpartisan basis and by division as set forth more fully in §3-5-1 et seq.
20 of this code.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

1 (a) The board of ballot commissioners in counties using ballots upon which votes may be
2 recorded by means of marking with electronically sensible ink or pencil and which marks are
3 tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the
4 electronic voting system for use in elections.

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and
6 arrangement of offices and the printing of names and arrangement of candidates within each
7 office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

8 (2) For the general election, the heading of the ballot, the type faces, the names and
9 arrangement of offices and the printing of names and the arrangement of candidates within each
10 office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

(iii) Judge of the circuit court;

(iv) Family court judge; and

(v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any

office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

1 (a) Any person who is eligible and seeks to hold an office or political party position to be
2 filled by election in any primary or general election held under the provisions of this chapter shall
3 file a certificate of announcement declaring his or her candidacy for the nomination or election to
4 the office.

5 (b) The certificate of announcement shall be filed as follows:

6 (1) Candidates for the House of Delegates, the State Senate, circuit judge, family court
7 judge, and any other office or political position to be filled by the voters of more than one county
8 shall file a certificate of announcement with the Secretary of State.

9 (2) Candidates for an office or political position to be filled by the voters of a single county
10 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,
11 circuit judge or family court judge, shall file a certificate of announcement with the clerk of the
12 county commission.

13 (3) Candidates for an office to be filled by the voters of a municipality shall file a certificate
14 of announcement with the recorder or city clerk.

15 (c) The certificate of announcement shall be filed with the proper officer not earlier than
16 the second Monday in January before the primary election day and not later than the last Saturday
17 in January before the primary election day and must be received before midnight, eastern
18 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service
19 before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of
20 the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which
21 are to be filled on a nonpartisan and division basis at the primary election: Provided, That on the
22 final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m.
23 until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that
24 final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

50 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
51 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
52 certified copy of the voter's registration record of the candidate showing that the candidate was
53 registered as a voter in a party other than the one named in the certificate of announcement during
54 the 60 days immediately preceding the filing of the certificate: Provided, That unless a signed
55 formal complaint of violation of this section and the certified copy of the voter's registration record
56 of the candidate are filed with the officer receiving that candidate's certificate of announcement
57 no later than 10 days following the close of the filing period, the candidate may not be refused
58 certification for this reason.

59 (f) The certificate of announcement shall be subscribed and sworn to by the candidate
60 before some officer qualified to administer oaths, who shall certify the same. Any person who
61 knowingly provides false information on the certificate is guilty of false swearing and shall be
62 punished in accordance with §3-9-3 of this code.

63 (g) Any candidate for delegate to a national convention may change his or her statement
64 of presidential preference by notifying the Secretary of State by letter received by the Secretary
65 of State no later than the third Tuesday following the close of candidate filing. When the rules of
66 the political party allow each presidential candidate to approve or reject candidates for delegate
67 to convention who may appear on the ballot as committed to that presidential candidate, the
68 presidential candidate or the candidate's committee on his or her behalf may file a list of approved
69 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any
70 candidate for delegate who is disapproved by the presidential candidate.

71 (h) A person may not be a candidate for more than one office or office division at any
72 election: Provided, That a candidate for an office may also be a candidate for President of the
73 United States, for membership on political party executive committees or for delegate to a political
74 party national convention: Provided, however, That an unsuccessful candidate for a nonpartisan

office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

§3-5-13. Form and contents of ballots.

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of Election of Judicial Officers" and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of

the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The names of the candidates for the respective circuit court judge office shall be printed by division without references to political party affiliation or registration.

(iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

(v) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words “Nonpartisan Ballot of Election of Members of the _____ County Board of Education”. The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings,

from left to right across the ballot: “National Ticket”, “State Ticket”, “Nonpartisan Judicial Ballot”, “County Ticket”, “Nonpartisan Ballot” in a nonpresidential election year, “District Ticket” or, in a presidential election year, “National Convention”. The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words “Vote for _____” with the number to be nominated or elected or “Vote For Not More Than _____” in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words “Vote for One” printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a

square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree, or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of

Board of Education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words "For election in accordance with the plan adopted by the party and filed with the Secretary of State" is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words "Official Ballot" with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words "Poll Clerks".

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front

of the ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or

the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

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

10 (b) The commission shall consist of eight appointed members appointed by the Governor
11 for six-year terms, including four public members and four attorney members. The Governor shall
12 appoint attorney members from a list of nominees provided by the Board of Governors of the West
13 Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more
14 than 20 nor less than 10 of the most qualified attorneys for appointment to the commission
15 whenever there is a vacancy in the membership of the commission reserved for attorney
16 members. The commission shall choose one of its appointed members to serve as chair for a
17 three-year term. No more than four appointed members of the commission shall belong to the
18 same political party. All members of the commission shall be citizens of this state. Public members
19 of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

20 (c) (1) No more than two appointed members of the commission may be residents of the
21 same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment:
22 *Provided*, That the members appointed to, and serving on, the commission prior to the enactment
23 of this subdivision are not disqualified from service for the remainder of the member's term based
24 on the residency requirements of this subdivision.

25 (2) No more than three appointed members of the commission may be residents of the
26 same congressional district: *Provided*, That, if the number of congressional districts in the state

is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however,* That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

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

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

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members, including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial

meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

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

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.

§6-5-1. When terms of office to begin.

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the Intermediate Court of Appeals, the judges of the several circuit

7 courts, the judges of the family and other inferior courts, the county commissioners, prosecuting
8 attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks
9 of the county commissions, magistrates, on January 1, next after their election.

10 Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as
11 prescribed by chapter three of this code.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-16a. Transfer of appellate jurisdiction to Intermediate Court of Appeals.

1 (a) Notwithstanding any other provision of this article, effective July 1, 2022:

2 (1) The Office of Judges may not review a decision of the authority, issued after June 30,
3 2022, in a certificate of need review. On or before September 30, 2022, the Office of Judges shall
4 issue a final decision in, or otherwise dispose of, each and every appeal, pending before the
5 Office of Judges, of a decision by the authority in a certificate of need review.

6 (2) An appeal of a final decision in a certificate of need review, issued by the authority
7 after June 30, 2022, shall be made to the West Virginia Intermediate Court of Appeals, pursuant
8 to the provisions governing the judicial review of contested administrative cases in §29A-5-1 et
9 seq. of this code.

10 (b) If the Office of Judges does not issue a final decision or otherwise dispose of any
11 appeal of a decision of the authority in a certificate of need review on or before September 30,
12 2022, the appeal shall be transferred to the Intermediate Court of Appeals, as provided in §29A-
13 5-4 of this code. For any appeal transferred pursuant to this subsection, the Intermediate Court
14 of Appeals shall adopt any existing records of evidence and proceedings in the Office of Judges,
15 conduct further proceedings as it considers necessary, and issue a final decision or otherwise
16 dispose of the case pursuant to the provisions governing the judicial review of contested
17 administrative cases in §29A-5-1 et seq. of this code.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1h. Powers and duties of Office of Judges transferred to Board of Review; definition of certain terms effective July 1, 2022.

1 (a) Notwithstanding any other provision of this code, with regard to an objection, protest,
2 or any other decision issued after June 30, 2022, all powers and duties of the Workers'
3 Compensation Office of Judges, as provided in this chapter, shall be transferred to the Workers'
4 Compensation Board of Review.

5 (b) Notwithstanding any other provision of this code, the West Virginia Intermediate Court
6 of Appeals has exclusive appellate jurisdiction over the following matters:

7 (1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its
8 termination; and

9 (2) Decisions of the Workers' Compensation Board of Review, issued after June 30, 2022,
10 as provided in §23-5-8a and §51-11-1 et seq. of this code.

11 (c) Unless the context clearly indicates a different meaning, effective July 1, 2022, the
12 following terms shall have the following meanings for the purposes of this chapter, except when
13 used in §23-5-1 et seq. of this code:

14 (1) "Administrative law judge" means a member of the Workers' Compensation Board of
15 Review, or a hearing examiner designated by the Board of Review as authorized in §23-5-1 et
16 seq. of this code;

17 (2) "Office of judges" means the "Workers' Compensation Board of Review"; and

18 (3) "Workers' Compensation Board of Review" or "Board of Review" when used in
19 reference to an appeal of a Board of Review decision, means the West Virginia Intermediate Court
20 of Appeals, created by §51-11-1 et seq. of this code.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c) of this code, and under §23-3-1 *et seq.* and §23-4-1 *et seq.* of this code, the Insurance Commissioner, private carriers, and self-insured employers shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, and the employer, and with respect to claims involving funds created in §23-2C-1 *et seq.* of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim, or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing a protest to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless the decision is protested within 60 days after the receipt of such decision unless a protest is filed within the 60-day period, the finding or action is final. This time limitation

is a condition of the right to litigate the finding or action and hence jurisdictional. Any protest shall be filed with the Office of Judges with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-8-1 *et seq.* and §23-9-1 *et seq.* of this code. An employer may protest decisions incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code or decisions entered pursuant to §23-4-7A(c)(1) of this code.

(2) (A) With respect to every application for benefits filed on or after July 1, 2008, in which a decision to deny benefits is protested and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Office of Judges that another identifiable person may be liable. The Office of Judges shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Office of Judges may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the administrative law judge has made a determination as to the party properly liable for payment of the claim, he or she shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The Office of Judges may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

51 (2) A petition to reopen be designated as an application for benefits, effective as of the
52 original date of filing; or

53 (3) An application for benefits or petition to reopen filed with the Insurance Commissioner,
54 private carrier, or self-insured employer be designated as an application or petition to reopen filed
55 with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the
56 original date of filing.

57 (d) Where an employer protests a written decision entered pursuant to a finding of the
58 Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance
59 Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or
60 decisions entered pursuant to §23-4-7A(c)(1) of this code, and the employer does not prevail in
61 its protest, and in the event the claimant is required to attend a hearing by subpoena or agreement
62 of counsel, or at the express direction of the Office of Judges, then the claimant, in addition to
63 reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the
64 claimant in attending the hearing.

65 (e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is
66 applicable, may amend, correct, or set aside any order or decision on any issue entered by it,
67 which, at the time of issuance or any time after that, is discovered to be defective or clearly
68 erroneous or the result of mistake, clerical error, or fraud, or with respect to any order or decision
69 denying benefits, otherwise not supported by the evidence, but any protest filed prior to entry of
70 the amended decision is a protest from the amended decision unless and until the administrative
71 law judge before whom the matter is pending enters an order dismissing the protest as moot in
72 light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection
73 continues until the expiration of two years from the date of a decision to which the amendment is
74 made unless the decision is sooner affected by an action of an administrative law judge or other
75 judicial officer or body: *Provided*, That corrective actions in the case of fraud may be taken at any
76 time.

77 (f) This section is of no force and effect after June 30, 2022.

§23-5-1a. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective July 1, 2022.

1 (a) The Insurance Commissioner, private carriers, and self-insured employers may
2 determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under
3 §23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private carriers,
4 and self-insured employers, whichever is applicable, shall promptly review and investigate all
5 claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, the
6 employer, and, with respect to claims involving funds created in §23-2C-1 et seq. of this code for
7 which he or she has been designated the administrator, the Insurance Commissioner. In claims
8 in which the employer had coverage on the date of the injury or last exposure, the employer's
9 carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the
10 claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private
11 carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all
12 parties, including the basis of its decision. As soon as practicable after receipt of any occupational
13 pneumoconiosis or occupational disease claim or any injury claim in which temporary total
14 benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer,
15 whichever is applicable, shall send the claimant a brochure approved by the Insurance
16 Commissioner setting forth the claims process.

17 (b) (1) Except with regard to interlocutory matters, upon making any decision, upon making
18 or refusing to make any award, or upon making any modification or change with respect to former
19 findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private
20 carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties
21 to the claim of its action. The notice shall state the time allowed for filing an objection to the finding.
22 The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is
23 applicable, is final unless an objection to the decision is properly filed within 60 days after the

receipt of such decision. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any objection shall be filed with the Workers' Compensation Board of Review, as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and §23-5-9a of this code. An employer may file an objection to a decision incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code.

(2) (A) With respect to every application for benefits in which an objection to a decision to deny benefits is filed and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Workers' Compensation Board of Review that another identifiable person may be liable. The Workers' Compensation Board of Review shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Workers' Compensation Board of Review may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the Workers' Compensation Board of Review has made a determination as to the party properly liable for payment of the claim, the Board of Review shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The member of the Workers' Compensation Board of Review assigned to an objection, as provided in §23-5-9a(b) of this code, may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer files an objection to a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in its objection, and in the event the claimant is required to attend a hearing by subpoena, or agreement of counsel, or at the express direction of Workers' Compensation Board of Review, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it which, at the time of issuance or any time after that, is discovered to be defective, or clearly erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence: *Provided*, That any objection filed prior to entry of the amended decision is an objection to the amended decision unless and until the Workers' Compensation Board of Review enters an order dismissing the objection as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an action of the Workers' Compensation Board of

Review or a judicial officer or body: *Provided*, however, That corrective actions in the case of fraud may be taken at any time.

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

§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-2-1 *et seq.* of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a *prima facie* cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Office of Judges shall afford the claimant an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

(b) This section is of no force and effect after June 30, 2022.

§23-5-3a. Refusal to reopen claim; notice; objection; effective July 1, 2022.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-5-2a of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings, and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a *prima*

8 facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial
9 and the time allowed for objection to the decision of the commission. The claimant may, within 60
10 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within
11 the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to
12 objection and hence jurisdictional. Upon receipt of an objection, the Workers' Compensation
13 Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9a of this
14 code.

15 (b) This section becomes effective on July 1, 2022.

**§23-5-4. Application by employer for modification of award; objection to modification;
hearing.**

1 In any case in which an employer makes application in writing for a modification of any
2 award previously made to an employee of the employer, the commission, the successor to the
3 commission, other private insurance carriers and self-insured employers, whichever is applicable,
4 shall make a decision upon the application. If the application discloses cause for a further
5 adjustment, the commission, the successor to the commission, other private insurance carriers
6 and self-insured employers, whichever is applicable, shall, after due notice to the employee, make
7 the modifications or changes with respect to former findings or orders that are justified. Any party
8 dissatisfied with any modification or change made or by the denial of an application for
9 modification is, upon proper and timely objection, entitled to a hearing as provided in either §23-
10 5-9 or §23-5-9a of this code.

§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.

1 (a) If in any case it appears to the commission, the successor to the commission, other
2 private insurance carriers, and self-insured employers, whichever is applicable, that the
3 application filed pursuant to §23-4-1 *et seq.* of this code fails to disclose some fact or facts which

4 were not previously considered by the commission in its former findings, and which would entitle
5 the employer to any modification of the previous award, the commission, the successor to the
6 commission, other private insurance carriers, and self-insured employers, whichever is
7 applicable, shall, within 60 days from the receipt of the application, notify the claimant and
8 employer that the application fails to establish a just cause for modification of the award. The
9 notice shall be in writing stating the reasons for denial and the time allowed for objection to the
10 decision of the commission, the successor to the commission, other private insurance carriers,
11 and self-insured employers, whichever is applicable. The employer may, within 30 days after
12 receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-
13 day period, no objection shall be allowed. This time limitation is a condition of the right to objection
14 and hence jurisdictional. Upon receipt of the objection, the Office of Judges shall afford the
15 employer an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

16 (b) This section is of no force and effect after June 30, 2022.

§23-5-5a. Refusal of modification; notice; objection; effective July 1, 2022.

1 (a) If in any case it appears to the Insurance Commissioner, other private insurance
2 carriers, and self-insured employers, whichever is applicable, that the application filed pursuant
3 to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered
4 in former findings, and which would entitle the employer to any modification of the previous award,
5 the Insurance Commissioner, other private insurance carriers, and self-insured employers,
6 whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant
7 and employer that the application fails to establish a just cause for modification of the award. The
8 notice shall be in writing stating the reasons for denial and the time allowed for objection to the
9 decision of the Insurance Commissioner, other private insurance carriers, and self-insured
10 employers, whichever is applicable. The employer may, within 30 days after receipt of the notice,

object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the Workers' Compensation Board of Review shall afford the employer an evidentiary hearing as provided in §23-5-9 of this code.

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

§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.

(a) Notwithstanding the fact that the time periods set forth for objections, protests and appeals to or from the workers' compensation Office of Judges are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the administrative law judge, appeal board, or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) This section is of no force and effect after June 30, 2022.

§23-5-6a. Time periods for objections and appeals; extensions; effective July 1, 2022.

(a) Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the Workers' Compensation Board of Review are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the Workers' Compensation Board of Review or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

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

§23-5-8. Designation of Office of Administrative Law Judges; powers of chief administrative law judge; effective until June 30, 2022.

1 (a) The Workers' Compensation Office of Administrative Law Judges previously created
2 pursuant to Chapter 12, Acts of the Legislature, second extraordinary session, 1990, is hereby
3 continued and designated to be an integral part of the workers' compensation system of this state.
4 The Office of Judges shall be under the supervision of a chief administrative law judge who shall
5 be appointed by the Governor with the advice and consent of the Senate.

6 (b) The chief administrative law judge shall be a person who has been admitted to the
7 practice of law in this state and shall also have had at least four years of experience as an
8 attorney. The chief administrative law judge's salary shall be set by the workers' compensation
9 board of managers. The salary shall be within the salary range for comparable chief administrative
10 law judges as determined by the state Personnel Board created by §29-6-6 of this code. The chief
11 administrative law judge may only be removed by a vote of two-thirds of the members of the
12 Workers' Compensation Board of managers. Upon transfer of the Office of Judges to the
13 Insurance Commissioner, the chief administrative law judge shall continue to serve as chief
14 administrative law judge until December 31, 2007. Thereafter, appointments of the chief
15 administrative law judge shall be for terms of four years beginning January 1, 2008, and the chief
16 administrative law judge may be removed only for cause by the vote of four members of the
17 Industrial Council. No other provision of this code purporting to limit the term of office of any
18 appointed official or employee or affecting the removal of any appointed official or employee is
19 applicable to the chief administrative law judge.

20 (c) The chief administrative law judge shall employ administrative law judges and other
21 personnel that are necessary for the proper conduct of a system of administrative review of orders
22 issued by the Workers' Compensation Commission which orders have been objected to by a
23 party. The employees shall be in the classified service of the state. Qualifications, compensation,
24 and personnel practice relating to the employees of the office of judges, other than the chief

administrative law judge, shall be governed by the provisions of this code and rules of the classified service pursuant to §29-6-1 of this code. All additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the Office of Judges.

(d) The administrative expense of the Office of Judges shall be included within the annual budget of the Workers' Compensation Commission and, upon termination of the commission, the Insurance Commissioner.

(e) The Office of Judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the Workers' Compensation Commission. The Office of Judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The Office of Judges shall follow the remaining provisions of said chapter for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(f) The chief administrative law judge has the power to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for disputed claims and exercise any additional powers, including the delegation of powers to administrative law judges or hearing examiners that are necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law judge shall make reports that are requested of him or her by the workers' compensation board of managers.

(g) Effective upon termination of the commission, the Office of Judges and the Board of Review shall be transferred to the Insurance Commissioner, which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(h) This section is of no force and effect after June 30, 2022.

§23-5-8a. Transfer of powers and duties of the Office of Administrative Law Judges to the Workers' Compensation Board of Review; powers of the Workers' Compensation Board of Review in relation to review of objections; effective July 1, 2022.

(a) The Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, shall terminate on or before October 1, 2022, as provided in §23-5-8b of this code. All powers and duties of the Office of Judges to review objections, protests, or any other matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of Review on July 1, 2022: *Provided*, That any objection or other matter filed pursuant to this chapter and pending before the Office of Judges upon its termination, in which a final decision has not been issued, shall also be transferred to the Workers' Compensation Board of Review as provided in §23-5-8b of this code.

(b) Pursuant to §23-5-11a(n) of this code, the Workers' Compensation Board of Review shall employ hearing examiners and other personnel that are necessary for the proper conduct of a system of administrative review of objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code and issued after June 30, 2022. All hearing examiners hired by the Workers' Compensation Board of Review shall be persons who have been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chair of the Workers' Compensation Board of Review shall supervise hearing examiners and other personnel of the board, which collectively shall be referred to in this chapter as the Workers' Compensation Board of Review.

19 (c) The Workers' Compensation Board of Review has the power to hear and determine
20 all objections in accordance with the provisions of this article, establish a procedure for the hearing
21 of objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness
22 fees, keep records, and make reports that are necessary for reviewing objections, and exercise
23 any additional powers, including the delegation of powers to hearing examiners that are
24 necessary for the proper conduct of a system of administrative review of objections. The chair of
25 the Workers' Compensation Board of Review shall make reports that are requested of him or her
26 by the Insurance Commissioner.

27 (d) Effective upon termination of the Office of Judges, the Insurance Commissioner shall
28 have oversight and administrative authority over the Workers' Compensation Board of Review as
29 heretofore provided to the Insurance Commissioner over the Office of Judges.

30 (e) This section becomes effective on July 1, 2022.

**§23-5-8b. Transfer of jurisdiction to review objections to Workers' Compensation Board of
Review; termination of Office of Judges; appeals of board decisions to Intermediate
Court of Appeals; effective July 1, 2022.**

31 (a) The Office of Judges has no jurisdiction to review objections to a decision of the
32 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made
33 pursuant to the provisions of this chapter and issued after June 30, 2022. The Workers'
34 Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the
35 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made
36 pursuant to the provisions of this chapter and issued after June 30, 2022.

37 (b) On or before September 30, 2022, the Office of Judges shall issue a final decision in,
38 or otherwise dispose of, each and every objection or other matter pending before the Office of
39 Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any
40 objection or other matter pending before the Office of Judges on or before September 30, 2022,
41 the objection or other matter shall be transferred to the Workers' Compensation Board of Review.

42 For any objections transferred from the Office of Judges to the Workers' Compensation Board of
43 Review, the Board of Review shall adopt any existing records of proceedings in the Office of
44 Judges, conduct further proceedings, and collect evidence as it determines to be necessary, and
45 issue a final decision or otherwise dispose of the case according to the procedural rules
46 promulgated pursuant to §23-5-11a(m) of this code.

47 (c) Upon the Office of Judges' disposition of every matter pending before the office, or on
48 October 1, 2022, whichever occurs earlier, the Office of Judges is terminated.

49 (d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 *et seq.* of this
50 code, has exclusive appellate jurisdiction over the following:

51 (1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its
52 termination; and

53 (2) All final orders or decisions issued by the Workers' Compensation Board of Review
54 after June 30, 2022.

55 (e) Notwithstanding the requirements of this section, the Workers' Compensation Board
56 of Review shall review and decide all remaining appeals filed with the Board of Review, of Office
57 of Judges' decisions issued prior to June 30, 2022, according to the procedure and requirements
58 for such appeals heretofore provided in this article.

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

**§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured
employer decisions; mediation; remand; effective until June 30, 2022.**

1 (a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured
2 employer, whichever is applicable, made pursuant to the provisions of §23-5-1 *et seq.* of this code
3 shall be filed with the Office of Judges. Upon receipt of an objection, the Office of Judges shall
4 notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is
5 applicable, and all other parties of the filing of the objection. The Office of Judges shall establish
6 by rule promulgated in accordance with the provisions of §23-5-8(e) of this code an adjudicatory

7 process that enables parties to present evidence in support of their positions and provides an
8 expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner,
9 private carrier, or self-insured employer, whichever are applicable, shall be notified of any hearing
10 at least 10 days in advance. The Office of Judges shall review and amend, or modify, as
11 necessary, its procedural rules by July 1, 2007.

12 (b) The Office of Judges shall establish a program for mediation to be conducted in
13 accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties
14 may agree that the result of the mediation is binding. A case may be referred to mediation by the
15 administrative law judge on his or her own motion, on motion of a party or by agreement of the
16 parties. Upon issuance of an order for mediation, the Office of Judges shall assign a mediator
17 from a list of qualified mediators maintained by the West Virginia State Bar.

18 (c) The Office of Judges shall keep full and complete records of all proceedings concerning
19 a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to §23-5-
20 8 of this code, the record upon which the matter shall be decided shall include any evidence
21 submitted by a party to the Office of Judges and evidence taken at hearings conducted by the
22 Office of Judges. The record may include evidence or documents submitted in electronic form or
23 other appropriate medium in accordance with the rules of practice and procedure. The Office of
24 Judges is not bound by the usual common law or statutory rules of evidence.

25 (d) All hearings shall be conducted as determined by the chief administrative law judge
26 pursuant to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code.
27 Upon consideration of the designated record, the chief administrative law judge or other
28 authorized adjudicator within the Office of Judges shall, based on the determination of the facts
29 of the case and applicable law, render a decision affirming, reversing, or modifying the action
30 protested. The decision shall contain findings of fact and conclusions of law and shall be mailed
31 to all parties.

32 (e) The Office of Judges may remand a claim to the Insurance Commissioner, private
33 carrier, or self-insured employer, whichever is applicable, for further development of the facts or
34 administrative matters as, in the opinion of the administrative law judge, may be necessary for a
35 full and complete disposition of the case. The administrative law judge shall establish a time within
36 which the Insurance Commissioner, private carrier, or self-insured employer, whichever is
37 applicable, must report back to the administrative law judge.

38 (f) The decision of the Office of Judges regarding any objections to a decision of the
39 Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final
40 and benefits shall be paid or denied in accordance with the decision, unless an order staying the
41 payment of benefits is specifically entered by the Workers' Compensation Board of Review
42 created in §23-5-11 of this code or by the administrative law judge who granted the benefits. No
43 stay with respect to any medical treatment or rehabilitation authorized by the Office of Judges
44 may be granted. If the decision is subsequently appealed and reversed in accordance with the
45 procedures set forth in this article, and any overpayment of benefits occurs as a result of such
46 reversal, any such overpayment may be recovered pursuant to the provisions of §23-4-1C(h) and
47 §23-4-1D(d) of this code, as applicable.

48 (h) This section is of no force and effect after June 30, 2022.

**§23-5-9a. Hearings on objections to Insurance Commissioner; private carrier, or
self-insured employer decisions; mediation; remand; effective July 1, 2022.**

1 (a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured
2 employer, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code, shall
3 be filed with the Workers' Compensation Board of Review. Upon receipt of an objection, the
4 Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier,
5 or self-insured employer, whichever is applicable, and all other parties of the filing of the objection.
6 The Workers' Compensation Board of Review shall establish by rule, promulgated in accordance
7 with the provisions of §23-5-11a(m) of this code, an adjudicatory process that enables parties to

8 present evidence in support of their positions and provides an expeditious resolution of the
9 objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the
10 self-insured employer, whichever is applicable, shall be notified of any hearing at least 10 days in
11 advance.

12 (b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating
13 basis, a member of the Board of Review to preside over the review process and issue a decision
14 in each objection that is properly filed with the Board of Review. The member of the Workers'
15 Compensation Board of Review assigned to an objection shall review evidence, conduct
16 proceedings, and develop a record as is necessary for a full and thorough review of the objection:
17 *Provided*, That the board member may delegate such duties to a hearing examiner employed by
18 the Board of Review, pursuant to §23-5-8a and §23-5-11a(n) of this code: *Provided, however*,
19 That any order or decision of the Board of Review must be issued and signed by the member of
20 the Board assigned to the objection, as provided in subsection (e) of this section: *Provided further*,
21 That a time frame order, continuance order, show cause order, failure to prosecute order, or other
22 interlocutory order as permitted by the Workers' Compensation Board of Review's procedural
23 rules may be issued and signed by a hearing examiner only, and is not subject to the general
24 requirement that orders be issued and signed by a member of the board.

25 (c) The Workers' Compensation Board of Review shall establish a program for mediation
26 to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court
27 Rules. The parties may agree that the result of the mediation is binding. A case may be referred
28 to mediation by the Board of Review member assigned to the objection on his or her own motion,
29 on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the
30 Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators
31 maintained by the West Virginia State Bar.

32 (d) The Workers' Compensation Board of Review shall keep full and complete records of
33 all proceedings concerning an objection. Subject to the rules of practice and procedure

promulgated pursuant to §23-5-11a(m) of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Workers' Compensation Board of Review and evidence taken at hearings conducted by the Board of Review. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Workers' Compensation Board of Review is not bound by the usual common law or statutory rules of evidence.

(e) All hearings shall be conducted as determined by the Workers' Compensation Board of Review according to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review process, submit the designated record to the member of the Workers' Compensation Board of Review to whom the objection is assigned, along with the hearing examiner's recommendation of a decision affirming, reversing, or modifying the action that was subject to the objection. Upon consideration of the designated record and, if applicable, the recommendation of the hearing examiner, the member of the Workers' Compensation Board of Review assigned to the objection shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action that was subject to the objection. The decision shall contain findings of fact and conclusions of law, shall be signed by the member of the Workers' Compensation Board of Review rendering the decision, and shall be mailed to all parties.

(f) The Workers' Compensation Board of Review may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the member of the board of review assigned to the objection, may be necessary for a full and complete disposition of the case. The member of the Workers' Compensation Board of Review assigned to the objection shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the board of review.

(g) The decision of the Workers' Compensation Board of Review regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by a court with appellate jurisdiction over the decision or by the member of the Office of Judges who granted the benefits. A stay with respect to any medical treatment or rehabilitation authorized by the Workers' Compensation Board of Review may not be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of the reversal, the overpayment may be recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

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

§23-5-10. Appeal from administrative law judge decision to appeal board; effective until June 30, 2022.

(a) The employer, claimant, Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may appeal to the appeal board created in §23-11-1 *et seq.* of this code for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within sixty days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) This section is of no force and effect after June 30, 2022.

§23-5-10a. Appeal from a Workers' Compensation Board of Review decision to the Intermediate Court of Appeals; effective July 1, 2022.

1 (a) The employer, claimant, Insurance Commissioner, other private insurance carriers,
2 and self-insured employers, whichever is applicable, may appeal to the West Virginia Intermediate
3 Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of a decision by the
4 Workers' Compensation Board of Review. No appeal or review shall lie unless application is
5 made within 30 days of receipt of notice of the Workers' Compensation Board of Review's final
6 action or in any event within 60 days of the date of such final action, regardless of notice and,
7 unless the application for appeal or review is filed within the time specified, no such appeal or
8 review shall be allowed, such time limitation being hereby declared to be a condition of the right
9 of such appeal or review and hence jurisdictional.

10 (b) This section becomes effective on July 1, 2022.

**§23-5-11. Workers' Compensation Board of Review generally; administrative powers and
duties of the board; effective until June 30, 2022.**

1 (a) On January 31, 2004, the Workers' Compensation Appeal Board heretofore
2 established in this section is hereby abolished.

3 (b) There is created the "Workers' Compensation Board of Review", which may also be
4 referred to as "the Board of Review" or "the board". Effective February 1, 2004, the Board of
5 Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation
6 Office of Judges including any and all appeals pending with the board of Appeals on January 31,
7 2004.

8 (c) The board consists of three members.

9 (d) The Governor shall appoint, from names submitted by the "Workers' Compensation
10 Board of Review Nominating Committee", with the advice and consent of the Senate, three
11 qualified attorneys to serve as members of the Board of Review. If the Governor does not select
12 a nominee for any vacant position from the names provided by the nominating committee, he or
13 she shall notify the nominating committee of that circumstance and the committee shall provide
14 additional names for consideration by the Governor. A member of the Board of Review may be

15 removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality,
16 or malfeasance, and then only after notice and opportunity to respond and present evidence. No
17 more than two of the members of the board may be of the same political party. The members of
18 the Board of Review shall be paid an annual salary of \$85,000: *Provided*, That on and after July
19 1, 2008, the Governor shall set the salary of the members of the board: *Provided, however*, That
20 the annual salary of a member of the Board of Review shall not exceed \$110,000. Members are
21 entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of
22 official duties in a manner consistent with the guidelines of the Travel Management Office of the
23 Department of Administration.

24 (e) The nominating committee consists of the following members: (1) The President of the
25 West Virginia State Bar who serves as the chairperson of the committee; (2) an active member
26 of the West Virginia State Bar Workers' Compensation Committee selected by the major trade
27 association representing employers in this state; (3) an active member of the West Virginia State
28 Bar Workers' Compensation Committee selected by the highest ranking officer of the major
29 employee organization representing workers in this state; (4) the Dean of the West Virginia
30 University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

31 (f) The nominating committee is responsible for reviewing and evaluating candidates for
32 possible appointment to the Board of Review by the Governor. In reviewing candidates, the
33 nominating committee may accept comments from and request information from any person or
34 source.

35 (g) Each member of the nominating committee may submit up to three names of qualified
36 candidates for each position on the Board of Review: *Provided*, That the member of the
37 nominating committee selected by the major trade organization representing employers of this
38 state shall submit at least one name of a qualified candidate for each position on the board who
39 either is, or who represents, small business employers of this state. After careful review of the
40 candidates, the committee shall select a minimum of one candidate for each position on the board.

41 (h) Of the initial appointments, one member shall be appointed for a term ending
42 December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and
43 one member shall be appointed for a term ending December 31, 2010. Thereafter, the
44 appointments shall be for six-year terms.

45 (i) A member of the Board of Review must, at the time he or she takes office and thereafter
46 during his or her continuance in office, be a resident of this state, be a member in good standing
47 of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted
48 to practice law in this state prior to appointment and have a minimum of five years' experience in
49 preparing and presenting cases or hearing actions and making decisions on the basis of the
50 record of those hearings before administrative agencies, regulatory bodies, or courts of record at
51 the federal, state, or local level.

52 (j) No member of the Board of Review may hold any other office, or accept any
53 appointment or public trust, nor may he or she become a candidate for any elective public office
54 or nomination thereto. Violation of this subsection requires the member to vacate his or her office.
55 No member of the Board of Review may engage in the practice of law during his or her term of
56 office.

57 (k) A vacancy occurring on the board other than by expiration of a term shall be filled in
58 the manner original appointments were made, for the unexpired portion of the term.

59 (l) The board shall designate one of its members in rotation to be chairman of the board
60 for as long as the board may determine by order made and entered of record. In the absence of
61 the chairman, any other member designated by the members present shall act as chairman.

62 (m) The Board of Review shall meet as often as necessary to hold review hearings, at
63 such times and places as the chairman may determine. Two members shall be present in order
64 to conduct review hearings or other business. All decisions of the board shall be determined by a
65 majority of the members of the board.

66 (n) The Board of Review shall make general rules regarding the pleading, including the
67 form of the petition and any responsive pleadings, practice, and procedure to be used by the
68 board.

69 (o) The Board of Review may hire a clerk and other professional and clerical staff
70 necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of
71 Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and
72 directions, to take care of and preserve in an office, kept for the purpose, all records and papers
73 of the board, and to perform other duties as prescribed by law or required of him or her by the
74 board. All employees of the board serve at the will and pleasure of the board. The board's
75 employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel.
76 All personnel of the Board of Review are under the supervision of the chairman of the Board of
77 Review.

78 (p) If considered necessary by the board, the board may, through staffing or other
79 resources, procure assistance in review of medical portions of decisions.

80 (q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties,
81 the board shall promptly determine the matter and make an award in accordance with its
82 determination.

83 (r) The award shall become a part of the commission file. A copy of the award shall be
84 sent forthwith by mail to all parties in interest.

85 (s) The award is final when entered. The award shall contain a statement explaining the
86 rights of the parties to an appeal to the Board of Review and the applicable time limitations
87 involved.

88 (t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately
89 provide for the administrative and other operating expenses of the board.

90 (u) The board shall report monthly to the Industrial Council on the status of all claims on
91 appeal.

(v) Effective upon termination of the commission, the Board of Review shall be transferred to the Insurance Commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(w) This section is of no force and effect after June 30, 2022.

§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective July 1, 2022.

(a) The "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all matters pending before the Office of Judges after September 30, 2022.

(b) The board consists of five members.

(c) The Governor shall appoint, with the advice and consent of the Senate, five attorneys qualified in accordance with subsection (f) of this section to serve as members of the Board of Review. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then only after notice and opportunity to respond and present evidence. No more than three of the members of the board may be of the same political party. The Governor shall set the salary of the members of the board: *Provided, however,* That the annual salary of a member of the Board of Review shall not exceed \$125,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments of the two additional seats created during the 2021 Regular Session, one member shall be appointed for a term ending December 31, 2025; one member shall be appointed for a term ending December 31, 2027. Thereafter, The appointments shall be for six-year terms.

(e) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(f) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(g) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(h) The board shall designate one of its members in rotation to be chair of the board for as long as the board may determine by order made and entered of record. In the absence of the chair, any other member designated by the members present shall act as chair.

(i) The Board of Review shall meet as often as necessary to conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to conduct administrative business and make rules of practice and procedure. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board.

(j) The Board of Review shall, from time to time, promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the

provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: *Provided*, That for the purpose of any applicable Division of Personnel Class Specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: *Provided*, That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of §23-5-9 of this code shall have the right to appeal to the board created in §23-11-1 of this code

4 for a review of such action. The Workers' Compensation Commission, the successor to the
5 commission, other private insurance carriers and self-insured employers, whichever is applicable,
6 shall likewise have the right to appeal to the board any final action taken by the administrative law
7 judge. The aggrieved party shall file a written notice of appeal with the Board of Review, with a
8 copy to the Office of Judges, within 30 days after receipt of notice of the action complained of or,
9 in any event, regardless of notice, within 60 days after the date of the action complained of, and
10 unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time
11 limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the
12 other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the
13 ground for review and whether oral argument is requested. The Office of Judges, after receiving
14 a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the
15 Office of Judges and certify and transmit it to the board. The certificate shall incorporate a brief
16 recital of the proceedings in the case and recite each order entered and the date thereof.

17 (b) The board shall set a time and place for the hearing of arguments on each claim and
18 shall notify the interested parties thereof. The review by the board shall be based upon the record
19 submitted to it and such oral argument as may be requested and received. The board may affirm,
20 reverse, modify, or supplement the decision of the administrative law judge and make such
21 disposition of the case as it determines to be appropriate. Briefs may be filed by the interested
22 parties in accordance with the rules of procedure prescribed by the board. The board may affirm
23 the order or decision of the administrative law judge or remand the case for further proceedings.
24 It shall reverse, vacate, or modify the order or decision of the administrative law judge if the
25 substantial rights of the petitioner or petitioners have been prejudiced because the administrative
26 law judge's findings are:

- 27 (1) In violation of statutory provisions; or
28 (2) In excess of the statutory authority or jurisdiction of the administrative law judge; or
29 (3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

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

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

(c) After a review of the case, the board shall issue a written decision and send a copy by mail to the parties.

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

(2) Decisions of the Board of Review shall be made by a majority vote of the Board of Review.

(3) A decision of the Board of Review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the Board of Review.

(d) Instead of affirming, reversing, or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional, or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional, or further evidence in accordance

with any instruction given by the board within 30 days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within 60 days, render his or her decision affirming, reversing, or modifying the former action of the administrative law judge. The decision shall be appealable to and proceeded with by the Board of Review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, following a remand shall be subject to objection to the Office of Judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

(g) This section is of no force and effect after June 30, 2022.

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

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of such action. The Insurance Commissioner, other private insurance carriers, and self-insured 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;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

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

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

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

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

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

(d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the court, remand the case to the Board of Review for the taking of such new, additional, or further evidence as in the opinion of the court considers necessary for a full and complete development of the facts of the case. In the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the taking of further evidence, the Board of Review shall proceed to take new, additional, or further evidence in accordance with any instruction given by the court within 30 days after receipt of the

order remanding the case. The Workers' Compensation Board of Review shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the Board of Review for good cause. After the completion of a supplemental hearing, the Workers' Compensation Board of Review shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon a finding of good cause, the court may remand the case to the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, for further development. Any decision made by the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for a full development and just decision of the case.

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

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

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the chief administrative law judge and his or her authorized representatives to prevent delay when granting or denying continuances and

8 supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of
9 injured or deceased workers or their dependents on technicalities.

10 (b) This section is of no force and effect after June 30, 2022.

§23-5-13a. Continuances and supplemental hearings; claims not to be denied on technicalities; effective July 1, 2022.

1 (a) It is the policy of this chapter that the rights of claimants for workers' compensation be
2 determined as speedily and expeditiously as possible to the end that those incapacitated by
3 injuries and the dependents of deceased workers may receive benefits as quickly as possible in
4 view of the severe economic hardships which immediately befall the families of injured or
5 deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good
6 cause shown" are to be strictly construed by the Workers' Compensation Board of Review and its
7 authorized representatives to prevent delay when granting or denying continuances and
8 supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of
9 injured or deceased workers or their dependents on technicalities.

10 (b) This section becomes effective on July 1, 2022.

§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals prior to July 1, 2022; procedure; costs.

1 (a) As provided in §23-5-8b of this code, the provisions of this section do not apply to any
2 decision issued by the Workers' Compensation Board of Review after June 30, 2022.

3 (b) Review of any final decision of the board, including any order of remand, may be
4 prosecuted by either party or by the Insurance Commissioner, other private insurance carriers,
5 and self-insured employers, whichever is applicable, to the Supreme Court of Appeals within 30
6 days from the date of the final order by filing a petition therefor with the court against the board
7 and the adverse party or parties as respondents. Unless the petition for review is filed within the
8 30-day period, no appeal or review shall be allowed, such time limitation is a condition of the right
9 to such appeal or review and hence jurisdictional. The clerk of the Supreme Court of Appeals

10 shall notify each of the respondents and the Insurance Commissioner, other private insurance
11 carriers, and self-insured employers, whichever is applicable, of the filing of such petition. The
12 board shall, within 10 days after receipt of the notice, file with the clerk of the court the record of
13 the proceedings had before it, including all the evidence. The court or any judge thereof in
14 vacation may thereupon determine whether or not a review shall be granted. If review is granted
15 to a nonresident of this state, he or she shall be required to execute and file with the clerk before
16 an order or review shall become effective, a bond, with security to be approved by the clerk,
17 conditioned to perform any judgment which may be awarded against him or her. The board may
18 certify to the court and request its decision of any question of law arising upon the record, and
19 withhold its further proceeding in the case, pending the decision of court on the certified question,
20 or until notice that the court has declined to docket the same. If a review is granted or the certified
21 question is docketed for hearing, the clerk shall notify the board and the parties litigant or their
22 attorneys and the Insurance Commissioner, other private insurance carriers, and self-insured
23 employers, whichever is applicable, of that fact by mail. If a review is granted or the certified
24 question docketed, the case shall be heard by the court in the same manner as in other cases,
25 except that neither the record nor briefs need be printed. Every review granted or certified
26 question docketed prior to 30 days before the beginning of the term, shall be placed upon the
27 docket for that term. The Attorney General shall, without extra compensation, represent the board
28 in such cases. The court shall determine the matter brought before it and certify its decision to
29 the board and to the commission. The cost of the proceedings on petition, including a reasonable
30 attorney's fee, not exceeding \$30 to the claimant's attorney, shall be fixed by the court and taxed
31 against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the
32 latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be
33 taxed against the commission, payable out of the Workers' Compensation Fund, or shall be taxed
34 against the claimant, in the discretion of the court: But there shall be no cost taxed upon a certified
35 question.

36 (c) In reviewing a decision of the Board of Review, the Supreme Court of Appeals shall
37 consider the record provided by the board and give deference to the board's findings, reasoning,
38 and conclusions, in accordance with subsections (d) and (e) of this section.

39 (d) If the decision of the board represents an affirmation of a prior ruling by both the
40 commission and the Office of Judges that was entered on the same issue in the same claim, the
41 decision of the board may be reversed or modified by the Supreme Court of Appeals only if the
42 decision is in clear violation of constitutional or statutory provision, is clearly the result of
43 erroneous conclusions of law, or is based upon the board's material misstatement or
44 mischaracterization of particular components of the evidentiary record. The court may not conduct
45 a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the
46 board pursuant to this subsection, it shall state with specificity the basis for the reversal or
47 modification and the manner in which the decision of the board clearly violated constitutional or
48 statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's
49 material misstatement or mischaracterization of particular components of the evidentiary record.

50 (e) If the decision of the board effectively represents a reversal of a prior ruling of either
51 the commission or the Office of Judges that was entered on the same issue in the same claim,
52 the decision of the board may be reversed or modified by the Supreme Court of Appeals only if
53 the decision is in clear violation of constitutional or statutory provisions, is clearly the result of
54 erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even
55 when all inferences are resolved in favor of the board's findings, reasoning, and conclusions,
56 there is insufficient support to sustain the decision. The court may not conduct a de novo
57 reweighing of the evidentiary record. If the court reverses or modifies a decision of the board
58 pursuant to this subsection, it shall state with specificity the basis for the reversal or modification
59 and the manner in which the decision of the board clearly violated constitutional or statutory
60 provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the

61 evidentiary record that even when all inferences are resolved in favor of the board's findings,
62 reasoning, and conclusions, there is insufficient support to sustain the decision.

**§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees;
effective until June 30, 2022.**

1 (a) An attorney's fee in excess of 20 percent of any award granted may not be charged or
2 received by an attorney for a claimant or dependent. In no case may the fee received by the
3 attorney of the claimant or dependent be in excess of 20 percent of the benefits to be paid during
4 a period of 208 weeks. The interest on disability or dependent benefits as provided in this chapter
5 may not be considered as part of the award in determining the attorney's fee. However, any
6 contract entered into in excess of 20 percent of the benefits to be paid during a period of 208
7 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this
8 state and any fee charged or received by an attorney in violation thereof is an unlawful practice
9 and renders the attorney subject to disciplinary action.

10 (b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the
11 total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when
12 combined with any fees previously charged or received by the attorney for permanent partial
13 disability or permanent total disability benefits may not exceed 20 percent of an award of benefits
14 to be paid during a period of 208 weeks.

15 (c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code,
16 an attorney's fee for successful recovery of denied medical benefits may be charged or received
17 by an attorney, and paid by the private carrier or self-insured employer, for a claimant or
18 dependent under this section. In no event may attorney's fees and costs be awarded pursuant to
19 both this section and §23-2C-21(c) of this code.

20 (1) If a claimant successfully prevails in a proceeding relating to a denial of medical
21 benefits brought before the commission, successor to the commission, other private carrier, or
22 self-insured employer, whichever is applicable, as a result of utilization review, arbitration,

mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Office of Judges, Board of Review, or court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court shall enter an order within 30 days awarding reasonable attorney fees not to exceed \$125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

(3) In determining the reasonableness of the attorney fees to be awarded, the Insurance Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) This section is of no force and effect after June 30, 2022.

§23-5-16a. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter, may not be considered as part of the award in determining the attorney's fee. However, any

contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the Insurance Commissioner, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Workers' Compensation Board of Review, or a court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Workers' Compensation Board of Review, or a court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediators, the Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding reasonable attorney's fees not to exceed \$125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

(3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance Commissioner, arbitrator, mediator, Workers' Compensation Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

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

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress, or relief provided by law.

(b) Proceedings for review of any final order or decision issued on or before June 30, 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within 30 days after the date upon which such party received notice of the final order or decision of the agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to the Intermediate Court of Appeals as provided in §51-11-1 *et seq.* of this code. A copy of the

petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to affect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his or her petition, may apply to such court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by

agreement of the parties, shall not be held sooner than 10 days after the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

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

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

(h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

ARTICLE 6. APPEALS.

§29A-6-1. Supreme Court of Appeals.

(a) Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made

therefor in the manner and within the time provided by law for civil appeals generally: *Provided*, That a circuit court has no jurisdiction to review a final order or decision in a contested case issued after June 30, 2022.

(b) Any party adversely affected by the final order, decision, or judgment of the Intermediate Court of Appeals under this chapter may seek review thereof by petition to the Supreme Court of Appeals, pursuant to 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 court.

a) Notwithstanding any provision of this code to the contrary, an appeal of a final order or decision entered by a family court after June 30, 2022, must be made to the Intermediate Court of Appeals, as provided in §51-11-1 *et seq.* of this code.

(b) Notwithstanding any provision of this code to the contrary, a circuit court has no jurisdiction to review a final order or decision entered by a family court after June 30, 2022, if review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5 of this code.

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

§51-9-1a. Definitions.

(a) As used in this article, the term “judge”, “judge of any court of record”, or “judge of any court of record of this state” means, refers to, and includes judges of the several circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to, or include family court judges.

(b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value 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 36 consecutive months’
16 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 12-month period commencing on July 1 of any designated year
21 and ending the following June 30.

22 (i) “Required beginning date” means April 1 of the calendar year following the later of: (1)
23 The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in
24 which the 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 REORGANIZATION ACT.

§51-11-1. Short title.

This article is known and may be cited as the West Virginia Appellate Reorganization Act of 2021.

§51-11-2. Definitions.

For the purpose of this article:

“Circuit court” means a circuit court of this state, as provided in §51-2-1 of this code.

“Clerk” means the Clerk of the Supreme Court of Appeals of West Virginia.

“Intermediate Court of Appeals” means the Intermediate Court of Appeals of West Virginia created by this article.

“Judge” means a person appointed or elected to serve as a Judge for the Intermediate Court of Appeals, pursuant to this article.

“Supreme Court of Appeals” means the Supreme Court of Appeals of West Virginia.

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

(a) The Legislature finds that:

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

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

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

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

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

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

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

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

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

29 (e) The Intermediate Court of Appeals may be located in any seat of county government
30 within the state, or in any other place which is convenient to litigants designated by the
31 Intermediate Court of Appeals for the purpose of hearing oral argument, or may be located in a
32 fixed location, in a facility provided by the Clerk pursuant to §51-11-8 of this code.

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

§51-11-4. Jurisdiction; limitations.

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

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

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

(2) Final judgments or orders of a family court, entered after June 30, 2022;

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

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

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

(6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

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

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

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

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

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

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

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

(5) Any proceedings of the Lawyer Disciplinary Board;

(6) Any proceedings of the Judicial Investigation Commission;

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

(8) Interlocutory appeals;

(9) Certified questions of law; and

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

§51-11-5. Motion for direct review by Supreme Court of Appeals.

(a) Within 20 days after a petition for appeal is filed in the Intermediate Court of Appeals, a party may file a motion in the Supreme Court of Appeals for direct review of a final judgment or order that is otherwise within the appellate jurisdiction of the Intermediate Court of Appeals pursuant to §51-11-5 of this code.

(b) The Supreme Court of Appeals may grant a motion filed pursuant to this section if both of the following extraordinary circumstances exist:

(1) The appeal involves a question of fundamental public importance; and

8 (2) The appeal involves exigencies, in which time is of the essence, necessitating direct
9 review of the appeal by the Supreme Court of Appeals.

10 (c) Notwithstanding any other provision of this code, if the Supreme Court of Appeals
11 grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction
12 over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules
13 of the court:

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

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

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

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

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

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

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

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

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

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

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

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

§51-11-7. Rules of practice and procedure; fees; deadlines.

(a) Section three, article VIII of the Constitution of West Virginia grants the Supreme Court of Appeals of West Virginia supervisory control over all intermediate appellate courts in the state, including the power to promulgate rules for the procedures of an intermediate appellate court created by statute. In accordance with those provisions, the Intermediate Court of Appeals is therefore subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals and unless specifically provided otherwise in this article, the pleadings, practice, and procedure in all matters before the Intermediate Court of Appeals are governed by rules promulgated by the Supreme Court of Appeals.

(b) *Filing; records.* — All notices of appeals, petitions, documents, and records in connection with an appeal to the Intermediate Court of Appeals shall be filed in accordance with rules promulgated by the Supreme Court of Appeals. Appeals to the Intermediate Court of Appeals shall be filed with the Clerk of the Supreme Court of Appeals. All appeals and other related documents shall be filed by electronic means, when available.

(c) *Fees.* —

(1) The Clerk of the Supreme Court of Appeals may charge a party appealing to the Intermediate Court of Appeals a filing fee in the amount of \$200.

(2) All moneys collected pursuant to this subsection shall be deposited in the Ryan Brown Addiction Prevention and Recovery Fund, created by §16-53-2 of this code, and all expenditures from the fund shall comply with the requirements of that section.

(d) *Appeal bonds.* — The court may order the payment of an appeal bond before an appeal to the Intermediate Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of Appeals, and when applicable, the requirements of §58-5-14 of this code.

(e) *Oral argument.* — The Intermediate Court of Appeals has discretion to determine whether appellate review of a case before the court requires oral argument.

§51-11-8. 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 Supreme Court of Appeals. Under that same provisions, the Chief Justice of the Supreme
4 Court of Appeals is the “administrative head” of all West Virginia courts, empowering the chief
5 justice to exercise supervisory control over an intermediate court of appeals.

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

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

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

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

23 (e) *Staff.* — The Administrative Director of the Supreme Court of Appeals shall provide
24 administrative support and may employ additional staff, as necessary, for the efficient operation
25 of the Intermediate Court of Appeals. The budget for the payment of compensation and expenses

of the Intermediate Court of Appeals staff shall be included in the appropriation to the Supreme Court of Appeals.

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

§51-11-9. Written opinions; precedential effect.

(a) The Intermediate Court of Appeals shall issue, as appropriate in each appeal, written opinions, orders, and decisions: *Provided*, That a written decision on the merits shall be issued as a matter of right in each appeal that is properly filed and within the jurisdiction of the Intermediate Court of Appeals.

(b) A written opinion, order, or decision of the Intermediate Court of Appeals is binding precedent for the decisions of all circuit courts, family courts, magistrate courts, and agencies unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals.

§51-11-10. Discretionary review by Supreme Court of Appeals by petition.

(a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order or judgment of the Intermediate Court of Appeals may be stayed pending the appeal, in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal or certiorari of a decision by the Intermediate Court of Appeals.

§51-11-11. Judicial compensation and benefits; expenses.

1 (a) The annual salary of a Judge of the Intermediate Court of Appeals is \$142,500. 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) Judges of the Intermediate Court of Appeals and staff shall be reimbursed for their
5 actual and necessary expenses incurred in the performance of their duties under the guidelines
6 prescribed by the Administrative Director of the Supreme Court of Appeals.

§51-11-12. Attorney General as counsel for state.

1 The Attorney General shall appear as counsel for the state in all cases pending in the
2 Intermediate Court of Appeals, subject to the same requirements and restrictions provided in
3 §5-3-2 of this code that apply to the Attorney General's representation of the state in cases
4 pending in the Supreme Court of Appeals.

§51-11-13. Severability.

1 The provisions of this article are severable. If any portion of this article is declared
2 unconstitutional or the application of any part of this article is held invalid, the remaining portions
3 of this article and their applicability shall remain valid and enforceable.

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 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.