
WEST VIRGINIA CODE CHAPTER 51

WV Legislature

§51-1-1. Justices.

The Supreme Court of Appeals shall consist of five justices, elected and qualified according to the Constitution and the laws of this state, any three of whom shall constitute a quorum. Effective with the primary election of 2016, all elections for justices will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for the office of justice and all elections for justice are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for that office shall be omitted.

§51-1-2. Chief justice.

The court shall designate one of its justices to be chief justice of the court for such term as the court may determine by order made and entered of record. In the absence of the chief justice, any other justice designated by the justices present shall act as chief justice. Any reference in the Constitution of this state, in this code or elsewhere in law to the president of the West Virginia Supreme Court of Appeals shall henceforth be construed to mean the chief justice of such court.

§51-1-3. Jurisdiction.

The Supreme Court of Appeals shall have original jurisdiction in cases of habeas corpus, mandamus and prohibition. It shall have appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than \$100; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee or curator, or concerning a mill, road, way, ferry or landing, or the right of a corporation or county to levy tolls or taxes; in cases of quo warranto, habeas corpus, mandamus, certiorari and prohibition, and in cases involving freedom or the Constitutionality of a law. It shall have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a circuit court, and where a conviction has been had in any inferior court and been affirmed in a circuit court, and in cases relating to the public revenue, the right of appeal shall belong to the state, as well as the defendant, and such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

§51-1-4. Regulation of pleading, practice and procedure in all courts of record; judicial council as advisory committee.

The Supreme Court of Appeals may, from time to time, make and promulgate general rules and regulations governing pleading, practice and procedure in such court and in all other courts of record of this state. All statutes relating to pleading, practice and procedure shall have force and effect only as rules of court and shall remain in effect unless and until modified, suspended or annulled by rules promulgated pursuant to the provisions of this section. Such rules and regulations shall be uniform for all courts of the same grade or class; but any court of the state other than the Supreme Court of Appeals may adopt rules of court governing its local practice, but such rules of local practice shall not be inconsistent with any general rule of court then in existence or thereafter promulgated, and shall be effective only after approval by the Supreme Court of Appeals.

The judicial council of West Virginia is hereby designated as advisory committee to make observation and report to the Supreme Court of Appeals, from time to time, such recommendations as may, in its judgment, be proper; and all rules promulgated by the Supreme Court of Appeals under the authority of this section shall, before taking effect, be referred to the chairman of the judicial council, the president of the West Virginia bar association and to the judge of every court affected thereby. In the event a hearing is requested, within twenty days after such reference, by any five of the persons so designated, the Supreme Court of Appeals shall thereupon designate a day when a hearing on the matter of the adoption of such rules shall be held. In the event no hearing is requested or, if requested, after such hearing, the Supreme Court of Appeals shall be free to adopt or reject the proposed rules. General rules and regulations governing pleading, practice and procedure, and local rules, shall from time to time be published as an appendix to the official reports of the Supreme Court of Appeals and bound therewith.

§51-1-4a. Rules governing practice of law; creation of West Virginia State Bar; providing its powers, and fees for administration.

The Supreme Court of Appeals of West Virginia shall, from time to time, prescribe, adopt, promulgate, and amend rules:

- (a) Defining the practice of law.
- (b) Prescribing a code of ethics governing the professional conduct of attorneys at law and the practice of law, and prescribing a code of judicial ethics.
- (c) Prescribing procedure for disciplining, suspending, and disbaring attorneys at law.
- (d) Organizing and governing by and through all of the attorneys at law practicing in this state, an administrative agency of the Supreme Court of Appeals of West Virginia, which shall be known as "The West Virginia State Bar." The West Virginia State Bar shall be a part of the judicial department of the state government and is hereby created for the purpose of enforcing such rules as may be prescribed, adopted and promulgated by the court from time to time under this section. It is hereby authorized and empowered to perform the functions and purposes expressed in a Constitution, bylaws and amendments thereto as shall be approved by the Supreme Court of Appeals from time to time. All persons practicing law in this state shall be members of the West Virginia State Bar in good standing: Provided, however, That the West Virginia State Bar shall not become operative until its Constitution and bylaws shall first have been submitted to all attorneys at law practicing in this state, including those presently serving in the Armed Forces of the United States, for the purpose of securing the suggestions and recommendations of all such attorneys at law, for a period of at least sixty days prior to the entry of an order by such court approving said Constitution and bylaws.
- (e) Fixing a schedule of fees to be paid by attorneys at law practicing in the State of West Virginia for the purpose of administering this section, and providing for the collection and disbursement of such fees: Provided, however, That the annual fees to be paid by any attorney at law shall not exceed the sum of \$5, unless a majority of the attorneys at law practicing in this state consent to the payment of a higher annual fee.

The inherent rule-making power of the Supreme Court of Appeals is hereby declared.

When and as the rules of the court herein authorized shall be prescribed, adopted, and promulgated, all laws and parts of laws that conflict therewith shall be and become of no further force or effect to the extent of such conflict.

§51-1-5. Regular terms.

Two terms of the Supreme Court of Appeals shall be held every year at Charleston, in Kanawha county, the first commencing on the second Tuesday in January, the second on the first Wednesday in September, and shall continue until the business is dispatched. But when, in the judgment of the court, extraordinary circumstances require, such term or terms may be held at such other place or places within the state as the court may designate, such times and places to be fixed in the manner provided in this article for holding special terms of said court.

§51-1-6. Special terms.

Special terms of the Supreme Court of Appeals may be held for the trial and decision of causes at Charleston, in Kanawha county, specially designated as the place for holding the regular terms thereof, and under extraordinary circumstances at such other times and places as the court may designate by an order entered of record at a regular or special term of said court.

WV Legislature

§51-1-7. Warrant of judges appointing special term.

The judges of said court, or a majority of them, may, by warrant signed by them, directed to the clerk, appoint a special term to be held for the trial and decision of causes at Charleston, or, under extraordinary circumstances, at any other point within the state designated by them, or which may hereafter be designated by law for holding regular terms thereof. The clerk shall enter such warrant in the order book of the court.

§51-1-8. Hearing of cases at special term.

At any special term of the court, any cause, the record of which has been previously printed, may, in the discretion of the court, be heard and decided by consent of parties or their counsel, entered of record, or upon at least thirty days' notice in writing, given by the party desiring the hearing to the opposite party or his counsel, of his intention to insist on a hearing, when the same may, in the discretion of the court, be heard and determined at any such special term.

WV Legislature

§51-1-9. What cases may be decided at regular or special term.

The court may, at any regular or special term, decide any cause or proceeding which may have been previously heard by the court at any regular or special term thereof.

WV Legislature

§51-1-10. Adjournment.

The court may, at any regular or special term, adjourn from day to day or from time to time, as the court may order, until its close.

WV Legislature

§51-1-10a. Salary of justices.

The salary of each of the justices of the Supreme Court of Appeals shall be \$95,000 per year: *Provided*, That beginning July 1, 2005, the salary of each of the justices of the Supreme Court shall be \$121,000: *Provided, however*, That beginning July 1, 2011, the annual salary of a justice of the Supreme Court shall be \$136,000: *Provided further*, That beginning July 1, 2021, the annual salary of a justice of the Supreme Court of Appeals shall be \$142,800, and beginning July 1, 2022, the annual salary of a justice of the Supreme Court of Appeals shall be \$149,600.

§51-1-11. Appointment and compensation of the Clerk and employees of the clerks' office; compensation.

The justices of the Supreme Court of Appeals may appoint a clerk. Notwithstanding any code provision to the contrary, no bond shall be required to be posted by the clerk. The justices of the Supreme Court of Appeals may also appoint any other full-time and part-time professional and clerical assistants necessary to efficiently perform the functions and duties of the office of the clerk. These employees shall serve at the will and pleasure of the justices of the Supreme Court of Appeals. The salary of the clerk and persons employed within the office of the clerk shall be established by the justices of the Supreme Court of Appeals. If any position becomes vacant while the Supreme Court of Appeals is in vacation, the position may be filled by appointment, in writing, issued by the justices of the Supreme Court of Appeals.

§51-1-12. Duties of clerk.

It shall be the duty of the Clerk of the Supreme Court of Appeals to attend in person, or by designated staff, all the sessions of the court, to obey its orders and directions, to preserve all digital and physical court records, and to perform such other duties as may be prescribed by law or required of him or her by the court.

WV Legislature

§51-1-13.

Repealed.

Acts, 1975 Reg. Sess., Ch. 126.

WV Legislature

§51-1-14.

Repealed.

Acts, 1975 Reg. Sess., Ch. 126.

WV Legislature

§51-1-15. Administrative office of Supreme Court of Appeals continued; director; assistants and secretaries; seal.

The administrative office of the Supreme Court of Appeals heretofore established is hereby continued. The court shall appoint a director thereof and such assistants and secretaries as it deems necessary to perform the duties of the office as specified in section seventeen of this article and such other duties as may be specified by the court. Such appointees shall serve at the will and pleasure of the court and shall receive such compensation as may be fixed from time to time by the court. They shall also be reimbursed out of the state Treasury for all reasonable and necessary expenses actually incurred for travel, meals and lodging incident to the performance of their duties as such appointees. The director, when so directed by the court, shall cause a seal of office to be made for such office of such design as the court shall approve, and judicial notice shall be taken of such seal.

§51-1-16. Director and assistant directors not to practice law.

During his employment in the administrative office, no director or assistant director shall engage directly or indirectly in the practice of law in any of the courts of this state.

WV Legislature

§51-1-17. Administrative office of Supreme Court of Appeals -- duties of director.

The director shall, when authorized by the Supreme Court of Appeals, be the administrative officer of said court and shall have charge, under the supervision and direction of the Supreme Court of Appeals, of:

- (a) All administrative matters relating to the offices of the clerks of the circuit and intermediary courts and of the offices of justice of the peace and all other clerical and administrative personnel of said courts; but nothing contained in this article shall be construed as affecting the authority of the courts to appoint their administrative or clerical personnel;
- (b) Examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts;
- (c) The preparation of a proper budget to secure the appropriation of moneys for the maintenance, support and operation of the courts;
- (d) The purchase, exchange, transfer and distribution of equipment and supplies, as may be needful or desirable;
- (e) Such other matters as may be assigned to him by the Supreme Court of Appeals. The clerks of the circuit courts, intermediate courts and courts of the justices of the peace shall comply with any and all requests made by the director or his assistants for information and statistical data bearing on the state of the dockets of such courts, or such other information as may reflect the business transacted by them;
- (f) Annual report of activities and estimates of expenditures. -- The director, when required to do so by the Supreme Court of Appeals, shall submit annually to the court a report of the activities of the administrative office and of the state of business of the courts, together with the statistical data compiled by him with his recommendations;
- (g) Serve as the chair of the court security board created under the provisions of section fifteen, article three of this chapter.

§51-1-18. Same -- Annual report of activities and estimates of expenditures.

The director shall submit annually to the Supreme Court of Appeals a report of the activities of the administrative office and of the state of business of the courts, together with the statistical data compiled by him with his recommendations.

WV Legislature

§51-1-19.

Repealed.

Acts, 1993 Reg. Sess., Ch. 56.

WV Legislature

§51-1-20. Feasibility study of one day-one trial jury selection system.

The Supreme Court of Appeals shall conduct a study to determine the feasibility of a system of jury selection for petit juries in West Virginia wherein those prospective jurors who are called for jury duty are required to report for duty for not more than one day or until the completion of one trial for which they are chosen on that day. The supreme court shall designate a judicial circuit within this state and direct the court of that circuit to order the jury commission of each county within the circuit to employ this a jury selection system in whole, or in part, from July 1, 1988, to June 30, 1989.

Before September 1, 1989, the jury commission shall prepare and deliver a report to the Supreme Court of Appeals relating the cost, efficiency, effectiveness and general acceptance of the system. The Supreme Court of Appeals shall report to the Legislature on the feasibility of the system before January 1, 1990. The Supreme Court of Appeals shall fund those expenses necessary to conduct this study out of the budget of the court.

§51-1-21. Authority to maintain domestic violence database.

(a) The West Virginia Supreme Court of Appeals is hereby authorized to maintain a domestic violence database containing copies of protective orders entered by the courts of this state and granted pursuant to the provisions of article twenty-seven, chapter forty-eight of this code. Further, the domestic violence database shall also include, upon request, protection orders issued by a jurisdiction outside of this state pursuant to its law.

(b) Only a protected individual who obtains a protection order from a jurisdiction other than this state pursuant to its law or his or her representative as provided in section five, article twenty-eight of this chapter may register that order with the West Virginia Supreme Court of Appeals.

(c) Failure to register an order as provided in this section shall not affect its enforceability in any county or jurisdiction.

§51-1-22. Court Advanced Technology Subscription Fund created.

(a) There is created within the State Treasury a special revenue fund designated the Court Advanced Technology Subscription Fund to be administered by the West Virginia Supreme Court of Appeals.

(b) The fund shall consist of moneys received from subscribers using the court's advanced technology systems including, but not limited to, the e-filing system and the Unified Judicial Application Information System.

(c) All moneys deposited into the State Treasury and credited to the Court Advanced Technology Subscription Fund shall be used to pay the costs associated with maintaining and administering the court's advanced technology systems.

(d) All moneys collected by the administrator of the Supreme Court of Appeals for the use of the court's advanced technology shall be deposited into the Court Advanced Technology Subscription Fund. Expenditures from the fund shall be for the purposes set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with article three, chapter twelve of this code and upon fulfillment of the requirements of article two, chapter eleven-b of this code: Provided, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

§51-1-23. Court Facilities Maintenance Fund created.

(a) There is created within the State Treasury a special revenue fund designated the Court Facilities Maintenance Fund to be administered by the West Virginia Supreme Court of Appeals.

(b) The fund shall consist of moneys received from rent or other payments from tenants leasing space owned by the Supreme Court of Appeals of West Virginia.

(c) All moneys deposited into the State Treasury and credited to the Court Facilities Maintenance Fund shall be used to offset the cost to maintain property owned by the Supreme Court of Appeals of West Virginia.

(d) All moneys collected by the administrator of the Supreme Court of Appeals from rent or other payments from tenants leasing space owned by the Supreme Court of Appeals of West Virginia shall be deposited into the Court Facilities Maintenance Fund. Expenditures from the fund shall be for the purposes set forth in subsection (c) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature in accordance with §12-3-1 *et seq.* of this code and upon fulfillment of the requirements of §11B-2-1 *et seq.* of this code.

§51-1A-1. Definitions.

As used in this article:

(1) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(2) "Tribe" means a native American tribe, band or village recognized by federal law or formally acknowledged by a state.

WV Legislature

§51-1A-2. Power to certify.

The Supreme Court of Appeals of West Virginia, on the motion of a party to a pending cause or its own motion, may certify a question of law to the highest court of another state or of a tribe or of Canada, a Canadian province or territory, Mexico or a Mexican state if:

- (1) The pending cause involves a question to be decided under the law of the other state or of the tribe or of Canada, the Canadian province or territory, Mexico or the Mexican state;
- (2) The answer to the question may be determinative of an issue in the pending cause; and
- (3) The question is one for which no answer is provided by a controlling appellate decision, Constitutional provision or statute of the other state or of the tribe or of Canada, the Canadian province or territory, Mexico or the Mexican state.

§51-1A-3. Power to answer.

The Supreme Court of Appeals of West Virginia may answer a question of law certified to it by any court of the United States or by the highest appellate court or the intermediate appellate court of another state or of a tribe or of Canada, a Canadian province or territory, Mexico or a Mexican state, if the answer may be determinative of an issue in a pending cause in the certifying court and if there is no controlling appellate decision, Constitutional provision or statute of this state.

§51-1A-4. Power to amend question.

The Supreme Court of Appeals of West Virginia may reformulate a question certified to it.

WV Legislature

§51-1A-5. Certification order; record.

The court certifying a question shall issue a certification order and shall forward it to the designated receiving court. Before responding to a certified question, the receiving court may require the certifying court to deliver its record, or any portion of the record, to the receiving court.

WV Legislature

§51-1A-6. Contents of certification order.

(a) A certification order must contain:

(1) The question of law to be answered;

(2) The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

(3) A statement acknowledging that the receiving court may reformulate the question; and

(4) The names and addresses of counsel of record and unrepresented parties.

(b) If the parties cannot agree upon a statement of facts, then the certifying court shall determine the relevant facts and shall state them as a part of its certification order.

§51-1A-7. Notice; preference.

The Supreme Court of Appeals of West Virginia, acting as the receiving court, shall notify the certifying court of its acceptance or rejection of the question; and in accordance with notions of comity and fairness, it shall respond to an accepted certified question as soon as practicable.

WV Legislature

§51-1A-8. Procedures.

After the Supreme Court of Appeals of West Virginia has accepted a certified question, proceedings are governed by the rules and statutes of this state governing briefs, arguments and other appellate procedures. Procedures for certification from this state to a receiving court shall be those provided in the rules and statutes of the receiving forum.

WV Legislature

§51-1A-9. Opinion.

The Supreme Court of Appeals of West Virginia shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, to counsel of record and to unrepresented parties.

WV Legislature

§51-1A-10. Cost of certification.

Fees and costs are the same as in civil appeals docketed before the Supreme Court of Appeals of West Virginia and shall be equally divided between the parties unless otherwise ordered by the certifying court.

WV Legislature

§51-1A-11. Severability.

If any provision of this article or its application to any person, court or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

WV Legislature

§51-1A-12. Construction.

This article shall be construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

WV Legislature

§51-1A-13. Short title.

This article may be cited as the "Uniform Certification of Questions of Law Act".

WV Legislature

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) Beginning on the effective date of this subsection and until December 31, 2024, the state shall be divided into the following judicial circuits with the following number of judges:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall have four judges;

(2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall have two judges;

(3) The counties of Doddridge, Pleasants, and Ritchie shall constitute the third circuit and shall have one judge;

(4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges;

(5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit and shall have three judges;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

(7) The county of Logan shall constitute the seventh circuit and shall have two judges;

(8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

(9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

(10) The county of Raleigh shall constitute the tenth circuit and shall have four judges;

(11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges;

(12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

(13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;

(14) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the fourteenth circuit and shall have two judges;

(15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

(16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

(17) The county of Monongalia shall constitute the seventeenth circuit and shall have three

judges;

(18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

(19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have two judges;

(20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

(21) The counties of Grant, Mineral, and Tucker shall constitute the twenty-first circuit and shall have two judges;

(22) The counties of Hampshire, Hardy, and Pendleton shall constitute the twenty-second circuit and shall have two judges;

(23) The counties of Berkeley, Jefferson, and Morgan shall constitute the twenty-third circuit and shall have six judges;

(24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two judges;

(25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges;

(26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have two judges;

(27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge;

(28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge;

(29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two judges;

(30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

(31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge.

(b) Effective January 1, 2025, the state shall be divided into the following judicial circuits with the following number of judges who shall be elected by the voters of the entire circuit, but in separate divisions, as required by §3-5-6b of this code.

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year

2024, and every eighth year thereafter;

(2) The counties of Marshall, Tyler, and Wetzel shall constitute the second circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(3) The counties of Doddridge, Pleasants, Ritchie, and Wirt shall constitute the third circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That no more than one judge shall be a resident of any county comprising the third circuit: *Provided*, however, That if the highest vote recipients in both divisions are also both residents of the same county, then the candidate with the highest overall number of votes shall be declared the winner of the division in which he or she ran: *Provided*, further, That the candidate who has the highest number of votes in the other division who is not a resident of the same county as the highest overall vote recipient shall be declared the winner of the division in which he or she ran;

(4) The county of Wood shall constitute the fourth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(5) The counties of Calhoun, Jackson, Mason, and Roane shall constitute the fifth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: *Provided*, That Division 1 in the fifth circuit shall be for a judge who resides in Jackson County at the time of his or her filing and for the duration of his or her service, Division 2 in the fifth circuit shall be for a judge who resides in Mason County at the time of his or her filing and for the duration of his or her service, and Division 3 in the fifth circuit shall be for a judge who resides in either Calhoun County or Roane County at the time of his or her filing and for the duration of his or her service;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(7) The county of Putnam shall constitute the seventh circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(8) The county of Kanawha shall constitute the eighth circuit and shall have eight judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(9) The counties of Boone and Lincoln shall constitute the ninth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year

2024, and every eighth year thereafter;

(10) The county of Wayne shall constitute the tenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(11) The counties of Logan and Mingo shall constitute the eleventh circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: Provided, That Division 1 in the eleventh circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Mingo County, Division 2 in the eleventh circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Logan County, and Division 3 in the eleventh circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Logan County;

(12) The counties of McDowell and Wyoming shall constitute the twelfth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: Provided, That Division 1 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in McDowell County, and Division 2 in the twelfth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Wyoming County;

(13) The county of Mercer shall constitute the thirteenth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(14) The county of Raleigh shall constitute the fourteenth circuit and shall have four judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(15) The county of Fayette shall constitute the fifteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(16) The county of Nicholas shall constitute the sixteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(17) The counties of Braxton, Clay, Gilmer, and Webster shall constitute the seventeenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: Provided, That no more than one judge shall be a resident of any county comprising the seventeenth circuit: Provided, however, That if the highest vote recipients in both divisions are also both residents of the same county, then the candidate with the highest overall number of votes shall be declared the winner of the division in which he or she ran: Provided, further, That the candidate who

has the highest number of votes in the other division who is not a resident of the same county as the highest overall vote recipient shall be declared the winner of the division in which he or she ran;

(18) The counties of Lewis and Upshur shall constitute the eighteenth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter: Provided, That Division 1 in the eighteenth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Upshur County, and Division 2 in the eighteenth circuit shall be for a judge who will reside at the time of his or her filing and during his or her service in Lewis County;

(19) The county of Harrison shall constitute the nineteenth circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(20) The county of Marion shall constitute the twentieth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(21) The county of Monongalia shall constitute the twenty-first circuit and shall have three judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(22) The counties of Preston and Tucker shall constitute the twenty-second circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(23) The counties of Barbour and Taylor shall constitute the twenty-third circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(24) The county of Randolph shall constitute the twenty-fourth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(25) The counties of Grant and Mineral shall constitute the twenty-fifth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(26) The counties of Hampshire, Hardy, and Pendelton shall constitute the twenty-sixth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(27) The counties of Berkley and Morgan shall constitute the twenty-seventh circuit and shall have five judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(28) The county of Jefferson shall constitute the twenty-eighth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(29) The counties of Greenbrier and Pocahontas shall constitute the twenty-ninth circuit and shall have two judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter; and

(30) The counties of Monroe and Summers shall constitute the thirtieth circuit and shall have one judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter.

(c) The Raleigh County circuit court shall be a court of concurrent jurisdiction with the remaining single-judge circuit where the sitting judge in the single-judge circuit is unavailable by reason of sickness, vacation, or other reason.

(d) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until December 31, 2024.

(e) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during an election conducted in the year 2024, shall commence on January 1, 2025, and end on December 31, 2032.

(f) For election purposes, in every judicial circuit having two or more judges there shall be numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall be elected at large from the entire circuit. In each numbered division of a judicial circuit, the candidates for election shall be voted upon, and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the circuit. The candidate receiving the highest number of the votes cast within a numbered division shall be elected, except as provided above with respect to the third and seventeenth circuits.

(g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit judges.

(h) Notwithstanding any provisions of this code to the contrary, public defender corporations organized pursuant to the provisions of §29-21-1 *et seq.* of this code shall have until July 1, 2025, to conform their offices to the judicial circuits established in this section by the amendments to this section enacted during the regular session of the Legislature, 2023.

§51-2-1a.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1aa.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1b.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1bb.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1c.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1cc.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1d.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1dd.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1e.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1ee.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1f.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1ff.

Repealed.

Acts, 1976 Reg. Sess., Ch. 37.

WV Legislature

§51-2-1g.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1gg.

Repealed.

Acts, 1976 Reg. Sess., Ch. 37.

WV Legislature

§51-2-1h.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1i.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1j.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1k.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-11.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1m.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1n.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-10.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1p.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1q.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1r.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1s.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1t.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1u.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1v.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1w.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1x.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1y.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-1z.

Repealed.

Acts, 1991 Reg. Sess., Ch. 34.

WV Legislature

§51-2-2. Jurisdiction.

(a) The circuit court shall have supervision and control of all proceedings before magistrates, by mandamus, prohibition and certiorari.

(b) Except in cases confined exclusively by the Constitution to some other tribunal, the circuit court shall have original and general jurisdiction of all matters at law where the amount in controversy, excluding interest, exceeds \$7,500: Provided, That the jurisdictional limit on amounts in controversy does not apply to real estate installment sales contracts.

(c) The circuit court shall have original and general jurisdiction in all of the following matters:

(1) Habeas corpus;

(2) Mandamus;

(3) Quo warranto;

(4) Prohibition;

(5) Crimes; and

(6) Misdemeanors.

(d) The circuit court shall have original and general jurisdiction in all cases in equity, including jurisdiction in equity to remove any cloud on the title to real property, or any part of a cloud, or any estate, right or interest in the real property, and to determine questions of title with respect to the real property without requiring allegations or proof of actual possession of the real property.

(e) The circuit court shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas may be allowed to the judgment or proceedings of any inferior tribunal.

(f) The circuit court shall also have any other jurisdiction, whether supervisory, original, appellate or concurrent, as is or may be prescribed by law.

§51-2-3. Adjourned terms.

If any term of a circuit court is about to end without dispatching all its business, the judge thereof may, by an order entered of record, adjourn the holding of such court to any future day on which he is not required by law to hold a court in some other county; and all causes on the docket of such court, and not otherwise disposed of, shall stand continued to such adjourned day. The court may, in its discretion, require the jury summoned to attend such term to attend as such on the adjourned day, or may require a new jury to be drawn and summoned in the manner required by law; and all witnesses summoned to attend in causes so continued to such adjourned term shall attend the term without being again summoned. All judgments, orders and decrees rendered and made by such court before or during the day on which the court adjourns to such future day, as aforesaid, shall have the same force and effect in all respects as if the court had finally adjourned on that day.

§51-2-4. Special terms -- When and how held.

If any term of such court has ended without dispatching all its business, or if there be a failure to hold any term, or whenever he thinks the public interest requires it, the judge of the circuit court may, by a warrant directed to the clerk, appoint a special term thereof and prescribe in such warrant whether a grand or petit jury, or both, are to be summoned to attend such term. The clerk shall enter the warrant in the order book of the court, inform the prosecuting attorney and the sheriff of such appointment, post a copy of the warrant at the door of the courthouse, and issue all proper process returnable to such special term; and the sheriff shall execute such process, and summon a grand or petit jury, or both, as may be prescribed in the warrant. Any such special term may be held in any county, although at the time the same is held a term of the circuit court is being held, or required to be held, in any other county of the same judicial circuit, and it may be held by the judge of another circuit, or by a special judge elected by the attorneys practicing in such court in the manner prescribed by law.

§51-2-5. Same -- Adjournment.

Whenever any judge of a circuit court shall have appointed a special term of any circuit court in the manner directed by the preceding section, and shall afterwards ascertain that he cannot hold such special term on the day appointed for it, he may, by warrant under his hand directed to the clerk of the court, adjourn it to such other day as he may deem proper. Such warrant shall be transmitted by the judge to the clerk, who shall immediately enter it in the order book of the court, and as to the special term thereafter to be held under such continuance proceed in all other respects in the manner directed by the section aforesaid.

§51-2-6. Same -- For trial of person imprisoned.

Whenever the situation of a prisoner confined in jail for trial in a circuit court makes it proper that his case should be disposed of before the next regular term thereof, the judge of such court may appoint a special term to be held for the trial of the case, in the same manner as if the same had stood for trial at the next preceding term and the court had adjourned without disposing thereof.

WV Legislature

§51-2-7. Same -- What causes may be tried; judge presiding.

Any cause, civil or criminal, and any motion or proceeding ready for trial or hearing, may be tried, heard and determined at a special term, the same as if it were a regular term of such court. Every such special term may be held by the judge of the circuit, or, if he be dead or absent, by any other circuit judge who may be present; and part of its session may be held by one judge and part by another; and such special term may be adjourned from time to time during the interval between the regular terms as the judge may deem necessary for the dispatch of the business of the court.

§51-2-8. Residence of judge; disqualification.

Each circuit, criminal or intermediate judge, during his continuance in office, shall reside in the circuit or county for which he was elected. When such judge is a party to a suit, or is interested in the result thereof otherwise than as a resident or taxpayer of the district or county, or is related to either of the parties, as grandfather, father, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle, first cousin or guardian, or if, at the time of the institution of the suit, or at any time before its final termination, he his wife, or any party or parties related to him in the degree hereinbefore specified, is a stockholder, or officer, in any stock company or corporation which is a necessary party to the proceedings, or if he is a material witness for either party, he shall not take cognizance thereof unless all parties to the suit consent thereto in writing: Provided, That no judgment or decree rendered or pronounced by any such judge shall be invalidated by reason of such relationship unless the same appear of record in such suit or proceeding: Provided further, That nothing herein contained shall disqualify a judge who comes within the provisions of this section to enter a formal order designed merely to advance the cause towards a final hearing and not requiring judicial action involving the merits of the case.

§51-2-9.

Repealed.

Acts, 1992 Reg. Sess., Ch. 45.

WV Legislature

§51-2-10.

Repealed.

Acts, 1992 Reg. Sess., Ch. 45.

WV Legislature

§51-2-11.

Repealed.

Acts, 1992 Reg. Sess., Ch. 45.

WV Legislature

§51-2-12.

Repealed.

Acts, 1992 Reg. Sess., Ch. 45.

WV Legislature

§51-2-13. Salaries of judges of circuit courts.

The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners, or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be \$90,000 per year: *Provided*, That beginning July 1, 2005, the annual salary of all circuit judges shall be \$116,000 per year: *Provided, however*, That beginning July 1, 2011, the annual salary of a circuit court judge shall be \$126,000: *Provided further*, That beginning July 1, 2021, the annual salary of a circuit judge shall be \$132,300 and beginning July 1, 2022, the annual salary of a circuit court judge shall be \$138,600.

§51-2-14. Holding court in two or more counties in circuit at same time.

Notwithstanding any provision in this code to the contrary, terms of circuit court may be held in two or more counties in the same circuit at the same time and a term of court in one county of a circuit need not be adjourned sine die or otherwise terminated as a condition of or prior to the commencement of a term of court in another county of the same circuit.

WV Legislature

§51-2-15. Business Court Division.

(a) The West Virginia Legislature finds that, due to the complex nature of litigation involving highly technical commercial issues, there is a need for a separate and specialized court docket to be maintained in West Virginia's most populated circuit court districts with specific jurisdiction over actions involving such commercial issues and disputes between businesses.

(b) The West Virginia Supreme Court of Appeals is authorized to designate a business court division within the circuit court of any judicial district with a population in excess of sixty thousand according to the 2000 Federal Decennial Census.

(c) Upon the determination to designate business court divisions, the West Virginia Supreme Court of Appeals shall promulgate rules for the establishment and jurisdiction of the business court divisions within its circuit court system.

§51-2A-1. Family courts established.

There is hereby created in each county in this state a family court to be designated as "The Family Court of _____ County, West Virginia."

WV Legislature

§51-2A-2. Family court jurisdiction; exceptions; limitations.

(a) The family court shall exercise jurisdiction over the following matters:

(1) All actions for divorce, annulment or separate maintenance brought under the provisions of §48-3-1 et seq., §48-4-1 et seq., or §48-5-1 et seq. of this code, except as provided in subsections (b) and (c) of this section;

(2) All actions to obtain orders of child support brought under the provisions of §48-11-1 et seq., §48-12-1 et seq., and §48-14-1 et seq. of this code;

(3) All actions to establish paternity brought under the provisions of §48-24-1 et seq. of this code and any dependent claims related to such actions regarding child support, parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child;

(4) All actions for grandparent visitation brought under the provisions of §48-10-1 et seq. of this code;

(5) All actions for the interstate enforcement of family support brought under §48-16-1 et seq. of this code and for the interstate enforcement of child custody brought under the provisions of §48-20-1 et seq. of this code;

(6) All actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, including actions brought under the Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-1 et seq. of this code;

(7) All petitions for writs of habeas corpus in which the issue contested is custodial responsibility for a child;

(8) All motions for temporary relief affecting parenting plans or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or domestic violence;

(9) All motions for modification of an order providing for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child or for child support or spousal support;

(10) All actions brought, including civil contempt proceedings, to enforce an order of spousal or child support or to enforce an order for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child;

(11) All actions brought by an obligor to contest the enforcement of an order of support through the withholding from income of amounts payable as support or to contest an

affidavit of accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

(12) All final hearings in domestic violence proceedings;

(13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

(14) All proceedings for payment of attorney fees if the family court judge has jurisdiction of the underlying action;

(15) All proceedings for property distribution brought under §48-7-1 et seq. of this code;

(16) All proceedings to obtain spousal support brought under §48-8-1 et seq. of this code;

(17) All proceedings relating to the appointment of guardians or curators of minor children brought pursuant to §44-10-3, §44-10-4 and §44-10-6 of this code, exercising concurrent jurisdiction with the circuit court; and

(18) All proceedings relating to petitions for sibling visitation.

(b) If an action for divorce, annulment, or separate maintenance does not require the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and does not require an award or any payment of child support, the circuit court has concurrent jurisdiction with the family court over the action if, at the time of the filing of the action, the parties also file a written property settlement agreement executed by both parties.

(c) If an action for divorce, annulment, or separate maintenance is pending and a petition is filed pursuant to the provisions of §49-4-601 through §49-4-610 of this code alleging abuse or neglect of a child by either of the parties to the divorce, annulment, or separate maintenance action, the orders of the circuit court in which the abuse or neglect petition is filed shall supersede and take precedence over an order of the family court respecting the allocation of custodial and decision-making responsibility for the child between the parents. If no order for the allocation of custodial and decision-making responsibility for the child between the parents has been entered by the family court in the pending action for divorce, annulment, or separate maintenance, the family court shall stay any further proceedings concerning the allocation of custodial and decision-making responsibility for the child between the parents and defer to the orders of the circuit court in the abuse or neglect proceedings.

(d) If a family court judge is assigned as a judicial officer of a domestic violence court then jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as referenced in §48-27-301 of this code involving a family or household member as referenced in §48-27-204(1) through §48-27-204(6) and §48-27-204(7)(A), §48-27-204(7)(B), and §48-27-204(7)(H) of this code shall be concurrent with the circuit and magistrate courts.

(e) A family court is a court of limited jurisdiction. A family court is a court of record only for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family

court is specifically authorized in this section and in chapter 48 of this code. A family court may not exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers provided for courts of record in this code unless specifically authorized by the Legislature. A family court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are defined and used in §51-9-1 et seq. of this code.

WV Legislature

§51-2A-2a. Family court jurisdiction to restrict contact between parties.

(a) A family court in its discretion may, at any time during the pendency of any action prosecuted under chapter forty-eight of this code, restrict contact between the parties thereto without a finding of domestic violence under article twenty-seven of said chapter. This order shall not be considered a protective order for purposes of section five hundred seven, article twenty-seven, chapter forty-eight of this code. A court may enter a standing order regarding the conduct expected of the parties during the proceeding. Any standing order may restrict the parties from:

(1) Entering the home, school, business or place of employment of the other for the purpose of bothering or annoying the other;

(2) Contacting the other, in person, in writing, electronically or by telephone, for purposes not clearly necessary for the prosecution of the underlying action or any obligation related thereto or resulting therefrom.

(b) Upon a finding of misconduct by a party, the court shall enter an order against the offending party enjoining the conduct which disturbs or interferes with the peace or liberty of the other party so long as such conduct does not rise to the level of or constitute domestic violence as defined in article twenty-seven, chapter forty-eight of this code. The court shall not issue orders under this section in cases where the conduct of either party has previously risen to the level of domestic violence.

(c) Nothing in this section shall preclude the court from entering an emergency protective order, or final protective order, as provided in article twenty-seven, chapter forty-eight of this code.

(d) Notwithstanding the provisions of section five hundred five, article twenty-seven, chapter forty-eight of this code, an order entered pursuant to the provisions of this section shall remain in effect for a period of time as specified in the order.

(e) The court may enforce orders under this section against the offending party through its powers of contempt, pursuant to section nine of this article.

(f) It is the express intent of the Legislature that orders issued pursuant to this section are to restrict behavior which is not of sufficient severity to implicate the provisions of article twenty-seven, chapter forty-eight of this code and 18 U. S. C. §922(g)(8).

§51-2A-3. Number of family court judges; assignment of family court judges by family court circuits.

(a) Beginning on the effective date of this subsection and until December 31, 2024, 47 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:

(1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit and have two family court judges;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges;

(13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges;

- (14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge;
- (15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge;
- (16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge;
- (17) The counties of Braxton, Lewis, and Upshur shall constitute the seventeenth family court circuit and have one family court judge;
- (18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges;
- (19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge;
- (20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges;
- (21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge;
- (22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge;
- (23) The counties of Mineral, Hampshire and Morgan shall constitute the twenty-third family court circuit and have two family court judges;
- (24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have three family court judges;
- (25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge;
- (26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge; and
- (27) The counties of Webster and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge.
- (b) Effective January 1, 2025, 48 family court judges shall serve throughout the state, allocated among a total of 27 family court circuits as follows:

- (1) The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit

and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(2) The counties of Marshall, Wetzel, and Tyler shall constitute the second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(3) The counties of Pleasants and Wood shall constitute the third family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(4) The counties of Roane, Calhoun, Gilmer, and Ritchie shall constitute the fourth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(5) The counties of Mason, Jackson, and Wirt shall constitute the fifth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(6) The county of Cabell shall constitute the sixth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(7) The county of Wayne shall constitute the seventh family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(8) The county of Mingo shall constitute the eighth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(9) The county of Logan shall constitute the ninth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(10) The counties of Lincoln and Boone shall constitute the tenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(11) The county of Kanawha shall constitute the eleventh family court circuit and have five family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(12) The counties of McDowell and Mercer shall constitute the twelfth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(13) The counties of Raleigh, Summers, and Wyoming shall constitute the thirteenth family court circuit and have three family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(14) The county of Fayette shall constitute the fourteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(15) The counties of Greenbrier and Monroe shall constitute the fifteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(16) The counties of Clay and Nicholas shall constitute the sixteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(17) The counties of Lewis and Upshur shall constitute the seventeenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(18) The counties of Harrison and Doddridge shall constitute the eighteenth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(19) The county of Marion shall constitute the nineteenth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(20) The counties of Monongalia and Preston shall constitute the twentieth family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(21) The counties of Barbour and Taylor shall constitute the twenty-first family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(22) The counties of Tucker and Randolph shall constitute the twenty-second family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(23) The counties of Mineral, Hampshire, and Morgan shall constitute the twenty-third family court circuit and have two family court judges, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(24) The counties of Berkeley and Jefferson shall constitute the twenty-fourth family court circuit and have four family court judges with the additional family court judge to be elected

at the regularly scheduled election held in 2024, and every eighth year thereafter;

(25) The counties of Hardy, Pendleton, and Grant shall constitute the twenty-fifth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter;

(26) The county of Putnam shall constitute the twenty-sixth family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter; and

(27) The counties of Webster, Braxton, and Pocahontas shall constitute the twenty-seventh family court circuit and have one family court judge, who shall be elected at the regularly scheduled election(s) to be held in the year 2024, and every eighth year thereafter.

(c) Family court judges taking office January 1, 2025, shall be elected at the regularly scheduled election(s) occurring in the year 2024, and shall serve for a term of eight years.

(d) The Legislature has the authority and may determine to realign the family court circuits and has the authority and may determine to increase or decrease the number of family court judges within a family court circuit, from time to time. Any person appointed or elected to the office of family court judge acknowledges the authority of the Legislature to realign family court circuits and the authority of the Legislature to increase or decrease the number of family court judges within a family court circuit.

§51-2A-4. Qualifications of family court judges.

(a) A family court judge must be a resident of this state, a member in good standing of the West Virginia State Bar, admitted to practice law in this state for at least five years prior to election, and must, at the time he or she takes office, and thereafter during his or her continuance in office, reside in the family court circuit for which he or she is a judge.

(b) A family court judge may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A family court judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(c) The Supreme Court of Appeals may establish requirements for family court judges to attend and complete courses of instruction and continuing educational instruction in principles of family law and procedure.

(d) A person's acceptance of the office of family court judge pursuant to appointment or election constitutes the person's consent, agreement and election during the term of office not to become a member of the judges retirement system solely by reason of or based upon service as a family court judge and an acknowledgment by the person of the sole authority of the Legislature to determine the eligibility of family court judges to participate in a retirement system. Notwithstanding any other provision of law to the contrary, upon final judicial determination that a person, individually or as a member of a class, is eligible for participation in the judges retirement system solely by reason of or based upon service as a family court judge, no additional persons except as may be provided for in this subsection may be admitted to the judges retirement system existing upon the effective date of the final judicial determination. A circuit judge or justice of the Supreme Court of Appeals who is a member of the existing judges retirement system whose employment continues beyond the final judicial determination shall continue to contribute to and participate in the existing judges retirement system without a change in plan provisions or benefits. Any person who was previously a member of the judges retirement system and who later returns to participating employment as a circuit judge or justice of the Supreme Court of Appeals after the final judicial determination has the right to elect to return to the existing judges retirement system and participate during the judge's or justice's term or terms of office.

§51-2A-5. Term of office of family court judge; initial appointment; elections.

(a) Beginning with the election to be conducted in the year 2016, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be. Effective with the primary election of 2016, all elections for family court judges in the respective circuits will be on a nonpartisan basis by division. Beginning in 2016, there will no longer be primary elections held for family court judges and all elections for family court judges are to be held in the nonpartisan judicial election as set forth in article five, chapter three of this code. All indications of party identification on election ballots for family court judge shall be omitted.

(b) The term of office for all family court judges elected in 2002 shall be for six years, commencing on January 1, 2003, and ending on December 31, 2008. Subsequent terms of office for family court judges elected thereafter shall be for eight years.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court shall be paid at least twice per month by the state. The annual salary of all secretary-clerks of the family court is \$42,576. Beginning July 1, 2023, the annual salary of a family court secretary-clerk shall be \$44,876. Family court secretary-clerks may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure: *Provided*, That the Supreme Court of Appeals may authorize additional family case coordinators if the workload of a circuit's family court requires extra staff support. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$54,576. Beginning July 1, 2023, the annual salary of a family court case coordinator shall not exceed \$56,876. Family court case coordinators may receive any general salary increase granted to state employees, whose salaries are not set by statute, expressed as a percentage increase or an across-the-board increase enacted after July 1, 2023. If more than one family case coordinator is approved by the Supreme Court of Appeals, then the chief family court judge of that circuit shall appoint, supervise, and assign job duties for any additional family case coordinator as needed for that circuit.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs staff are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) The Supreme Court of Appeals is authorized to create additional classifications of support staff that it deems necessary to adequately and efficiently staff the family courts of this state, including, but not limited to, receptionists, assistant case coordinators, and assistant secretary-clerks. The Supreme Court of Appeals may determine the authority to hire and terminate, supervise, and assign job duties for these positions pursuant to its own employment rules, policies, and procedures. The annual salary of additional support staff authorized by this section shall not exceed the regular annual salary of a secretary-clerk and shall be paid by the state on the same basis established for secretary-clerks as provided in this section.

§51-2A-7. Powers; administrative and judicial functions of family court judge.

(a) The family court judge will exercise any power or authority provided in this article, in chapter forty-eight of this code or as otherwise provided by general law. Additionally, the family court judge has the authority to:

- (1) Manage the business before them;
- (2) Summon witnesses and compel their attendance in court;
- (3) Exercise reasonable control over discovery;
- (4) Compel and supervise the production of evidence, including criminal background investigations when appropriate;
- (5) Discipline attorneys;
- (6) Prevent abuse of process; and
- (7) Correct errors in a record.

(b) The family court judge has responsibility for the supervision and administration of the family court. A family court judge may promulgate local administrative rules governing the conduct and administration of the family court. In family court circuits with more than one family court judge, all family court judges must agree to the rules. If all of the family court judges in a family court circuit cannot agree, the chief judge of each circuit court in the counties in which the family court circuit is located shall promulgate the local administrative rules. If the chief judges of the circuit courts cannot agree, the Supreme Court of Appeals may promulgate the local administrative rules. Local administrative rules are subordinate and subject to the rules of the Supreme Court of Appeals or the orders of the chief justice. Rules promulgated by the family or circuit court are made by order entered upon the order book of the circuit court and are effective when filed with the Clerk of the Supreme Court of Appeals.

(c) Prior to the 2003 regular session of the Legislature and annually thereafter, the Supreme Court of Appeals shall report to the Legislature on the caseload in each family court circuit and shall recommend changes to the management of the family court as the Supreme Court of Appeals deems warranted or necessary to improve the family court.

(d) The Supreme Court of Appeals shall promulgate a procedural rule to establish time-keeping requirements for family court judges, family case coordinators and secretary-clerks of family court judges so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity and the establishment, modification and enforcement of child support orders.

§51-2A-8. Rules of practice and procedure; applicability of rules of evidence; record of hearings; duties of clerk of circuit court.

(a) Pleading, practice and procedure in matters before a family court judge are governed by rules of practice and procedure for family law promulgated by the Supreme Court of Appeals.

(b) The West Virginia Rules of Evidence apply to proceedings before a family court judge.

(c) Hearings before a family court shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family court judge and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family court judge, the magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family court judge shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia Rules of Evidence and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an original under such rule. The party requesting the copy shall pay the circuit clerk an amount equal to the actual cost of the tape or other medium or the sum of \$5, whichever is greater. Unless otherwise ordered by the court, the preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript. The circuit clerk shall remit those amounts received monthly to the State Treasury for deposit in the West Virginia Supreme Court of Appeals fund designated for receipt of such moneys.

(d) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all documents filed in the proceeding, constitute the exclusive record and, on payment of lawfully prescribed costs, shall be made available to the parties.

(e) In any proceeding in which a party has filed an affidavit that he or she is financially unable to pay the fees and costs, the family court judge shall determine whether either party is financially able to pay the fees and costs based on the information set forth in the affidavit or on any evidence submitted at the hearing. If a family court judge determines that either party is financially able to pay the fees and costs, the family court judge shall assess the payment of such fees and costs accordingly as part of an order. The provisions of this subsection do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

(f) The clerks of the circuit court shall have, within the scope of the jurisdiction of family courts, all the duties and powers prescribed by law that clerks exercise on behalf of circuit courts: Provided, That a family court judge may not require the presence or attendance of a circuit clerk or deputy circuit clerk at any hearing before the family court.

§51-2A-9. Contempt powers of family court judge.

(a) In addition to the powers of contempt established in chapter forty-eight of this code, a family court judge may:

- (1) Sanction persons through civil contempt proceedings when necessary to preserve and enforce the rights of private parties or to administer remedies granted by the court;
- (2) Regulate all proceedings in a hearing before the family court judge; and
- (3) Punish direct contempts that are committed in the presence of the court or that obstruct, disrupt or corrupt the proceedings of the court.

(b) A family court judge may enforce compliance with his or her lawful orders with remedial or coercive sanctions designed to compensate a complainant for losses sustained and to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an opportunity to purge himself or herself. In selecting sanctions, the court must use the least possible power adequate to the end proposed. A person who lacks the present ability to comply with the order of the court may not be confined for a civil contempt. Sanctions may include, but are not limited to, seizure or impoundment of property to secure compliance with a prior order. Ancillary relief may provide for an award of attorney's fees.

(c) Upon a finding that a person is in civil contempt, the court, when otherwise appropriate and in its discretion, and as an alternative to incarceration, may place the person on work release, in a weekend jail program, in an existing community service program, in an existing day-reporting center program, in any other existing community corrections program or on home confinement until the person has purged himself or herself of the contempt.

§51-2A-10. Motion for reconsideration of family court order.

(a) Any party may file a motion for reconsideration of a temporary or final order of the family court for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been available at the time the matter was submitted to the court for decision; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) clerical or other technical deficiencies contained in the order; or (5) any other reason justifying relief from the operation of the order.

(b) A motion for reconsideration must be filed with the clerk of the circuit court within a reasonable time and for reasons set forth in subdivision (1), (2) or (3), subsection (a) of this section, not more than one year after the order was entered and served on the other party in accordance with rule 5 of the rules of civil procedure. The family court must enter an order ruling on the motion within thirty days of the date of the filing of the motion.

§51-2A-11. Petition for appeal.

(a) Within thirty days following the entry of a final order of a family court judge or the entry of a final order of any senior status circuit judge, circuit judge or other judicial officer appointed to serve pursuant to the provisions of section nineteen of this article, any party may file a petition for appeal with the circuit court. No appeal may be had under the provisions of this article from any order of a family court judge or from any order of another judicial officer temporarily serving as a family court judge other than a final order.

(b) A petition for appeal of a final order of the family court shall be filed in the office of the clerk of the circuit court. At the time of filing the petition, a copy of the petition for appeal must be served on all parties to the proceeding in the same manner as pleadings subsequent to an original complaint are served under rule 5 of the rules of civil procedure.

(c) The circuit judge may require, or a party may choose to submit with the petition for appeal, a brief in support of the petition.

(d) A respondent shall have fifteen days after the filing of a petition to file a reply to the petition for appeal. The reply must be served on all parties to the proceeding in the same manner required for service of the petition. The circuit judge may require, or a party may choose to submit with the reply, a brief in opposition to the petition.

(e) In addition to the reply, the respondent may file a cross-petition to the petition for appeal within fifteen days after the filing of the petition. The respondent to the cross-petition shall have fifteen days after the filing of the cross-petition to file a reply. The cross-petition and any reply must be served in the same manner required for service of the original petition. The circuit judge may require or either party may choose to submit a brief on the cross-petition.

(f) The Supreme Court of Appeals shall develop and provide forms for appeals filed pursuant to this section. The forms shall be made available for distribution in the offices of the clerks of the circuit courts and in the offices of the secretary-clerks to the family court judges.

(g) The Supreme Court of Appeals shall promulgate a supervisory rule setting forth educational requirements in domestic relations matters for circuit court judges.

(h) An appeal from the final order of any judicial officer assigned or appointed pursuant to the provisions of section nineteen of this article shall be perfected and treated in all respects as an appeal from an order of the family court. The terms "family court" or "family court judge" as provided in this section and in sections twelve, thirteen, fourteen and fifteen of this article mean the judicial officer who entered the final order which is the subject of an appeal.

§51-2A-12. Stay of proceedings pending appeal.

(a) Any person desiring to file a petition for appeal from a final order of the family court may file a motion for a stay of proceedings to the family court in which the order was entered. The motion for a stay shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. The family court may, sua sponte, order a stay of all or part of a final order pending appeal. Subject to the provisions of subsection (c) of this section, the family court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(b) If the family court judge denies a motion for a stay of the proceedings pending appeal, or if the relief afforded is not acceptable, the person desiring to file the petition for appeal may file a motion for a stay of the proceedings to the circuit court. The motion for stay shall be filed with the clerk of the circuit court and served upon the other party in accordance with rule 5 of the rules of civil procedure. Subject to the provisions of subsection (c) of this section, the circuit court may order a stay for the period of time allowed for the filing of a petition for appeal to the circuit court or for any additional period of time pending disposition of the appeal. If the circuit court refuses to consider the petition for appeal, the stay is vacated.

(c) An order granting a motion for a stay under the provisions of this section may not include a stay of an award for the payment of spousal support or child support pending the appeal, except that an award of past-due child support may be stayed pending an appeal.

§51-2A-13. Motion to dismiss appeal.

At any time following the filing of a petition for appeal of a final order of a family court, either party may move the circuit court to dismiss the appeal on any of the following grounds: (1) A joint agreement of the parties to the dismissal; (2) failure to properly perfect the appeal; (3) failure to obey an order of the family court or circuit court; (4) lack of an appealable order; or (5) lack of jurisdiction. Such motion shall be filed with the clerk of the circuit court and served on the respondent in accordance with rule 5 of the rules of civil procedure. No oral argument shall be held on such motion unless requested by the court.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

- (a) The circuit court may refuse to consider the petition for appeal may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge.
- (b) In considering a petition for appeal, the circuit court may only consider the record as provided in subsection (d), section eight of this article.
- (c) The circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.
- (d) If the circuit court agrees to consider a petition for appeal, the court shall provide the parties an opportunity to appear for oral argument, upon the request of either party or in the discretion of the court. The provisions of this subsection are effective until the adoption of rules by the Supreme Court of Appeals governing the appellate procedures of family courts.
- (e) If the proceeding is remanded to the family court, the circuit court must enter appropriate temporary orders for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or such other temporary relief as the circumstances of the parties may require. If the circuit court remands the case to the family court, it must state the legal or factual issues to be considered by the family court on remand. If the family court determines that the consideration of those issues also requires consideration of collateral or interdependent issues, the family court may also consider those other collateral or interdependent issues.
- (f) The circuit court must enter an order ruling on a petition for appeal within sixty days from the last day a reply to the petition for appeal could have been filed. If the circuit court does not enter the order within the sixty-day period or does not, within the sixty-day period, enter an order stating just cause why the order has not been timely entered, the circuit clerk shall send a written notice to the parties that unless the parties both file an objection within fourteen days of the date of the notice, the appeal will be transferred to the Supreme Court of Appeals as provided in section fifteen of this article due to the failure of the circuit court to timely enter an order. The appeal shall be transferred without the necessity of the filing of any petition or further document by the petitioner.

§51-2A-15. Review by Supreme Court of Appeals; assistance for pro se appellants.

(a) If both of the parties file, either jointly or separately, within fourteen days following the entry of the final order of a family court judge, a notice of intent to file an appeal from the final order of the family court directly to the Supreme Court of Appeals and to waive their right to file a petition for appeal with the circuit court, the petition for appeal of the final order of the family court may be filed with the Supreme Court of Appeals in accordance with the provisions of article five, chapter fifty-eight of this code and the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(b) If a circuit court judge refuses to consider a petition for appeal or if a party is adversely affected by the order entered by the circuit court upon review of the final order of the family court, the party may seek review of the order of the circuit court by the Supreme Court of Appeals. If a petition for appeal to the circuit court is transferred to the Supreme Court of Appeals pursuant to the provisions of subsection (d), section fourteen of this article, the petition for appeal filed in the circuit court will be considered as a petition for appeal to the Supreme Court of Appeals. The Supreme Court of Appeals has jurisdiction to hear and entertain an appeal from an order of a circuit court or the transfer of an appeal to the Supreme Court of Appeals as provided in this article in the same manner provided for civil appeals in article five, chapter fifty-eight of this code and in the rules of appellate procedure, except that the standard of review for any such appeal is the same as set forth in subsection (b), section fourteen of this article.

(c) The Supreme Court of Appeals shall promulgate rules to assist pro se litigants in the filing and processing of family court appeals to the circuit court and to the supreme court. Such rules may address, but are not limited to, expedited means of transcribing family court records, use of asynchronous data communication network or other alternate forms of transmission for conducting appellate hearings, alternate requirements for the number of copies to be provided to the Supreme Court of Appeals and other appropriate measures which will provide meaningful appellate access to the courts pursuant to section seventeen, article III of the West Virginia Constitution.

§51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

(a) The provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall expire and be of no force and effect after June 30, 2011, except as otherwise provided by subsection (b) of this section.

(b) Appeals that are pending before a circuit court or the Supreme Court of Appeals on June 30, 2011, but not decided before July 1, 2011, shall proceed to resolution in accordance with the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article, notwithstanding the provisions of subsection (a) of this section that provide for the expiration of those sections. The Supreme Court of Appeals shall, by rule, provide procedures for those appeals that are remanded but not concluded prior to July 1, 2011, in the event that the appeals process set forth in sections eleven, twelve, thirteen, fourteen and fifteen of this article is substantially altered as of July 1, 2011.

(c) Prior to the 2011 regular session of the Legislature and annually thereafter, the Supreme Court of Appeals shall provide a detailed report to the Joint Committee on Government and Finance the number of appeals from final orders of the family court filed in the various circuit courts and in the Supreme Court of Appeals, the number of pro se appeals filed, the subject matter of the appeals, the time periods in which appeals are concluded, the number of cases remanded upon appeal, recommendations and supporting data on the feasibility, need and effect of creating an intermediate appellate court or other system of appellate procedure for family court matters and such other detailed information so as to enable the Legislature to study the appellate procedures for family court matters and to consider the possible necessity and feasibility of creating an intermediate appellate court or other system of appellate procedure.

(d) The amendments to this section in the second extraordinary session of the Legislature in 2010 shall apply retroactively so that the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall be construed as if they did not expire after June 30, 2010.

§51-2A-17. Disciplinary proceedings for family court judges.

A family court judge may be censured, temporarily suspended or retired as provided for in section eight, article VIII of the West Virginia Constitution. A family court judge may be removed from office only by impeachment in accordance with the provisions of section nine, article IV of the West Virginia Constitution.

WV Legislature

§51-2A-18. Vacancy in the office of family court judge.

If a vacancy occurs in the office of family court judge, the Governor shall fill the vacancy by appointment as provided in section three, article ten, chapter three of this code.

WV Legislature

§51-2A-19. Temporary assignment of family court judges.

(a) Upon the occurrence of a vacancy in the office of family court judge, the disqualification of a family court judge or the inability of a family court judge to attend to his or her duties because of illness, temporary absence or any other reason, the chief justice of the Supreme Court of Appeals may assign the family court judge of any other family court circuit, or any senior status circuit judge or circuit judge of any judicial circuit, to hear and determine any and all matters then or thereafter pending in the family court to which the family court judge is assigned. While so assigned, the family court judge, senior status circuit judge or circuit judge has all of the powers of the regularly elected family court judge of the family court circuit.

(b) When, in the discretion of the chief justice of the Supreme Court of Appeals, the urgency or volume of cases in a family court circuit so requires, the chief justice may assign a senior status circuit judge, a circuit judge of any judicial circuit or a family court judge of any family court division to serve temporarily in a family court circuit. When a senior status circuit judge or other circuit judge is so assigned, he or she has all of the powers of a regularly elected family court judge.

(c) The chief justice of the Supreme Court of Appeals may appoint a person who has previously served as a family law master or family court judge to serve as a temporary family court judge as disqualification, recusal, vacation, illness or the ends of justice may dictate.

(d) The Supreme Court of Appeals shall promulgate a supervisory rule setting forth educational requirements for persons assigned to serve temporarily as family court judges pursuant to the provision of this section.

§51-2A-20. County commissions required to furnish offices for the family court judges.

Each county commission of this state has a duty to provide premises for the family court which are adequate for the conduct of the duties required of the court under the provisions of this article and of chapter forty-eight of this code and which conform to standards established by rules promulgated by the Supreme Court of Appeals. The administrative office of the Supreme Court of Appeals shall pay to the county commission a reasonable amount as rent for the premises furnished by the county commission to the family court and his or her staff pursuant to the provisions of this section.

§51-2A-21. Budget of the family court.

The budget for the payment of the salaries and benefits of the family court judges and clerical and secretarial assistants shall be included in the appropriation for the Supreme Court of Appeals. The family court administration fund, heretofore created as the family law master administration fund, is continued as a special account in the state Treasury. The fund shall operate as a special fund administered by the State Auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of family courts. All agencies or entities receiving federal matching funds for the services of family court judges and their staff, including, but not limited to, the commissioner of the Bureau for Child Support enforcement and the Secretary of the Department of Human Services, shall enter into an agreement with the administrative office of the Supreme Court of Appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family court judges and the program staff shall be paid into the family court administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

§51-2A-22. Family court fund.

The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all amounts directed to be paid to the family court fund under any provision of this code to the state Treasurer for deposit in the state Treasury to the credit of a special revenue fund known as the "family court fund" and created by prior enactment of former section twenty-three, article four, chapter forty-eight-a of this code. All moneys paid into the state Treasury and credited to the "family court fund" shall be used by the administrative office of the Supreme Court of Appeals solely for paying the costs associated with the duties imposed upon the family courts under the provisions of this article or under chapter forty-eight of this code which require activities by the family court judges or members of their staff which are not subject to being matched with federal funds or subject to reimbursement by the federal government. Such moneys shall not be treated by the Auditor and treasurer as part of the general revenue of the state. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2002, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

§51-2A-23. Operative dates; terminology.

(a) Except as provided in subsection (b) of this section, the provisions of Enrolled Senate Bill No. 5007, passed during the fifth extraordinary session of the 2001 Legislature, become operable on January 1, 2002. It is intended that the family law master system in existence on July 1, 2001, will continue to function under the prior enactment of this article, notwithstanding the passage of Enrolled Senate Bill No. 5007, until January 1, 2002, when the existing family law master system is replaced with the system of family court judges provided for in this article.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of section five of this article providing for the initial appointment of family judges by the Governor become operable on October 1, 2001.

(c) After the effective date of this article, whenever the terms "master", "law master" or "family law master" appear in this code, the terms shall have the same meaning as "family court judge."

§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: *Provided*, That any appeal of a judgement or final order entered by a family court in a domestic violence proceeding pursuant to §48-27-101 *et seq.* shall first be made to a circuit court.

(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: *Provided*, That a circuit court retains jurisdiction to review a judgement or final order issued by a family court in a domestic violence proceeding pursuant to §48-27-101 *et seq.* of this code.

§51-3-1. Seals of courts.

For every court without one, the Governor shall provide a seal to be deposited with the clerk of such court.

WV Legislature

§51-3-2. Use of private seal.

Until provided with an official seal, every clerk of such court may use his private seal or scroll by way of seal, in cases where the use of the seal is required by law or usage; and whenever so used, his attestation of the instrument, record or copy to which it is annexed shall set forth the fact that he is not provided with an official seal, and shall have the same force and effect as if an official seal was annexed.

WV Legislature

§51-3-3. Jurisdiction over watercourses.

When any river or watercourse lies between any counties in this state, the circuit and county courts and justices for the counties on each side, respectively, shall have concurrent jurisdiction over so much thereof as is opposite said counties. And the circuit and county courts and justices for counties lying on the waters bounding the state shall have jurisdiction respectively over such waters opposite said counties, so far as the jurisdiction of this state extends.

WV Legislature

§51-3-4. Records.

The orders of every court shall be entered in a book or kept digitally by the clerk of court.

WV Legislature

§51-3-5. Attending officer.

The Supreme Court of Appeals shall not be attended by any sheriff, but every circuit court, county court, and other court of record of any county shall be attended by the sheriff of the county in which it is held, who shall act as the officer thereof.

WV Legislature

§51-3-6. Citizenship and taxpaying not ground for disqualification of judge, sheriff or other court officer.

No judge of any court, and no sheriff or other officer of a court, shall be disqualified from performing his official duties with respect to any cause by reason of the fact that he is a citizen and taxpayer of a county, district, school district or municipal corporation which is interested in, or a party to, such cause.

WV Legislature

§51-3-7. Place of sessions of courts of county; destruction of courthouse.

Every circuit court, county court and other court of record of any county shall be held at the courthouse of such county, except where some other place is prescribed by law or lawfully appointed. When the courthouse of a county is destroyed or is not in a condition to be occupied, such court shall hold its sessions at such places as may be appointed by order of the county court. A copy of such order or warrant shall be posted by the clerk of the county court at the front door of his office, at the courthouse door, unless the courthouse has been destroyed, and at the place so appointed.

§51-3-8. Change of place or time of session by Governor.

Whenever, by reason of the destruction of the building in which the Supreme Court of Appeals was held, or by reason of any building in which any courts are appointed to be held being in the possession of, or threatened by, a public enemy, or infected with a contagious disease, it shall seem to the Governor necessary, he shall, by proclamation, appoint a place at which such courts shall be held, so long as such reason may continue, and, when the circumstances require it, may postpone the time for holding the courts. A copy of such proclamation shall be sent to the clerk and to each of the judges of any such court, and to the president of any such county court.

§51-3-9. Limitation of §§51-3-7 and 51-3-8.

No such place of session for a circuit court, county court, or other court of record of any county, shall be without the limits of the county in which it is to be held; and when such place is appointed because of the destruction of the building in which the Supreme Court of Appeals was held, the new place of session shall be within the same town as the old.

WV Legislature

§51-3-10. Opening after day fixed.

Though court be not held on the first day of a term, it may nevertheless be opened on any subsequent day; provided, in the case of any court of record for any county, the same be done before four o'clock in the afternoon of the third day. If, after a court is opened, it fails to sit on any day, it may nevertheless sit on any subsequent day of the term: Provided, That in the case of any court of record for any county, there be not more than thirty consecutive days of such failure.

WV Legislature

§51-3-11. Effect of changing time or place of session.

When the place for holding any court, or the day for commencing any term, is changed, or when a court fails to sit on any day appointed for it, or to which it may have adjourned, or when, for any reason, no court shall be held on any day within a term thereof, there shall be no discontinuance, but every notice, recognizance or process, given, taken or returnable to any such day or to any day between that day and the next that the court may sit, or to the day and place as it was before such change, and all matters ready for the court to act upon if it had been held on any such day, shall be in the same condition and have the same effect as if given, taken or returnable, or continued, to the substituted term or place, or to the next day of the same term that the court may sit, or to the next court in course, as the case may be.

§51-3-12. Adjournments.

Any court of record may, at any term, whether regular, adjourned or special, adjourn from day to day until the business before it is dispatched, or until the end of its term.

WV Legislature

§51-3-13. Power of judges of circuit courts to act during vacation of court.

The limitations upon the powers of circuit court judges to act in or during the vacation of the court as heretofore existed, either at common law or as may exist elsewhere in this code, to the contrary notwithstanding, a judge of a circuit court may do any act or take any proceeding in any action or proceeding, whether civil, criminal or otherwise, which is instituted or pending before the court during the vacation of such court to the same extent as such judge could act during the term of such court.

WV Legislature

§51-3-14. Court security fund.

(a) The offices and the clerks of the magistrate courts and the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs received for the Court Security Fund in accordance with the provisions of sections one and two, article three, chapter fifty of this code and section eleven, article one, chapter fifty-nine of this code for deposit in the state Treasury to the credit of a special revenue fund to be known as the Court Security Fund, which is hereby created under the Department of Military Affairs and Public Safety. The Court Security Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund. All moneys collected and received and paid into the state Treasury and credited to the Court Security Fund shall be expended by the board exclusively to implement the improvement measures agreed upon in accordance with the security plans submitted pursuant to section sixteen of this article and in accordance with an appropriation by the Legislature and to pay expenses of the Department of Military Affairs and Public Safety in administering this fund, which expenses may not in any fiscal year exceed the lesser of three percent of the funds deposited into the court security fund or \$30,000. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes upon appropriation by the Legislature.

(b) Notwithstanding any provision of this code to the contrary, after June 30, 2000, the court security board shall transfer such amounts from the Court Security Fund as may, from time to time, be directed by the Legislature in an appropriation act to the Domestic Violence Legal Services Fund created in section four-c, article two-c, chapter forty-eight of this code. Any moneys transferred to the Domestic Violence Legal Services Fund pursuant to the provisions of this section shall be expended for the purposes specified in said section.

§51-3-15. Court security board, terms.

(a) There is hereby created a court security board who shall make decisions on how the money in the court security fund is to be spent to enhance the security of courts. The board shall consist of seven members and the administrative director of the Supreme Court of Appeals who shall serve ex officio and be the chair. The board shall be appointed as follows: One circuit court judge appointed by the judicial association; one magistrate appointed by the magistrate's association; one family law master appointed by the family law master's association; one member of the bar appointed by the president of the West Virginia State Bar; one representative of counties appointed by the West Virginia Association of Counties; one representative of sheriffs appointed by the West Virginia sheriffs association; and one representative of the State Police appointed by the secretary of the Department of Military Affairs and Public Safety.

(b) The members of the board shall each serve terms that commence on July 1, 1996. Of the initial appointments to the board, two shall serve for two-year terms, two shall serve for three-year terms and two shall serve for four-year terms. Thereafter, each appointment shall be for a four-year term commencing upon the expiration of his or her previous term or of his or her predecessor's term. No member may be appointed for more than three consecutive terms. Vacancies shall be appointed in a like manner for the balance of an unexpired term.

(c) The board shall compile and keep a list of able and available law-enforcement officers who have obtained certification in compliance with the provisions of section five, article twenty-nine, chapter thirty of this code and who have maintained all necessary qualifications and firearms certifications to enable them to serve as bailiffs in court facilities. The board shall make the list available to all county sheriffs for their use in recruiting and hiring temporary, part-time or occasional bailiffs to exercise all the powers and duties of bailiffs in the court facilities in their counties.

§51-3-16. Security plans; approval by court security board; awards; training.

(a) The sheriff of each county in conjunction with the circuit judges, magistrates and family law master may develop a security plan to enhance the security of all the court facilities in use in the county and submit said plan to the court security board.

(b) Each security plan shall include, but not be limited to:

(1) An assessment of the existing security measures in place and any problems or shortcomings with the existing procedures;

(2) A description of how the county responds to court security emergencies and whether the response is adequate;

(3) A prioritized listing of equipment or personnel, or both, needed to improve the security of the court facilities in the county, including cost estimates for such equipment and personnel;

(4) A description of the physical locations of court facilities around the county and a discussion of whether changes or consolidation of space could improve court security in the county; and

(5) An assessment of the training needs for bailiffs currently employed in the county or for additional bailiffs and the options for securing the necessary training.

(c) Each plan prepared under this section is subject to approval by the court security board. Any plan rejected by the court security board shall be returned to the county with a statement of the insufficiencies in such plan. The county shall revise the plan to eliminate the insufficiencies and resubmit it to the court security board.

(d) Upon receipt of the plans the court security board shall meet at least twice a year to review the plans and to award money from the court security fund to the circuit clerk, county commission or county sheriff to be used solely and exclusively to purchase equipment, hire personnel or make other identified expenditures in accordance with the plan. The board shall develop an application form and establish criteria to assist them in making the decisions on which applications will receive money and how much money will be awarded. Once an award has been made, the recipient will have a fixed amount of time in which to execute the expenditures described in their plan. The board will set forth in writing the amount of the award, the time frame for accomplishing the plan objectives and the requirement that any unexpended money be returned to the board for deposit in the court security fund. The award or decision not to award these funds shall not relieve any person or office of their duty or obligation to provide security services to courts in this state.

(e) The board is authorized to award money from the court security fund to be used by the counties for costs and expenses of training for bailiffs. The board may establish minimum standards for training and it may designate specific agencies or institutions approved for administering such training.

§51-3-17. Promulgation of legislative rules.

The board shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code effectuating the purposes and intent of sections fourteen, fifteen and sixteen of this article. Such rules shall include, but shall not be limited to, operating procedures for the board and accounting for expenditures by the board.

WV Legislature

§51-3-18. Expeditious filling of judicial vacancies.

(a) The Legislature finds that when judicial offices created under the Constitution and laws of the state are vacant for extended periods of time, the proper functioning of the judicial branch of the government is impeded. The Legislature further finds that when a vacancy in a judicial office is to be filled by appointment, it is in the public interest that any questions regarding the qualifications or eligibility of the person nominated or appointed to fill the vacancy be determined expeditiously.

(b) When, pursuant to the provisions of section seven, article VIII of the Constitution of West Virginia, the Governor appoints a person to fill a vacancy in the office of Justice of the Supreme Court of Appeals or in the office of judge of the circuit court, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment by the Governor.

(c) When, pursuant to the provisions of section ten, article VIII of the Constitution of West Virginia and the general laws adopted thereunder, a person is appointed to fill a vacancy in the office of magistrate, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment.

(d) When, pursuant to the provisions of section sixteen, article VIII of the Constitution of West Virginia, the Governor appoints a person to fill a vacancy in the office of judge of the family court, no suit or action challenging the qualifications or eligibility of the person so appointed, if it be based upon any fact or circumstance in existence at the time of the appointment, will be cognizable in any court of this state unless it be brought within twenty days after the appointment by the Governor.

(e) Following a judicial appointment, if no suit or action is commenced within the time specified above, or if, in a suit having been timely brought, it is finally adjudged that the appointee is qualified and eligible to hold the office to which he or she has been appointed, then the appointee may take the oath of office and thereafter execute the office for the unexpired term to which he or she has been appointed, subject to removal under section eight, article VIII of the Constitution of West Virginia, in the case of a judge of the Supreme Court of Appeals, the circuit court or the family court, only by impeachment, and in the case of a magistrate, in the manner provided by general law for removal of a magistrate.

(f) An action timely brought to challenge the qualifications or eligibility of an appointee to judicial office shall be given priority over all other actions on the docket of the court in which the action is brought.

(g) Nothing contained in this section is intended by the Legislature to interfere with the

authority of the Supreme Court of Appeals to discipline or retire judges or magistrates as that authority is set forth in the Constitution of West Virginia and in rules adopted by the Supreme Court of Appeals pursuant to the Constitution of West Virginia.

(h) The Legislature declares that the offices of magistrate, judge of the family court, judge of the circuit court and Justice of the Supreme Court of Appeals are elective in nature and are all "offices to be filled by election by the people" within the meaning of the exceptions clause of section fifteen, article VI of the Constitution of West Virginia, which clause describes the kind and character of the offices thereby removed from the operation of the prohibitory clause and not the method by which the offices are to be filled.

§51-3-19. Courthouse security officers; arrest authority; concealed-carry authority; requirements for participation; authorization to carry firearms concealed consistent with federal law.

(a) In furtherance of enhanced courthouse security for court personnel, litigants, and the general public, courthouse security officers charged with effecting courthouse security may arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure occurring within a courthouse while the courthouse security officer is engaged in his or her official duties;

(b) For purposes of subsection (a) of this section, the arrest authority of courthouse security officers is consistent with that of a county deputy sheriff;

(c) In any judicial circuit where there is an order in effect authorizing courthouse security officers to carry a firearm, the circuit court may also authorize, consistent with the provisions of this section, qualifying courthouse security officers to carry a concealed firearm for self-defense purposes pursuant to 18 U.S.C. § 926B, upon the following criteria being met:

(1) The supervising authority of the courthouse security officer shall require courthouse security officers desiring to participate to regularly qualify in the use of firearms with standards therefor which are equal to or exceed those required of sheriff's deputies in the county in which the courthouse security officers are employed;

(2) The supervising authority of the courthouse security officers shall issue photographic identification and certification cards which identify the courthouse security officers as law-enforcement employees of the supervising entity pursuant to the provisions of §30-29-12 of this code;

(3) Any policy instituted pursuant to this section shall include provisions that:

(A) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of his or her authority to participate in the program;

(B) Preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm; and

(C) Prohibit persons from carrying a firearm pursuant to this subsection while in an impaired state as defined in §17C-5-2 of this code; and

(4) A courthouse security officer who participates in a program authorized by this section is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition for use when not engaged in his or her official duties.

(d) It is the intent of the Legislature in enacting this section during the 2019 regular session of the Legislature that active courthouse security personnel meeting all the requirements of this section to also meet the requirements of the federal Law-Enforcement Officers Safety Act, 18 U.S.C. § 926B.

(e) The provisions of this section shall become effective July 1, 2020.

WV Legislature

§51-3-20. Judicial officer education and training.

(a) The Supreme Court of Appeals may, in its discretion, pay a newly appointed or elected circuit judge, family court judge, or magistrate per diem compensation and expenses for attending any training and education session prior to taking the oath of office and beginning his or her term.

(b) The Supreme Court of Appeals may compensate the judicial officers specified in subsection (a) of this section up to a rate equivalent to the daily per diem rate of senior status circuit judges, senior status family court judges, or senior status magistrates for each required day of attendance, plus travel expenses.

§51-4-1. Where clerks' offices to be kept.

The clerk's office of the Supreme Court of Appeals shall be kept at the seat of government, unless such court shall direct it to be kept elsewhere. The clerks' offices of the circuit court and county court of every county shall be kept at the courthouse of such county, unless there shall have been a failure to provide such offices there, in which case they may be kept at such other place within the county as the respective courts may direct.

WV Legislature

§51-4-2. Inspection of records and papers; copies.

The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.

WV Legislature

§51-4-3. Preservation and destruction of papers; microphotography and electronic storage.

All papers lawfully returned to or filed in the clerk's office shall be preserved therein, subject to the conditions set out herein, until legally delivered out.

Notwithstanding any other provision of this code to the contrary, the clerk may destroy all documents, records, instruments, books, papers, depositions and transcripts in any action or proceeding in the circuit court or other court of record, or otherwise filed in his office pursuant to law, provided that:

(a) Destruction is done in accordance with a "Record Retention Schedule" to be adopted, promulgated and amended, from time to time, by the Supreme Court of Appeals; and

(b) The clerk maintains for the use of the public a microphotographic film or electronic storage media record of all documents required to be permanently preserved under the "Record Retention Schedule," together with an index and a mechanical or electronic device by which such microphotographic film or electronic storage media record may be conveniently examined. The clerk shall promptly seal and store at least one original of each microphotographic film or electronic storage media record in such manner and place as will reasonably assure its preservation indefinitely against loss, theft, defacement, intentional alteration, fire or other destruction. Any electronic method used must provide an exact copy of each document so stored and must be secure to the point that an attempt to alter a document is readily recognized.

A photographic reproduction or electronic media reproduction of any of the records described in this section, the negative or film or electronic record of which has been certified by the clerk in charge of such reproduction as being an exact replica of the original, shall be received in evidence in all courts, and in hearings before any officer, board or commission having jurisdiction or authority to conduct such hearings, in like manner as the original.

§51-4-4. Removal of records or papers out of county; penalty.

None of the records or papers of a court shall be removed by the clerk, nor allowed by him or by the court to be removed, out of the county wherein the clerk's office is kept, except on an occasion of invasion or insurrection, actual or threatened, when, in the opinion of the court, or, in a very sudden case, of the clerk, the same will be endangered, after which they shall be returned as soon as the danger ceases; and except in such other cases as are specifically provided by law, or by general order of the court permitting the removal or transfer thereof to counties within his circuit; or to another circuit in cases being heard by a visiting or special judge. In such cases of removal or transfer the clerk of the court from which such papers and records are removed shall take and preserve an appropriate written receipt therefor. Any clerk violating this section shall forfeit \$600. However, this section shall not be construed as to prevent a judge of a circuit court from taking files of papers from any county of his circuit, or directing the clerk to send such files to him when he needs to use the same.

§51-4-5. Authority to administer oath.

Any clerk of a court, or his deputy, may administer an oath in any case wherein an affidavit is necessary or proper.

WV Legislature

§51-4-6. Preparation of bonds.

Every clerk shall prepare in a proper manner any bond to be taken by or given before him or his court or the judge thereof in vacation.

WV Legislature

§51-4-7. Transmission of copies of certain records to county clerk; recordation; penalty.

The clerk of the court wherein there is any partition of, or assignment of dower in, or any recovery of, land under any judgment, decree or order, shall transmit, to the clerk of the county court of each county wherein such land is, a copy of such judgment, decree or order, and of the order confirming the same, together with such description of the land as may appear in the papers of the cause, and the report of such partition or assignment. Such clerk shall record the same in his deed book, and index it in the name of the person who had the land before, and also in the name of the person who became entitled under such partition, assignment or recovery. Every such record shall be as effectual, in cases of partition, to convey the legal title of such land to the person to whom the same is assigned by the report of the commissioners and decree of the court as deeds of partition would be if duly made by the parties. A clerk failing to perform any duty required of him by this section shall forfeit not less than twenty nor more than \$100.

§51-4-8.

Repealed.

Acts, 1992 Reg. Sess., Ch. 116.

WV Legislature

§51-4-9.

Repealed.

Acts, 2015 Reg. Sess., Ch. 57.

WV Legislature

§51-4-10. Duplicate certificate of allowance; penalty.

There shall be no duplicate certificate of any allowance of a court to be paid out of the treasury, unless the court, upon proof, by the oath of the party or otherwise, of the loss or destruction of the original certificate, shall order a duplicate, which shall show on its face that it is a duplicate issued by order of the court. Any clerk who shall issue a duplicate otherwise shall forfeit \$100.

WV Legislature

§51-4-11.

Repealed.

Acts, 2015 Reg. Sess., Ch. 57.

WV Legislature

§51-4-12.

Repealed.

Acts, 1998 Reg. Sess., Ch. 88.

WV Legislature

§51-4-12a. Free recordation of discharges, other than dishonorable, and certificates of satisfactory service; free issuance to veterans and dependents of copies of certain records.

A discharge, other than dishonorable, from the Armed Forces of the United States, and a certificate of satisfactory service in said Armed Forces held by any and all persons, shall be recorded by a county clerk in a special record book, free of any and all fees or costs therefor. This book shall be kept on file in the office of the clerk of the county court of the county in which the person holding such discharge or certificate resides: Provided, That upon application to the vital statistics department, or any other agency authorized to issue birth certificates in this state, the original discharge or certificate, or a certified copy from the clerk's office, where same is recorded, shall be taken as proof of the date of birth of the veteran for all purposes, and no other or further proof shall be required.

The county clerk of any county shall furnish copies of records of a discharge, other than dishonorable, certificate of satisfactory service, marriage, divorce, adoption, birth or death, which he may have in his possession, without fee, to veterans of any war, soldiers in service, or the dependents of such veterans or soldiers, when these records are necessary to obtain benefits from the federal or state governments.

§51-5-1. Appointment, removal and powers of commissioners.

Each circuit court and every other court of record now existing, or which may hereafter be established, having jurisdiction to try or hear suits in chancery or actions at law, may from time to time appoint not more than four commissioners in chancery or for stating accounts, except that the circuit court of any county the population of which exceeds thirty thousand and is less than fifty thousand may appoint not more than six of such commissioners, and that the circuit court of any county the population of which exceeds fifty thousand may appoint not more than eight of such commissioners, who shall be removable at its pleasure, with power to take depositions and to swear and examine witnesses and to certify their testimony. The judge of any court empowered to appoint commissioners in chancery or for stating accounts may in vacation appoint such commissioners with as much effect as if appointed by the court, and they shall have like powers.

§51-5-2. Oath of commissioner.

Every such commissioner, before proceeding to act, shall take the oath prescribed by section 5, article IV of the Constitution of this state.

WV Legislature

§51-6-1. Appointment; term; duties; authority.

Each circuit court, and every other court of record having jurisdiction to try or hear suits in chancery or actions at law, may appoint a general receiver of the court, who shall hold his office at its pleasure, and whose duty it shall be, unless it be otherwise specially ordered, to receive, take charge of, and invest in such stock or other security as the court may order, and in the manner required by such order, all moneys paid into court, or into bank or other place of deposit, under any judgment, order or decree of such court, and standing subject to its orders; and also to pay out or dispose of the same as the court may order or decree; and to this end the general receiver shall have authority to check for, receive and give acquittances for, all such moneys.

§51-6-2. Powers and duties as to securities.

The certificates of stock or other securities in which, under the orders of the court, such investments may be made, shall be taken in the name of the general receiver, as such, and be kept by him unless otherwise specially ordered; and he shall have the power to sell, transfer or collect the same, when ordered by the court to do so, but not otherwise; and in case of his death, resignation or removal, his successor, or any person specially appointed by the court for that purpose, shall have like power.

WV Legislature

§51-6-3. Dividends and interest.

The general receiver shall collect the dividends and interest on all certificates of stock or other securities in which investments have been or may be made under the orders or decrees of his court, or under the provisions of this article, when and as often as the same may become due and payable thereon, and shall invest or dispose of the same as the court shall order or decree.

WV Legislature

§51-6-4. Interest on money loaned.

The interest on all loans made to individuals under an order of court shall become due and payable on January 1, in each year, until the principal is paid; and unless the interest be paid at the time it becomes due and payable compound interest shall be charged thereon to the borrower from such time until payment thereof is made.

WV Legislature

§51-6-5. Receiver's liability for funds and interest thereon.

He shall be liable for all moneys which may come into his hands as general receiver; and if at any time he shall fail to invest any sum of money, as required by the preceding sections, for the space of sixty days after the same shall be, or ought to have been, received by him or shall fail to pay out any sum of money, when required by the court to pay the same, for the space of sixty days after it shall come into his hands for the purpose of such payment, he shall be charged with interest thereon from the day when such money was, or ought to have been, received by him until such investment or payment is made, unless, upon good cause shown, the court shall order otherwise.

§51-6-6. Receiver's bond.

Said general receiver shall receive or accept no money or securities until he shall have given bond with good security approved by the court or the judge thereof in vacation, conditioned as provided for official bonds, and in such penalty as the said court or judge may prescribe, but sufficient at least to cover the probable amount of money and securities that may come into his possession. If at any time it appears to the said court or judge that the penalty of the bond or bonds is not sufficient to cover the probable amount of money and securities that may come into the possession of the general receiver, or that for any reason, new or additional bonds should be given by him the said court or the judge thereof in vacation shall require the said general receiver to immediately give new or additional bonds in such penalty as the said court or judge may prescribe. The said general receiver shall not receive or accept any money or securities in excess of the penalty of the bonds given by him as aforesaid and remaining in full force and virtue.

If the said general receiver shall give bond as aforesaid with an indemnity or surety company having an unrevoked license or permit from the Insurance Commissioner authorizing it to engage or continue in business in this state, as surety thereon, the premiums for effecting or continuing such bond shall be treated as a cost or expense of administering the said receivership estate, and paid by the said general receiver out of the funds in his hands as ordered by the said court or judge.

In the event the said general receiver shall give any bond as aforesaid with a surety who is not an indemnity or surety company as aforesaid, he shall give a new bond at least once in every two years after his appointment, and at the time of giving such new bond the surety or sureties thereon shall appear before the said court or judge and be examined under oath in order that the said court or judge may determine the sufficiency of the surety on the said bond.

§51-6-7. Receiver's compensation.

He shall receive as compensation for his services such percent of the amount received and invested or paid out by him in each case as the court may direct.

WV Legislature

§51-6-8. Accounts and reports.

He shall keep an accurate and itemized account of all moneys received, invested and paid out by him showing the respective amounts to the credit of each case in the court, and designated in the items, the judgments, orders or decrees of the court under which the respective sums have been received, invested or paid out. On the first day of each regular term of the court, he shall report to such court a general statement showing the balance to the credit of each case in the court in which money has been received by him the manner in which it is invested, the amounts received, invested or paid out since his last report, and the whole amount then invested and subject to the future order of the court; and he shall, at any time when required by the court so to do, furnish a statement of the amount subject to the order of the court in any case pending therein.

§51-6-9. Failure to keep accounts or make statements.

If he shall fail to keep the account, or to make out and return the statements required by the next preceding section of this article, he shall be subject to a fine of not less than \$100 nor more than \$1,000, to be imposed by the court at its discretion; and the condition of his official bond shall be taken and held to embrace the liability of himself and his sureties for any such fine.

WV Legislature

§51-6-10. Settlement of accounts of general receiver and others who hold money subject to order of court; examination of bonds and securities.

Each circuit court, and every other court which has appointed a general receiver, shall, at its first regular term after January 1, in each year, by an order entered of record, require one of its commissioners in chancery, other than the commissioner who may have been appointed general receiver thereof, to state and settle the accounts of the general receiver of such court, and, unless otherwise provided, of all persons who have money subject to the future order of the court, and which then remains undisbursed. The clerk of the court shall furnish to such commissioner a copy of the order so made, with a list appended thereto exhibiting the names of such receiver and persons. The commissioner shall summon such receiver and persons, or the personal representatives of such of them as are dead, before him and audit, state and settle their accounts, and report the same to the circuit court at its next term after such order has been made. He shall also cause the bond of the receiver of the court, and the bonds or other securities given for any money loaned under the order of the court, to be produced before him and shall ascertain if the obligors in such bonds, or if such other securities, are sufficient, and report thereon to the court at the times before mentioned.

§51-6-11. Examination of reports; recordation; new bond or additional security; effect.

The court shall examine the reports required by the preceding section, when the same are made to it, and, if satisfied of the correctness thereof, shall order them, by indorsement thereon, to be recorded. If it appear from the report of the commissioner that any bond of a receiver, or any bond or other security given by any person to whom money has been loaned under its order, is insufficient, the court shall order additional security to be given, or another bond to be executed before it, in such penalty as may seem right, and with sufficient sureties. But the execution of such new bond shall not discharge the sureties in any prior bond from their liability for acts of the principal obligor done previously to the execution of such new bond.

§51-6-12. "Receivers' book"; recordation of reports; inspection.

The clerk of each circuit court shall procure, at the expense of his county, a book to be called the "receivers' book," wherein he shall record such reports, when approved by the court; and he shall make an index thereto, showing the style of the suit or other proceeding in which money has been paid as aforesaid, and the page where any report respecting the same has been recorded. Such book shall be open to the examination of any person interested, or his counsel, without the payment of any fee therefor.

§51-6-13. Charges of clerks and commissioners.

For recording the reports required by section ten of this article the clerks may charge, in each case mentioned in such report, a fee of 50¢, to be paid out of the fund in court; and such commissioners may charge for the reports made under said section the same fees allowed by law to commissioners in chancery for other reports, to be paid out of the funds in court, and charged to the respective cases therein, in such proportion as the court shall judge right.

WV Legislature

§51-6-14. Application of unclaimed funds in hands of general receiver of circuit court.

Whenever it shall appear to any circuit court that any fund in its charge and in the hands of its general receiver, for a period of at least twenty years, will, in all probability never be claimed by anyone entitled thereto, the court may order such fund applied to any loss of or shrinkage in the investments of such general receiver due to economic condition, and may release such general receiver from any further liability on account of such fund so in his hands.

But before entering any such order, the court shall cause a notice of such intention to be given by the clerk of said court by publication thereof as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty- nine of this code, and the publication area for such publication shall be said county. If no claimant shall appear and establish a right to said fund within one year from the date of the last publication thereof, the court may take said facts to have been fully established, and shall so apply said fund.

§51-7-1. Appointment; oath; attendance at grand jury sessions.

The circuit courts of the several judicial circuits in this state, or the judges thereof in vacation, or the judges of any intermediate, criminal or common pleas court, are hereby empowered and authorized to appoint court reporters, or use electronic means approved by the Supreme Court of Appeals, to take and report, under such regulations as such judges, or any of them, may prescribe, the proceedings had and the testimony given in any case, either civil or criminal, or in any other proceeding had in such court, including the taking of testimony before the grand jury of such court for the use of the prosecuting attorney of the county, and in proceedings before the judge of such court in vacation, and otherwise to aid the judge in the performance of his or her official duties.

The appointment of such reporter may be made by the judge of such court by an order entered of record, and the reporter so appointed shall be designated the "official reporter" of the court for which he or she shall be appointed.

Such reporter, when appointed, shall be qualified under oath, and shall be authorized to attend the sessions of the grand jury, but shall retire from such session when directed by the foreman, or a majority of the grand jury, or when ordered to do so by the court, and when the grand jury desires to consult or vote upon any matters before them.

§51-7-2. Duty to take shorthand notes.

It shall be the duty of such reporter to take full shorthand notes of the testimony and proceedings in which his services may be required, and such notes shall be deemed and held to be official and the best authority in any matter in dispute.

WV Legislature

§51-7-3. Compensation for attending court and taking notes.

The official reporter shall receive, for his or her services and expenses in attending the court or judge and in taking the notes provided for in section two of this article, such salary or other compensation as the court or judge, in accordance with the rules of the Supreme Court of Appeals, may allow. If such salary be allowed, it shall be paid at least twice per month, out of the State Treasury. If no such salary be allowed, such other compensation and expenses as may be allowed in civil cases shall be certified by the court or judge to the Auditor and the same shall be paid out of the State Treasury. Such other compensation and expenses in felony and, misdemeanor cases shall be certified to the Auditor and paid out of the State Treasury. The salary or other compensation provided for in this section shall not be deemed to include the making of typewritten transcripts as provided for in section four of this article.

§51-7-4. Transcript of notes; fees; authenticity; transcript for judge in criminal cases.

The reporter shall furnish, upon request, to any party to a case, a typewritten transcript of the testimony or other proceedings, which shall be upon paper measuring eight and one-half inches in width and eleven inches in length, with margins of one-half inch on the right side and bottom, one inch at the top and one and one-half inches on the left, with the page filled as completely as practicable, with at least twenty-four complete lines on each page, with no more than double spacing used between lines, with no more than five spaces used for indentation from the left margin, with no larger than ten point pica type being used, and shall certify the same as being correct and shall be paid therefor, by the party requesting the transcript, at the rate of \$2.85 for each page so transcribed and stamped "original"; and for each copy of the transcript stamped "copy", ordered at any time, he or she shall be paid \$1 for each page so furnished: Provided, That if any "original" transcript does not conform with the specifications set forth in this section, the party requesting the transcript may not be obligated to pay for the transcript: Provided, however, That the copy of the transcript may be provided either on disc or with multiple transcript pages condensed on each page if the court reporter can produce such a disc or copy and if the party requesting the copy specifically asks for a disc or a condensed page transcript: Provided further, That the reporter shall be paid at the same rate for each page as the copy rate for the original for a disc or for a condensed page transcript.

A transcript of the testimony or proceedings, when certified by the official reporter and by the judge of the court, shall be authentic for all purposes, and shall be used by the parties to the cause in any further proceeding therein wherein the use of the same may be required. An original transcript shall, upon completion and certification, be filed with the circuit clerk. The original transcript may be used, without further authentication, in making up the record on appeal, as provided in sections thirty-six and thirty-seven, article six, chapter fifty-six of this code. A certified copy of the original transcript so filed shall be delivered to the requesting party. In all cases of appeal the reporter shall also make a copy of the transcript, which copy shall be filed in the office of the clerk of the court in which the trial or proceedings were had, to be used, if necessary, in making up the record on appeal, and, if so used, the clerk may not be entitled to any fee for that part of the record. If, upon appeal or writ of error, the judgment, decree or order entered in the cause be reversed, the cost of the transcript shall be taxed as other costs; and if the transcript be requested or required for the purpose of demurring to the evidence, the cost thereof shall be taxed in favor of the party prevailing on the demurrer.

It shall also be the duty of the reporter in any criminal case, upon the request of the court or the judge thereof, and for his or her use, to furnish a transcript of his or her notes of the testimony and proceedings without extra charge.

§51-7-5. Salary in lieu of all other compensation.

If neither of the methods of compensation provided for in section three of this article be adopted, a salary may be allowed in lieu of all other compensation, which shall be paid at least twice per month, out of the State Treasury, in such proportions as the court or judge may fix in accordance with the rules of the Supreme Court of Appeals. All fees for services rendered by the official reporter in the discharge of his or her duties as such, when he or she is allowed a salary under the provisions of this section, may be collected, and shall, when collected by the sheriff or official reporter, be paid into the State Treasury; and it shall be the duty of such reporter to make out, sign and deliver to the sheriff a fee bill in every case, civil or criminal, giving the style thereof and the amount due, and from whom, which amount may be collected or levied for by the sheriff, and such fee bill shall have the force and effect of an execution when levied. An official reporter compensated under the provisions of this section shall collect the fees mentioned in section four of this article for any transcript of his or her shorthand notes of the testimony or proceedings furnished by him or her to any party, and shall pay the same over to the sheriff of the county in which the services were performed, to be by him or her accounted for and paid into the State Treasury.

§51-7-6. Reporter's fee; how taxed, paid and accounted for.

The clerk of the court in which such reporter is employed shall tax as a part of the costs a reporter's fee of not less than \$5, to be fixed by the court or judge, for each case in which such reporter was engaged. Such costs, when received by the clerk, shall be paid by him to the sheriff, who shall account for and pay such costs, in civil and misdemeanor cases, into the State Treasury.

WV Legislature

§51-7-7. Transcripts to be furnished indigent persons under conviction upon timely request; payment therefor.

In any case wherein an indigent person has filed a notice of intent to seek an appeal or writ of error as specified in section four, article four, or section four, article five, chapter fifty-eight of this code, the court, or judge thereof in vacation, upon written request of such convicted person or his counsel, presented within sixty days after the entry of such judgment, shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the testimony and proceedings of the trial, or such part or parts thereof as such convicted person or his counsel shall have indicated in his request to be necessary, to the convicted person, without charge to him for use in seeking his appeal or writ of error, and the cost of such transcript whether the case be one of misdemeanor or felony, shall be certified by the judge of the court to the Auditor of the state and shall be paid out of the treasury of the state from the appropriation for criminal charges.

§51-7-8. Transcripts to be furnished indigent persons in juvenile delinquency and child abuse and neglect proceedings upon timely request; payment therefor.

In any proceeding held pursuant to §49-4-601 through §49-4-725 of this code in which an indigent respondent or his or her counsel has filed a written request, in the manner prescribed by the Supreme Court of Appeals, evidencing an intent to appeal a decision of a circuit court in the proceeding, the court, upon presentation of a written request, presented within 30 days after the entry of the order sought to be appealed, shall authorize and direct the court reporter to furnish a transcript of the testimony of the proceeding or the part or parts of the transcript that have specifically been requested.

The court, after being sufficiently satisfied of the reasonableness of a voucher or claim submitted for payment of the cost of preparing the transcript, shall certify the cost to the State Auditor, who shall, in a timely manner, pay the court reporter's fee from appropriations to the Supreme Court of Appeals.

§51-8-1. West Virginia law library; control and management.

The state law library now in the city of Charleston shall be known as the "West Virginia law library," and shall be wholly under the control and management and in the custody of the Supreme Court of Appeals.

WV Legislature

§51-8-2. Librarian; bond; assistants; compensation.

The Supreme Court of Appeals, or the judges thereof in vacation, shall appoint a competent librarian to have immediate custody of the West Virginia Law Library under the direction of the court. Such librarian shall give bond in a penalty fixed by the court of not less than two nor more than \$5,000, with surety thereon, to be approved by the court, and conditioned as provided for official bonds. Such bond shall be deposited for safekeeping with the clerk of the court. The librarian shall be an officer of the court and shall hold his or her office and be removable at its pleasure. Vacancies in the office of librarian occurring during vacation of the court may be filled by appointment in writing made by the judges of the court, or any three of them. When, in the opinion of the court, other employees are needed for the proper protection and use of the library, it may employ such assistants as may be necessary for that purpose. The salary of the librarian and assistants shall be fixed by the court and shall be paid at least twice per month.

§51-8-3. Rules and regulations governing use of library.

The library shall be open under such rules and regulations as the court may prescribe from time to time, and it shall be the duty of the court to adopt such rules and regulations and to cause them to be published, as other rules of the court are published.

WV Legislature

§51-8-4. Control of library by court; expenses.

The Supreme Court of Appeals shall have the power and it shall be its duty, to purchase such new and additional books for the library as in its opinion shall be right and proper, and shall cause such exchanges or sales of books to be made as may be for the benefit of the library, and, in general, the court shall cause to be done and performed all things necessary and proper to keep the books of such library in good condition, and for that purpose may cause such catalogs to be made as may be necessary. All expenses necessarily incurred under the order of the court for the purposes of this article, including postage, freight and express charges, shall be paid out of appropriations for that purpose, under the order of the court.

§51-8-5. Distribution of West Virginia reports.

The state law librarian shall have charge of and make distribution of the reports of the cases decided by the Supreme Court of Appeals, after the same are printed and bound, and are approved by the reporter and the court. After any new volumes of such reports have been delivered to the librarian, not including reprints of former volumes, he shall distribute the volumes as follows: Five volumes to the Governor; one volume to the President of the Senate; one volume to the Speaker of the House of Delegates; twenty-five volumes to the Attorney General; two volumes to each judge of the Supreme Court of Appeals; one volume to each clerk to the judges of the Supreme Court of Appeals; one volume to the clerk of the Supreme Court of Appeals; one volume to the judge of each judicial circuit for each county in such judicial circuit; one volume to each of the judges of courts of limited jurisdiction; one volume to each judge of the United States district courts in West Virginia; one volume to each prosecuting attorney in this state; three volumes to the Public Service Commission; five volumes to the state road commissioner; three volumes to the State Tax Commissioner; five volumes to the library of Congress, Washington, District of Columbia; one volume to the director of Legislative Services; twenty volumes to the college of law of West Virginia University; one volume to the law library at Charles Town; one volume to the Ohio county law library at Wheeling; two volumes to the department of archives and history; one volume each to the Auditor, commissioner of agriculture, State Treasurer, Secretary of State and state superintendent of free schools; and one volume to the head of subordinate executive departments, boards, commissions and agencies at the State Capitol.

The state law librarian shall arrange, as far as possible, to exchange one volume of the West Virginia reports for a volume of the current reports of the court of last resort of each state, the District of Columbia and the territorial possessions of the United States. He may further arrange for the exchange of such volumes with law schools for law reviews, law bulletins, reports and other legal publications. All such law reviews, law bulletins, reports and other legal publications so received shall become the property of the State of West Virginia unless otherwise so designated, and shall be placed by the librarian and safely kept in the law library at the State Capitol.

The Supreme Court of Appeals, or a judge thereof in vacation of the court, may order the librarian to distribute volumes of the West Virginia reports to any university or college on written request therefor; and may order him to distribute additional volumes to any officer, judge, court, tribunal, prosecuting attorney, institution, library, board, commission or agency now entitled to one volume of such report, or any such agency hereafter created, upon written request therefor made to the court. Such volumes shall remain the property of the State of West Virginia and volumes so received by them shall be turned over to their successors in office.

The Supreme Court of Appeals, or a judge thereof in vacation of the court, on written request therefor and as such court or judge deems best, may order the librarian to distribute reprints of old volumes of the reports as replacements when requested.

The librarian is charged with and it shall be his duty to retain and keep safely five volumes of the reports in the state law library, at Charleston.

All volumes of the reports distributed as herein provided shall be sent by the librarian by mail, express, freight or otherwise as he may deem best: Provided, That such reports so distributed shall contain a receipt which, on return to the librarian, shall be kept on file.

WV Legislature

§51-8-6. Exchange of acts of the Legislature for acts of the Legislatures of other states; distribution.

The librarian shall arrange as far as possible with each of the other states for the exchange of two copies of the acts of the West Virginia Legislature for acts of the Legislature of each state, one of which copies received from each state shall be deposited in the state law library at Charleston, one copy in the library of the college of law of West Virginia University, and the other copies if any, so received from any other state, to be disposed of as the Supreme Court of Appeals shall direct.

The division of purchases, department of finance and administration, upon requisition of the librarian, shall, without cost, furnish such librarian with sufficient copies of the acts to make the exchanges provided for by this section.

§51-8-7. Accounts and reports of librarian.

The librarian shall keep full and complete account of all money transactions in connection with such library and of the receipt of all books therein, and shall perform such other duties in connection therewith as may be ordered by the court. The librarian shall make an annual report to the court within thirty days after the close of each fiscal year, in which he shall state the number of copies of reports and session acts received by him and what disposition he made thereof, and also what money came into his hands, and from what sources, during the preceding fiscal year.

§51-8-8. Authority to establish county law libraries; control of circuit judge; rules.

The Supreme Court of Appeals may establish county law libraries which once established, are wholly under the management of the circuit judge, with the assistance of the circuit clerk. The Supreme Court of Appeals may determine the appropriate number of law libraries that will be in operation as well as the location of the libraries and may expend funds for the purchase of books or other expenses necessary for the operation of the county law libraries.

All county law libraries in operation shall be kept current and the cost of the libraries, other than for provision of adequate space, shall be borne by the state and paid from the judicial branch appropriation. The county libraries shall be available for use by the public subject to reasonable rules as may be adopted by the circuit judge. County commissions shall provide adequate space for the county libraries.

§51-8-9. Accounts and reports relating to county law libraries.

The administrative director of the Supreme Court of Appeals, with the cooperation and assistance of each circuit clerk, shall keep full and complete account of all money transactions in connection with the various county law libraries and of the receipt of all books and other documents lodged in such libraries and shall perform such other duties in connection therewith as may be ordered by the Supreme Court of Appeals. Such administrative director shall make an annual report to the Supreme Court of Appeals within sixty days after the close of each fiscal year, in which he shall state the number of copies of reports, acts of the Legislature and all other books and documents received by each county law library and the disposition made thereof. Such report shall also set forth what money came into his hands during the preceding fiscal year.

§51-8-10. Law clerks.

Any circuit court heretofore authorized by special act of the Legislature to appoint a law clerk or law assistant shall continue to have such authority, and all of the provisions of any such special act or any other special acts amendatory thereof shall continue to apply, and any such law clerk or law assistant shall receive the salary most recently authorized in any such special act, until changed by such circuit court, with the approval of the Supreme Court of Appeals, by order entered of record, but such salary shall be paid out of the State Treasury.

§51-9-1. Establishment.

There is hereby established a judges' retirement system for the purpose and to be administered as hereinafter provided.

WV Legislature

§51-9-1a. Definitions.

(a) Notwithstanding any other provision of this code to the contrary, 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 family courts, circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals.

(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 retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) "Beneficiary" means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) "Board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(e) "Bona fide separation from service upon retirement" means that a retirant has completely terminated any employment relationship with the Supreme Court for a period of at least 60 consecutive days from the effective date of retirement and without a prearranged agreement to return to employment with the Supreme Court. For purposes of this definition, an employment relationship includes employment in any capacity, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis.

(f) "Employer error" means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(g) "Final average salary" means the average of the highest 36 consecutive months' compensation received by the member as a judge of any court of record of this state.

(h) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(i) "Member" means a judge participating in this system.

(j) "Plan year" means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(k) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains the applicable age as set forth in this

paragraph; or

(2) The calendar year in which he or she retires or otherwise separates from covered employment.

The applicable age is:

(A) Seventy-two, if the individual attains age 72 prior to January 1, 2023;

(B) Seventy-three, if the individual attains age 72 after December 31, 2022, and attains age 73 before January 1, 2033; or

(C) Seventy-five, if the individual attains age 74 after December 31, 2032; provided that the applicable age shall be determined in accordance with the provisions of §401(a)(9) of the Internal Revenue Code and the Treasury Regulations thereunder, as the same may be amended from time to time.

(l) "Retirant" means any member who commences an annuity payable by the plan.

(m) "Retirement system" or "system" means the Judges' Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to family court judges, circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article.

§51-9-1b. Statement of legislative intent, policy and finding.

The decision and opinion of the state Supreme Court of Appeals in the case of, which was rendered on November 7, 1984, and other decisions and opinions of that court based upon the decision have served to make substantial and fundamental changes in the retirement system for judges as established by the Legislature under the provisions of this article. These substantial and fundamental changes have served to or resulted in (i) expanding and greatly easing the requirements necessary to qualify to receive retirement annuity benefits from the system, (ii) making many persons eligible for retirement annuity benefits from the system at an earlier date than would have been the case under the provisions of the article, (iii) unjustly increasing the amount of retirement annuity benefits to be received by certain judges or justices would or will receive and (iv) altering or reducing the authority of the State Auditor as the primary administrator of the judges retirement fund and of the Governor to determine the eligibility of persons seeking to claim retirement annuity benefits from the fund and placed these functions within the province of the court administrator; thus removing the statutory authority of public officers outside the judicial branch of state government to determine the eligibility of judges and justices to receive such benefits or to see to the financial stability and soundness of the fund or to ensure fiscal accountability with respect thereto.

The Legislature hereby declares that the decision and the subsequent decisions of the Supreme Court of Appeals which were based upon the decision were not and do not constitute sound legal principles, in that they have served to rewrite contractual arrangements found to exist by the Supreme Court of Appeals in the case of v. decided on June 15, 1981, and, further, usurped the authority of the Legislature to determine or formulate the public policy of this state as required by article V, section 1 and article VI, section 1 of the Constitution of West Virginia and further usurped the authority of the Legislature to set judicial compensation.

The Legislature hereby states and finds that its intent and policy recognizes a compelling state interest is present in carrying out its Constitutional responsibilities of establishing, determining and setting reasonable compensation guidelines and amounts for judicial officers, by law, and of protecting the fiscal responsibility and soundness of the moneys required for payment into the trust fund, as a part of the judicial branch budget request, which is determined by benefits payable from the judicial retirement system, and which judicial budget request may not be reduced by the Legislature, Constitutionally.

The amendments now made to the provisions of this retirement system by the Legislature are made within the original and continuing framework of such system and with the benefits hereunder being directed toward those meeting the strict and fundamental requirements of career judicial service on the bench, of military service and service as a prosecuting attorney as granted by this article.

§51-9-2. Judges' retirement fund created; composition.

As a part of the judges' retirement system, there is hereby created a Judges' Retirement Fund which shall be made up of and into which shall be paid

- (a) Percentage contributions from salaries of judges as provided in section four of this article;
- (b) Gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund;
- (c) Specific appropriations to the fund made by the Legislature of the State of West Virginia and by any county court or courts of the state;
- (d) Interest on the investment of any part or parts of the fund;
- (e) Any other moneys, available and not otherwise expended, which may be appropriated or transferred to the fund.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; State Auditor's authority as administrator and trust fund fiduciary; refunds required, including interest; federal qualification requirements.

(a) The State Treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The Governor shall fix the amount of such bond which shall be approved as to sufficiency and form by the Attorney General and shall be filed in the office of the Secretary of State. The premium on such bond shall be paid from the fund.

(b) In a manner and to an extent consonant with sound administrative principles, the state Board of Investments shall have authority to invest such fund in interest-bearing securities of the United States of America, of the State of West Virginia and of any political subdivision thereof or such other investments as may be authorized or permitted by the provisions of article six, chapter twelve of this code.

(c) The State Auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matters incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section fifty-one of the Constitution of West Virginia. The State Auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge's retirement benefit or spousal benefit or any other substantive element of qualification supplied or certified to the State Auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges' retirement system.

(d) Through June 30, 1991, the State Auditor shall be the primary fiscal officer, responsible for the records and administration of the trust fund, including budgetary matter incident to the authority vested in him or her with respect to judicial department appropriations under article VI, section fifty-one of the Constitution of West Virginia. The State Auditor shall also, as trust fund fiduciary, independently determine anew, in a substantive sense and as a check and balance, any information concerning eligible service years, required money contributions, computation of judge's retirement benefit or spousal benefit or any other substantial element of qualification supplied or certified to the State Auditor by any other public officer, including the supreme court administrator or the chief executive, toward proper final review before issuance of a state warrant in payment of any benefit under the judges' retirement system. From July 1, 1991 and thereafter, the funds shall be administered by the Consolidated Public Retirement Board created by article ten-d, chapter five of this code.

(e) In respect of any credited service heretofore acquired under the Dostert decision and subsequent related decisions, the State Auditor shall make refund to any person heretofore

making payment to acquire such service credit, primary or derivative, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment by the Auditor or treasurer, as the case may be, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.

(f) The retirement system is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the retirement system to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements shall be effective as of the date required by federal law. The board may promulgate rules and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to section one, article ten-d, chapter five of this code to assure compliance with the requirements of this section.

§51-9-3a. Specification of actuarial assumptions.

The board at its first meeting in each calendar year or as soon thereafter as may be practicable shall adopt and specify actuarial assumptions for the system, which assumptions shall become part of the terms of this system.

WV Legislature

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

(a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the Judges' Retirement Fund six percent of the salary received by such person out of the State Treasury: Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after January 1, 1995, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund nine percent of the salary received by that person: Provided further, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on and after July 1, 2005, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the Judges' Retirement Fund ten and one-half percent of the salary received by that person: And provided further, That on and after July 1, 2013, except as provided in subsection (b) of this section, every person who is then serving or shall thereafter serve as a judge of any court of record in this state and who elects to participate in this retirement system shall pay into the Judges' Retirement Fund seven percent of the salary received. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the State Auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

(b) On and after July 1, 2014, every person who is serving or shall hereafter serve as a judge of any court of record of this state and who elects to participate in this retirement system shall contribute to the fund an amount determined by the board. This amount will be based on the annual actuarial valuation prepared by the State Actuary: Provided, That the contribution will be no less than seven percent or no more than ten and one-half percent of the participant's annual compensation.

(c) On or after July 1, 2013, and each year thereafter, the annual actuarial valuation prepared by the State Actuary for determination of all participants' contributions and the annual actuarially required contribution prepared by the State Actuary for use by the courts of this state for legislative appropriation shall be provided to the Legislature's Joint Committee on Government and Finance and the Joint Committee on Pensions and Retirement.

(d) An individual who is a leased employee shall not be eligible to participate in the system.

For purposes of this system, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or other similar organization. If a question arises regarding the status of an individual as a leased employee, the board has the final power to decide the question.

(e) In drawing warrants for the salary checks of judges, the State Auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the Consolidated Public Retirement Board to the trust fund: Provided, That on or after January 1, 1995, the amount so deducted and credited shall be nine percent of each such salary check: Provided, however, That consistent with the salary increase granted to judges of courts of record during the 2005 regular legislative session and to changes effectuated in judicial retirement by provisions enacted during the third extraordinary legislative session of 2005, on or after July 1, 2005, the amount so deducted and credited shall be ten and one-half percent of each such salary check: Provided further, That on and after July 1, 2013, except as provided in subsection (b) of this section, the amount so deducted and credited shall be seven percent of each salary check: And provided further, That on and after July 1, 2014, the amount so deducted and credited will be determined by the board.

(f) Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the Judges' Retirement Fund.

(g) Notwithstanding the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The Retirement Board is authorized to determine all questions and make all decisions relating to this section and may promulgate rules relating to contributions, benefits and service credit pursuant to the authority granted to the retirement board in section one, article ten-d, chapter five of this code to comply with Section 414(u) of the Internal Revenue Code.

(h) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its 1987 regular session who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year 1987, shall be required to pay into the Judges' Retirement Fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year 1987 and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year 1988 be considered as eligible service for any purposes of this article.

§51-9-5. Election not to participate, contribute, or be a member; authorized transfers of service credit by a judge; duplicate use of service credit prohibited.

(a) Notwithstanding any provisions of this article, any judge may in writing notify the Auditor within thirty days after he or she takes office, or, if he or she is in office, on the date this article becomes effective, then within thirty days from such latter date, that such judge elects not to become a member or make any payments or contributions to the trust fund, in which event every judge, so electing, shall not thereafter at any time be entitled to receive any retirement pay or benefits under provisions of this article, and any deduction that may have theretofore been made from the salary of such judge and paid into the fund shall be refunded without interest, to him or her by the Auditor by warrant drawn on the trust fund. Any judge who has so elected not to become a member or not to contribute, shall nevertheless thereafter be permitted to become such member, contribute and become eligible for retirement benefits by paying into the Judges' Retirement Fund all contributions such judge would have been required to pay into the fund, together with interest thereon at a rate to be determined by the State Auditor as reasonable for such prior periods, as if such judge had not previously elected not to be a member and not to contribute.

(b) There may be transfers of service credit on proper basis between the judges' retirement system and the Public Employees Retirement System, where such service credit constitutes qualified and eligible credit under the recipient system's statutes, in order to allow full flexibility of choice of option by a judge or judicial member; but in no case shall benefits be receivable from more than one of such state retirement systems, nor shall any service credit be usable more than once and then only in the finally chosen state retirement system.

§51-9-6. Eligibility for and payment of benefits.

(a) Except as otherwise provided in sections five, six-d, twelve and thirteen of this article, and subject to the provisions of subsection (e) of this section, any person who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than sixteen full years and shall have reached the age of sixty-five years, or who has served as judge of such court or of that court and other courts of record of the state for a period of sixteen full years or more (whether continuously or not and whether said service be entirely before or after this article became effective, or partly before and partly after said date, and whether or not said judge shall be in office on the date he or she shall become eligible to benefits hereunder) and shall have reached the age of sixty-five years, or who is now serving, or who shall hereafter serve, as a judge of any court of record of this state and shall have served as such judge for a period of not less than twenty-four full years, regardless of age, shall, upon a determination and certification of his or her eligibility as provided in section nine hereof, be paid from the fund annual retirement benefits, so long as he or she shall live, in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office and as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments: Provided, That such retirement benefits shall be paid only after such judge has resigned as such or, for any reason other than his or her impeachment, his or her service as such has ended: Provided, however, That every such person seeking to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of twelve years as a sitting judge of any such court of record: Provided further, That every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record.

(b) Notwithstanding any other provisions of this article with the exception of sections twelve-a and twelve-b, any person who is now serving or who shall hereafter serve as a judge of any court of record of this state and who shall have accumulated sixteen years or more of credited service, at least twelve years of which is as a sitting judge of a court of record, and who has attained the age of sixty-two years or more but less than the age of sixty-five years, may elect to retire from his or her office and to receive the pension to which he or she would otherwise be entitled to receive at age sixty-five, but with an actuarial reduction of pension benefit to be established as a reduced annuity receivable throughout retirement: Provided, That every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, who subsequently seeks to retire and to receive the annual retirement benefits provided by this subsection must have served a minimum of fourteen years as a sitting judge of any court of record. The reduced percentage (less than seventy-five percent) actuarially computed, determined and established at time of retirement

in respect of this reduced pension benefit shall also continue and be applicable to any subsequent new annual salary set for the office from which such judge has retired and as such salary may be changed from time to time during the period of his or her retirement.

(c) In determining eligibility for the benefits provided by this section, active full-time duty (including leaves and furloughs) in the Armed Forces of the United States shall be eligible for qualification as credited military service for the purposes of this article by any judge with twelve or more years actual service as a sitting judge of a court of record, such awardable military service to not exceed five years: Provided, That in determining eligibility for the benefits provided by this section for every individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, active full-time duty (including leaves and furloughs) in the Armed Forces of the United States qualifies as credited service for the purposes of this article for any judge with fourteen or more years actual service as a sitting judge of a court of record of this state, the awardable military service not to exceed five years.

(d) If a judge of a court of record who is presently sitting as such on the effective date of the amendments to this section enacted by the Legislature at its regular session held in the year 1987 and who has served for a period of not less than twelve full years and has made payments into the Judges' Retirement Fund as provided in this article for each month during which he or she served as judge, following the effective date of this section, any portion of time which he or she had served as prosecuting attorney in any county in this state shall qualify as years of service, if such judge shall pay those sums required to be paid pursuant to the provisions of section four of this article: Provided, That any term of office as prosecuting attorney, or part thereof, commencing after December 31, 1988, shall not hereafter in any way qualify as eligible years of service under this retirement system. For purposes of this article, eligible service as a "prosecuting attorney" or as a "prosecutor" does not include any service as an assistant prosecuting attorney. The amendment to this subsection during the third extraordinary session in the year 2005 is not for the purpose of changing existing law but is intended to clarify the intent of the Legislature as to existing law regarding eligibility for benefits for service as a prosecuting attorney since its initial enactment and this clarification shall be applied retrospectively to the effective date of this section and any predecessor acts in which service as a prosecuting attorney was initially determined by statute to qualify as eligible years of service under the retirement system provided by this article.

(e) Any retirement benefit accruing under the provisions of this section shall not be paid if otherwise barred under the provisions of article ten-a, chapter five of this code.

(f) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member would otherwise receive under the system.

§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

Any judge of a court of record of this state who shall have served for a period of not less than eight full years after attaining the age of sixty-five years and who shall have made payments into the Judges' Retirement Fund as provided in this article for each month during which he or she served as such judge following the effective date of this section, shall be subject to all the applicable terms and provisions of this article, not inconsistent with the provisions hereof, and shall receive retirement benefits in an amount equal to seventy-five percent of the annual salary of the office from which he or she has retired based upon such salary of such office as such salary may be changed from time to time during the period of his or her retirement and the amount of his or her retirement benefits shall be based upon and be equal to seventy-five percent of the highest annual salary of such office for any one calendar year during the period of his or her retirement and shall be payable in monthly installments. If such judge shall become incapacitated to perform his or her said duties before the expiration of his or her said term and after serving for six years thereof, and upon the acceptance of his or her resignation as in this article provided, he or she shall be paid the annual retirement benefits as herein provided so long as he or she shall live. The provisions of this section shall prevail over any language to the contrary in this article contained, except those provisions of sections twelve-a and twelve-b of this article: Provided, That no individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, is eligible for retirement under this section.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

(a) There shall be paid, from the fund created or continued by section two of this article, or from such funds as may be appropriated by the Legislature for such purpose, an annuity to the surviving spouse of a judge, if such judge at the time of his or her death is eligible for the retirement benefits provided by any of the provisions of this article, or who has, at death, actually served five years or more as a sitting judge of any court of record of this state, exclusive of any other service credit to which such judge may otherwise be entitled, and who dies either while in office or after resignation or retirement from office pursuant to the provisions of this article. Said annuity shall amount to forty percent of the annual salary of the office which said judge held at his or her death or from which he or she resigned or retired. In the event said salary is increased or decreased while an annuitant is receiving the benefits hereunder, his or her annuity shall amount to forty percent of the new salary: Provided, That with respect to any individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity to the surviving spouse of the judge shall be an amount equal to forty percent of the judge's final average salary: Provided, however, That the annuitant is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals. The annuity granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month for which the annuity shall have accrued. Such annuity shall commence on the first day of the month in which said judge dies and shall, subject to the provisions of subsection (b) of this section, terminate upon the death of the annuitant or shall terminate upon the remarriage of the annuitant.

(b) If there be no surviving spouse at the time of death of a judge who dies after serving five years or more as a sitting judge of any court of record and such judge leaves surviving him any dependent child or children, such dependent child or children shall receive an amount equal to twenty percent of the annual salary of the office which said judge held at the time of his or her death: Provided, That the total of all such annuities payable to each such child shall not exceed in the aggregate an amount equal to forty percent of such salary. Such annuity shall continue as to each such child until: (i) He or she attains the age of eighteen years; or (ii) attains the age of twenty-three years so long as such child remains a full-time student. The Auditor shall by legislative rule establish the criteria for determining a person's status as a full-time student within the meaning and intent of this subsection. In the event there are surviving any such judge three or more dependent children, then each such child's annuity shall be proratably reduced in order that the aggregate annuity received by all such dependent children does not exceed forty percent of such salary and the amount to be so received by any such child shall continue throughout the entire period during which each such child is eligible to receive such annuity. The provisions of this subsection shall also apply to those circumstances and situations wherein a surviving spouse of a deceased judge shall die while receiving benefits pursuant to subsection (a) of this section and who shall

leave surviving dependent children of such deceased judge who would be entitled to benefits under this subsection as if they had succeeded to such annuity benefits upon the death of such judge in the first instance. In the event the salary of judges is increased or decreased while an annuitant is receiving benefits pursuant to this subsection, the annuities payable shall be likewise increased or decreased proportionately to reflect such change in salary: Provided, however, That with respect to any individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, any annuity to any children of the judge shall be calculated with respect to the judge's final average salary: Provided further, That the child is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals. The annuities granted hereunder shall accrue monthly and shall be due and payable in monthly installments on the same day as surviving spouses' benefits are required to be paid. Such annuities shall commence on the first day of the month in which any such dependent child becomes eligible for benefits hereunder and shall terminate on the last day of the month during which such eligibility ceases.

§51-9-6c. Limitations on benefit increases.

(a) The state shall not increase any existing benefits or create any new benefits for any retirees or beneficiaries currently receiving monthly benefit payments from the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, in an amount that would exceed more than one percent of the accrued actuarial liability of the system as of the last day of the preceding fiscal year as determined in the annual actuarial valuation for the plan completed for the Consolidated Public Retirement Board as of the first day of the following fiscal year as of the date the improvement is adopted by the Legislature.

(b) If any increase of existing benefits or creation of new benefits for any retirees or beneficiaries currently receiving monthly benefit payments under the system, other than an increase in benefits or new benefits effected by operation of law in effect on the effective date of this article, causes any additional unfunded actuarial accrued liability in any of the West Virginia state sponsored pension systems as calculated in the annual actuarial valuation for the plan during any fiscal year, the additional unfunded actuarial accrued liability of the system shall be fully amortized over no more than the six consecutive fiscal years following the date the increase in benefits or new benefits become effective as certified by the Consolidated Public Retirement Board. Following the receipt of the certification of additional actuarial accrued liability, the Governor shall submit the amount of the amortization payment each year for the system as part of the annual budget submission or in an executive message to the Legislature.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the computation of annuities or benefits for active members due to retirement, death or disability as provided for in the system shall not be amended in such a manner as to increase any existing benefits or to provide for new benefits.

(d) The provisions of this section terminate effective July 1, 2009teen: Provided, That if bonds are issued pursuant to article eight, chapter twelve of this code, the provisions of this section shall not terminate while any of the bonds are outstanding.

§51-9-6d. Adjusted annual retirement benefit calculations.

In calculating the annual retirement benefits under section six of this article for any individual who is appointed or elected for the first time as judge of a court of record of this state after July 1, 2005, the judge shall receive retirement benefits in an amount equal to seventy-five percent of the individual's final average salary. The individual is not entitled to an increase in benefits by virtue of any increase in the salaries of the offices of circuit court judge or Justice of the Supreme Court of Appeals.

§51-9-7. Ineligibility to receive pay or benefits.

A judge who retires under the provisions of any section of this article and accepts the pay or benefits payable under this article shall, while receiving said pay or benefits, be permitted to hold any public office or trust for which the judge receives compensation from the State of West Virginia. If, after retirement under the provisions of this article, a judge is elected or appointed to any public office or trust for which he or she receives any salary or other compensation from the State of West Virginia, the retired judge is not eligible to participate in any other pension plan maintained by the State of West Virginia, nor accrue additional years of credited service under this system or any other state pension system. A judge who retires because of disability and accepts the pay or benefits payable under this article because of his or her disability shall not, while receiving said pay or benefits because of his or her disability, be permitted to practice law. If, after disability retirement under the provisions of this article and while receiving pay or benefits payable under said article because of his or her disability, he or she shall enter the practice of law, his or her pay or benefits under this article because of his or her disability shall be suspended for such time only as he or she shall be engaged in the practice of law.

§51-9-8. Retirement upon disability.

(a) Whenever a judge of a court of record of this state, who is not disqualified from participation herein as provided in section five of this article, who shall have served for ten full years, or if over the age of sixty-five years, who shall have served at least six years as a judge of a court of record, shall become physically or mentally incapacitated to perform the duties of his or her office as judge during the remainder of his or her term and shall make a written application to the Governor for his or her retirement, setting forth the nature and extent of his or her disability and tendering his or her resignation as such judge upon condition that upon its acceptance he or she be retired with pay under the provisions of this article, the Governor shall make such investigation as the Governor shall deem advisable and, if the Governor shall determine that such disability exists and that the public service is suffering and will continue to suffer by reason of such disability, the Governor shall thereupon accept the resignation and, by written order filed in the office of the Secretary of State, direct the retirement of the judge for the unexpired portion of the term for which such judge was elected or appointed. The Secretary of State shall thereupon file a certified copy of such order with the State Auditor. When so accepted, said resignation shall create a vacancy in such office of judge, which shall be filled by appointment or election as provided by law. The retired judge shall thereupon be paid annual retirement pay during the remainder of his or her unexpired term in an amount equal to the annual salary he or she was receiving at the time of his or her disability retirement, which annual retirement pay, so long as it shall be paid to him or her, shall be in lieu of any and all retirement benefits such judge may otherwise have received under provisions of this article: Provided, That when the payment of such full salary as disability retirement pay shall have terminated with the close of his or her term of office, such judge, even though he or she shall not have arrived at the age of sixty-five years, shall, so long as the disability determined by the Governor continues to exist, be paid the retirement benefits for which provision is made in section six of this article: Provided, however, That in the event any such judge shall die during the continuation of his or her disability, then such judge's surviving spouse shall receive the benefits to which he or she would have been entitled pursuant to the provisions of section six-b of this article and subject to the limitations thereon: Provided further, That any judge becoming a new member of this retirement system on or after April 1, one thousand nine hundred eighty-seven, and retiring upon disability retirement subsequent to such date shall be paid upon the basis of seventy-five percent of highest annual salary, with allowable salary increase, as provided in section six of this article during all disability retirement receipt periods.

(b) Any other provision of this section to the contrary notwithstanding, no judge shall be eligible pursuant to this section unless such judge is also disabled to such an extent so as to preclude such judge from engaging in the practice of law during all of the period of such disability.

§51-9-9. Determination of eligibility for benefits.

Before any person is entitled to retirement benefits under the provisions of this article, he or she shall submit proof of his or her eligibility for retirement benefits to the Governor. If the judge is still sitting, he or she shall at the same time tender to the Governor his or her resignation as judge to the Governor upon condition that, if the resignation is accepted, he or she will be paid retirement benefits as provided in this article. Upon request for retirement by a sitting judge, the Governor shall investigate to the extent he or she deems advisable to determine the judge's eligibility. If the Governor determines that such person is entitled to retirement benefits under the provisions of this article, the Governor shall accept the resignation and certify the facts and the amount of retirement benefits to be paid to the judge upon retirement by a written order filed in the office of the Secretary of State. The Secretary of State shall, upon receipt of the order, file a certified copy of the order with the State Auditor, the Governor's office, the Supreme Court of Appeals' administrative office and the Consolidated Public Retirement Board. After accepting the judge's resignation, a vacancy is created in the office of the retiring judge which shall be filled by appointment or election as provided by law.

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

(a) The Legislature finds that:

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

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

(b) The Legislature recognizes and acknowledges the authority of the West Virginia Supreme Court of Appeals to recall retired circuit court judges, family court judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals for temporary assignment and to create a panel of such senior judges and justices to serve in certain circumstances including, but not limited to, serving temporarily in the event of a protracted illness or medical condition, lengthy suspension, or other unfilled vacancy; serving temporarily in a circuit to assist with an excess of pending matters identified by the administrative director through statistical analysis; mentoring or assisting a sitting judge as directed by the administrative director; serving temporarily in a circuit in the event of a recusal or disqualification of a judge or justice; or presiding over cases as a member of the mass litigation or business court: *Provided*, That extended assignment of retired judges and justices must not be utilized in such a way as to threaten the qualified status of the Judges' Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation §1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age.

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

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decision making, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted illness or medical condition, or a lengthy suspension which necessitate the extended assignment of the

senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

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

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

(g) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the Supreme Court after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (h) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of § 51-9-18 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

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

§51-9-11. Monthly payments.

The retirement benefits and retirement pay, as herein provided, shall be paid in equal monthly installments upon the warrant of the State Auditor drawn on the Judges' Retirement Fund. If at any time moneys in said fund are insufficient to meet the orderly requirements of the retirement system, payments hereunder shall then be made from funds in the State Treasury appropriated and otherwise available for such purposes.

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§51-9-12. Refunds.

Any judge of a court of record of this state whose services have terminated, otherwise than by retirement under provisions of this article, shall, upon his written demand, or the written demand of his personal representative, filed with the State Auditor, by a proper warrant of the State Auditor drawn on the fund, be refunded, without interest, any and all money paid by or for said judge into the fund. Such repayment shall terminate all rights of said judge to participate thereafter at any time in the benefits and pay of the retirement system, without prejudice, however, to his right to reenter the system after a subsequent appointment or election to a qualified judgeship, but without credit for any prior years of service: Provided, however, That should a retired judge die, without leaving a widow surviving, while receiving retirement benefits under the provisions of this article, and before he has received from the Judges' Retirement Fund an amount equal to, or in excess of, sums paid by him into such fund, or should the widow, as defined by section six-b of this article, who is entitled to an annuity under the provisions of section six-b die or remarry while receiving annuity benefits, and before she and her husband have received from the Judges' Retirement Fund an amount equal to, or in excess of, sums contributed by him to such fund, then, and in either of these events, the State Auditor shall, upon the written demand of the personal representative of the judge or widow, as the case may be, filed with the State Auditor, by a proper warrant drawn on the fund, refund, without interest, to the estate of such judge or such widow, as the case may be, an amount equal to the difference between the sums contributed to the fund by or for such judge and the amount of such retirement benefits and annuities paid to him and his widow.

§51-9-12a. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the retirement system in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section, to the extent applicable to governmental plans (hereafter sometimes referred to as the "415 limitation(s)" or "415 dollar limitation(s)"), so that the annual benefit payable under this system to a member shall not exceed those limitations. Any annual benefit payable under this system shall be reduced or limited if necessary to an amount which does not exceed those limitations. The extent to which any annuity or other annual benefit payable under this retirement system shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be reduced, shall be proportional on a percentage basis to the reductions made in such other plans administered by the board and required to be so taken into consideration under Section 415, unless a disproportionate reduction is determined by the board to maximize the aggregate benefits payable to the member. If the reduction is under this retirement system, the board shall advise affected members of any additional limitation on the annuities or other annual benefit required by this section. For purposes of the 415 limitations, the "limitation year" shall be the calendar year. The 415 limitations are incorporated herein by reference, except to the extent the following provisions may modify the default provisions thereunder:

(a) The annual adjustment to the 415 dollar limitations made by Section 415(d) of the Internal Revenue Code and the regulations thereunder shall apply for each limitation year. The annual adjustments to the dollar limitations under Section 415(d) of the Internal Revenue Code which become effective: (i) After a retirant's severance from employment with the employer; or (ii) after the annuity starting date in the case of a retirant who has already commenced receiving benefits, will apply with respect to a retirant's annual benefit in any limitation year. A retirant's annual benefit payable in any limitation year from this retirement system shall in no event be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code and the regulations thereunder.

(b) For purposes of this section, the "annual benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit, using factors prescribed in the 415 limitation regulations, before applying the 415 limitations. No actuarial adjustment to the benefit shall be made for: (1) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise

satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Internal Revenue Code. For this purpose an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(c) Adjustment for benefit forms not subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is either: (1) A nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse); or (2) an annuity that decreases during the life of the member merely because of: (i) The death of the survivor annuitant (but only if the reduction is not below fifty percent of the benefit payable before the death of the survivor annuitant); or (ii) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 411(a)(9) of the Internal Revenue Code). The actuarially equivalent straight life annuity is equal to the greater of: (I) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date.

(d) Adjustment for benefit forms subject to Section 417(e)(3). -- The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection if the form of the member's benefit is other than a benefit form described in subdivision (c) of this section. The actuarially equivalent straight life annuity shall be determined as follows: The actuarially equivalent straight life annuity is equal to the greatest of: (1) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the interest rate specified in this retirement system and the mortality table (or other tabular factor) specified in this retirement system for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a five and a half percent interest rate assumption and the applicable mortality table defined in Treasury Regulation §1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) for that annuity starting date; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in Treasury Regulation §1.417(e)-1(d)(3) and the applicable mortality table defined in Treasury

Regulation §1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

(e) Benefits payable prior to age sixty-two. --

(1) Except as provided in paragraphs (2) and (3) of this subdivision, if the member's retirement benefits become payable before age sixty-two, the 415 dollar limitation prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of Section 415(b) of the Internal Revenue Code, so that the limitation (as so reduced) equals an annual straight life benefit (when the retirement income benefit begins) which is equivalent to an annual benefit in the amount of the applicable dollar limitation of Section 415(b)(1)(A) of the Internal Revenue Code (as adjusted pursuant to Section 415(d) of the Internal Revenue Code) beginning at age sixty-two.

(2) The limitation reduction provided in paragraph (1) of this subdivision shall not apply if the member commencing retirement benefits before age sixty-two is a qualified participant. A qualified participant for this purpose is a participant in a defined benefit plan maintained by a state, or any political subdivision of a state, with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least fifteen years of service: (i) As a full-time employee of any police or fire department organized and operated by the state or political subdivision maintaining the defined benefit plan to provide police protection, firefighting services or emergency medical services for any area within the jurisdiction of such state or political subdivision; or (ii) as a member of the Armed Forces of the United States.

(3) The limitation reduction provided in paragraph (1) of this subdivision shall not be applicable to preretirement disability benefits or preretirement death benefits.

(4) For purposes of adjusting the 415 dollar limitation for benefit commencement before age sixty-two or after age sixty-five (if the plan provides for such adjustment), no adjustment is made to reflect the probability of a member's death: (i) After the annuity starting date and before age sixty-two; or (ii) after age sixty-five and before the annuity starting date.

(f) Adjustment when member has less than ten years of participation. -- In the case of a member who has less than ten years of participation in the retirement system (within the meaning of Treasury Regulation §1.415(b)-1(g)(1)(ii)), the 415 dollar limitation (as adjusted pursuant to Section 415(d) of the Internal Revenue Code and subdivision (e) of this section) shall be reduced by multiplying the otherwise applicable limitation by a fraction, the numerator of which is the number of years of participation in the plan (or one, if greater), and the denominator of which is ten. This adjustment shall not be applicable to preretirement disability benefits or preretirement death benefits.

(g) The application of the provisions of this section shall not cause the maximum annual

benefit provided to a member to be less than the member's accrued benefit as of December 31, 2008 (the end of the limitation year that is immediately prior to the effective date of the final regulations for this retirement system as defined in Treasury Regulation §1.415(a)-1(g)(2)), under provisions of the retirement system that were both adopted and in effect before April 5, 2007, provided that such provisions satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of December 31, 2008, as described in Treasury Regulation §1.415(a)-1(g)(4). If additional benefits are accrued for a member under this retirement system after January 1, 2009, then the sum of the benefits described under the first sentence of this subdivision and benefits accrued for a member after January 1, 2009, must satisfy the requirements of Section 415, taking into account all applicable requirements of the final 415 Treasury Regulations.

§51-9-12b. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiaries' interest and take precedence over any inconsistent provisions of this retirement system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in the retirement system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of §1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the retirement system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the retirement system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death.

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection (d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary, commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §51-9-1a of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution: *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §51-9-1a of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

§51-9-12c. Direct rollovers.

(a) Except where otherwise stated, this section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of this article to the contrary that would otherwise limit a distributee's election under this system, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this section, the following definitions apply:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any of the following: (i) Any distribution that is one of a series of substantially equal periodic payments not less frequently than annually made for the life or life expectancy of the distributee or the joint lives or the joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities; (iv) any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code; and (v) any other distribution or distributions expected to total less than \$200 during a year. For distributions after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, this portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or (for taxable years beginning before January 1, 2007) to a qualified trust which is part of a defined contribution plan described in Section 401(a) or (for taxable years beginning after December 31, 2006) to a qualified trust or to an annuity contract described in Section 403(a) or (b) of the Internal Revenue Code that agrees to separately account for amounts transferred (including interest or earnings thereon), including separately accounting for the portion of the distribution which is includable in gross income and the portion of the distribution which is not so includable, or (for taxable years beginning after December 31, 2007) to a Roth IRA described in Section 408A of the Internal Revenue Code.

(2) "Eligible retirement plan" means an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified plan described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution: Provided, That in the case of an eligible rollover distribution prior to January 1, 2002, to the surviving spouse, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity. For distributions after December 31, 2001, an eligible retirement plan also means an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained

by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into the plan from this system. For distributions after December 31, 2007, an eligible retirement plan also means a Roth IRA described in Section 408A of the Internal Revenue Code: Provided, That in the case of an eligible rollover distribution after December 31, 2007, to a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code, an eligible retirement plan is limited to an individual retirement account or individual retirement annuity which meets the conditions of Section 402(c)(11) of the Internal Revenue Code.

(3) "Distributee" means a judge or former judge. In addition, the judge's or former judge's surviving spouse and the judge's or former judge's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, with respect to governmental plans, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2007, "distributee" also includes a designated beneficiary (other than a surviving spouse) as such term is defined in Section 402(c)(11) of the Internal Revenue Code.

(4) "Direct rollover" means a payment by the system to the eligible retirement plan.

(b) Nothing in this section may be construed as permitting rollovers into this system or any other system administered by the board.

§51-9-12d. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) This section applies to rollovers and transfers as specified in this section made on or after January 1, 2002. Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the retirement system shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole and in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with respect to a previous forfeiture of service credit as otherwise provided in this article: (i) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (ii) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (iii) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (iv) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: Provided, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with policies, practices and procedures established by the board from time to time. For purposes of this section, the following definitions apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(b) Nothing in this section shall be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this

article.

WV Legislature

§51-9-13. Disqualification for pay and benefits.

No judge of a court of record of this state, who has become physically incapacitated to perform the duties of his office as judge and who has remained so for one year without making application for retirement and submitting his resignation as provided in section eight hereof, shall be entitled to retirement pay or retirement benefits under the provisions of any section of this article.

WV Legislature

§51-9-14. Moneys exempt from execution, etc.; unassignable and nontransferable; exception for certain domestic relations orders.

The moneys in the Judges' Retirement Fund, the right of any judge to participate in the pay and benefits of the retirement system and the right of any judge to a refund of payments or contributions made to the fund shall not be subject to execution, garnishment, attachment or any other process whatsoever except that the benefits or contributions under this system shall be subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and shall be unassignable and nontransferable.

§51-9-15. County commissioners excluded.

Commissioners of county commissions, or of any tribunal established in lieu thereof, are excluded from the retirement pay and retirement benefits herein provided.

WV Legislature

§51-9-16. Severability of article and amendments thereto.

If any section, subsection, clause, phrase or requirement of this article or if any section, subsection, clause, phrase or requirement of this article as amended by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, if for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. The Legislature hereby declares that it would have passed this article, and each section, subsection, sentence, clause or phrase and requirement thereof, including any amendments thereto adopted by the Legislature at its regular session held in the year one thousand nine hundred eighty-seven, irrespective of the fact that any one or more sections, subsections, clauses, phrases or requirements be declared unconstitutional.

§51-9-17. Benefits not forfeited if system terminates.

If the retirement system is terminated or contributions are completely discontinued, the rights of all members to benefits accrued or contributions made to the date of such termination or discontinuance, to the extent then funded, may not be forfeited.

WV Legislature

§51-9-18. Correction of errors; underpayments; overpayments.

(a) *General rule.* — Upon learning of any errors, the board shall correct errors in the retirement system in a timely manner whether the individual, entity or board was at fault for the error with the intent of placing the affected individual, entity and retirement board in the position each would have been in had the error not occurred.

(b) *Underpayments to the system.* — Any error resulting in an underpayment to the system, may be corrected by the member or retirant remitting the required employee contribution or underpayment and the participating public employer remitting the required employer contribution or underpayment. Interest shall accumulate in accordance with the legislative rule 162 CSR 7 concerning retirement board refund, reinstatement, retroactive service, loan and correction of error interest factors and any accumulating interest owed on the employee and employer contributions or underpayments resulting from an employer error shall be the responsibility of the participating public employer. The participating public employer may remit total payment and the employee reimburse the participating public employer through payroll deduction over a period equivalent to the time period during which the employer error occurred. If the correction of an error involving an underpayment to the system will result in the system correcting an erroneous underpayment from the system, the correction of the underpayment from the system shall be made only after the board receives full payment of all required employee and employer contributions or underpayments, including interest.

(c) *Overpayments to the retirement system by an employer.* —When mistaken or excess employer contributions, including any overpayments have been made to the retirement system by a participating public employer, the board, upon learning of the error, shall credit the participating public employer with an amount equal to the overpayment, to be offset against the employer's future liability for employer contributions to the system. If the employer has no future liability for employer contributions to the retirement system, the board shall refund the erroneous contributions directly to the employer. Earnings or interest shall not be returned, offset or credited to the employer under any of the means used by the board for returning employer overpayments to the retirement system.

(d) *Overpayments to the retirement system by an employee.* — When mistaken or excess employee contributions or overpayments have been made to the retirement system, the board, upon learning of the error, shall have sole authority for determining the means of return, offset or credit to or for the benefit of the individual making the mistaken or excess employee contribution of the amounts, and may use any means authorized or permitted under the provisions of section 401(a), *et seq.* of the Internal Revenue Code and guidance issued thereunder applicable to governmental plans. Alternatively, in its full and complete discretion, the board may require the participating public employer employing the individual to pay the individual the amounts as wages, with the board crediting the participating public employer with a corresponding amount to offset against its future contributions to the plan. If the employer has no future liability for employer contributions to the retirement system, the board shall refund said amount directly to the employer: *Provided*, That the wages paid

to the individual shall not be considered compensation for any purposes of this article. Earnings or interest shall not be returned, offset, or credited under any of the means used by the board for returning employee overpayments.

(e) *Overpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the system more than he would have been entitled to receive had the error not occurred the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the member, retirant, beneficiary, entity or other person who received the overpayment from the retirement system shall repay the amount of any overpayment to the retirement system in any manner permitted by the board. If the member, retirant, beneficiary or other person who received the overpayment is deceased and an annuity or lump sum benefit is still payable, the amount of the overpayment shall be offset against the benefit payment owed in a manner consistent with the board's error correction policy. Interest shall not accumulate on any corrective payment made to the retirement system pursuant to this subsection.

(f) *Underpayments from the retirement system.* — If any error results in any member, retirant, beneficiary, entity or other individual receiving from the retirement system less than he would have been entitled to receive had the error not occurred, the board, upon learning of the error, shall correct the error in a timely manner. If correction of the error occurs after annuity payments to a retirant or beneficiary have commenced, the board shall prospectively adjust the payment of the benefit to the correct amount. In addition, the board shall pay the amount of such underpayment to the member, retirant, beneficiary or other individual in a lump sum. Interest shall not be paid on any corrective payment made by the retirement system pursuant to this subsection.

(g) *Eligibility errors.* — If the board finds that an individual, employer, or both individual and employer, participating in the system is not eligible to participate, the board shall notify the individual and his or her employer of the determination, and terminate participation in the system. Any erroneous payments to the system shall be returned to the employer and individual in accordance with the methods described in subsections (c) and (d) of this section and any erroneous payments from the system to such individual shall be returned to the system in accordance with the methods described in subsection (e) of this section. Any erroneous service credited to the individual shall be removed. If the board determines that an individual or employer, or both, has not been participating in the system, but was eligible to and required to be participating in the system, the board shall as soon as practicable notify the individual and his or her employer of the determination, and the individual and his or her employer shall prospectively commence participation in the retirement system as soon as practicable. Service credit for service prior to the date on which the individual prospectively commences participation in the system shall be granted only if the board receives the required employer and employee contributions for such service, in accordance with subsection (b) of this section, including interest.

§51-10-1. Definitions.

When used in this article:

"Approved securities" means cash, irrevocable letter of credit, bond issued by an insurance company licensed and in good standing in this state, or qualified power of attorney issued by an insurer pursuant to a producer underwriting agreement, or real estate located in this state that is unencumbered in, at least, the amount of minimum financial responsibility required as set forth by the insurance commissioner: *Provided*, That a pledge of real estate by a bondsman as an approved security is not permitted after July 1, 2024: *Provided, however*, That a bondsman who is licensed by the commissioner as of July 1, 2024, and has pledged real estate as security to conduct bonding business may continue to pledge real estate to operate as a bondsman until his or her license is voluntarily surrendered or revoked by the commissioner;

"Bonding business" means the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia;

"Bondsman" means any person engaged in the bonding business who is approved and licensed under the provisions of this article who pledges cash or approved securities with the commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value for the pledge;

"Commissioner" means the Insurance Commissioner of West Virginia, as defined in §33-1-5 of this code; and

"Insurer" means any domestic, foreign, or alien person, including a surety company, which has been qualified generally to transact surety business in the State of West Virginia.

§51-10-2. Business impressed with public interest.

The business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia is impressed with a public interest.

WV Legislature

§51-10-3. Procuring business through official or attorney for consideration prohibited.

It shall be unlawful for any person engaged, either as principal or as the clerk, agent, or representative of a corporation, or another person in the business of becoming surety upon bonds for compensation in the State of West Virginia, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, loan, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, sheriff, deputy sheriff, constable, jailer, probation officer, clerk, or other attache of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ said bondsman to execute as surety any bond for compensation in any criminal case in the State of West Virginia; and it shall be unlawful for any attorney at law, police officer, sheriff, deputy sheriff, constable, jailer, probation officer, clerk, bailiff, or other attache of a criminal court, or public official of any character, to accept or receive from any such person engaged in the bonding business any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring any person to employ any bondsman to execute as surety any bond for compensation in any criminal case in the State of West Virginia.

§51-10-4. Attorneys procuring employment through official or bondsman for consideration prohibited.

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contribute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, police officer, sheriff, deputy sheriff, constable, probation officer, assistant probation officer, bailiff, clerk or other attache of any criminal court for causing or procuring or assisting in causing or procuring any person to employ such attorney to represent him in any criminal case in the State of West Virginia.

§51-10-5. Receiving other than regular fee for bonding prohibited; bondsman prohibited from endeavoring to secure dismissal or settlement.

It shall be lawful to charge for executing any bond in a criminal case in the State of West Virginia, and it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, or clerk, agent or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money, or other thing of value, other than the bonding fee from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia, or in any counties where the court has regulated bonding fees pursuant to section eight of this article, it shall be unlawful for any person or corporation engaged in the bonding business, either as principal, clerk, agent, or representative of another, either directly or indirectly, to charge, accept, or receive any sum of money or other thing of value other than the duly authorized maximum bonding fee, from any person for whom he has executed bond, for any other service whatever performed in connection with any indictment or charge upon which said person is bailed or held in the State of West Virginia. It also shall be unlawful for any person or corporation engaged either as principal or as agent, clerk, or representative of another in the bonding business, to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the State of West Virginia, with any court, or with the prosecuting attorney, or with any police officer in any court in the State of West Virginia.

§51-10-5a. Bonding fee and collateral security required by bail bondsmen.

(a) The bonding fee required by a bail bondsman shall be at least ten percent of the amount of the bond. The bonding fee received by the bondsman shall not, in the aggregate, exceed the amount of the bond.

(b) The bonding fee may be paid as follows:

(1) In full at the time of the issuance of the bond; or

(2) At least three percent paid at the issuance of the bond with the remaining percentage to be paid over a period not to exceed twelve months.

(c) When collateral or security is received by a bail bondsman, a receipt shall be furnished. Copies of all receipts issued shall be kept by the bail bondsman for a minimum of five years. All receipts issued shall:

(1) Be prenumbered and used and filed in consecutive numerical order;

(2) Show the name and address of the bail bondsman;

(3) Show the name and address of the person providing the collateral;

(4) Show the amount and nature of the collateral and the date received;

(5) Show the name of the person accepting collateral; and

(6) Show the total amount of the bond for which the collateral is being accepted and the name of the defendant.

(d) When a bond is to be forfeited, the court is to give notification to the bail bondsman within twenty-four hours of the failure to appear.

§51-10-6. Posting names of authorized bondsmen; list to be furnished prisoners; prisoner may communicate with bondsman; record to be kept by police.

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any courts of record pursuant to section eight of this article, in the business of becoming surety on the bonds for compensation shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, municipal court, and justice of the peace court within the county, and one or more copies thereof kept on hand; and when any person who is detained in custody in any such place of detention shall request any person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, said list shall be furnished to the person so requesting, and it shall be the duty of the person in charge of said place of detention within a reasonable time to put the person so detained in communication with the bondsman so selected, and the person in charge of said place of detention shall contemporaneously with said transaction make in the blotter or book of record kept in any such place of detention, a record showing the name of the person requesting the bondsman, the offense with which the said person is charged, the time at which the request was made, the bondsman requested, and the person by whom the said bondsman was called, and preserve the same as a permanent record in the book or blotter in which entered.

§51-10-7. Bondsman prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.

It shall be unlawful for any bondsman, agent, clerk, or representative of any bondsman to enter a police precinct, jail, prisoner's dock, house of detention, justice of the peace court, or other place where persons in the custody of the law are detained in the State of West Virginia, for the purpose of obtaining employment as a bondsman, without having been previously called by a person so detained, or by some relative or other authorized person acting for or on behalf of the person so detained, and whenever any person engaged in the bonding business as principal, or as clerk, or representative of another, shall enter a police precinct, jail, prisoner's dock, house of detention, justice of the peace court, or other place where persons in the custody of the law are detained in the State of West Virginia, he shall forthwith give to the person in charge thereof his mission there, the name of the person calling him and requesting him to come to such place, and the same shall be recorded by the person in charge of the said place of detention and preserved as a public record, and the failure to give such information, or the failure of the person in charge of said place of detention to make and preserve such a record, shall constitute a violation of this article.

§51-10-8. Qualifications of bondsmen; rules to be prescribed by Insurance Commissioner; bondsman filing requirements; bondsman license renewal requirements; criminal penalty for filing false affidavit; list of bondsmen kept and provided to places of detention by Insurance Commissioner; requiring all bondsmen to be licensed by Insurance Commissioner after July 1, 2022.

(a) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out the intent, administration, and enforcement of this article. The commissioner may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as necessary to carry out the intent, administration, and enforcement of this article. The commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article.

(b) The rules required by subsection (a) of this section shall specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. The commissioner shall formulate testing requirements for all initial license applicants. The commissioner shall require a biennial fee of \$200 for all bondsmen licensed under this article.

(c) The commissioner, in promulgating and proposing rules required by subsection (a) of this section, and in granting a license to a person to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person applying, and a person who has been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character, shall not be licensed.

(d) The applicant shall provide the commissioner a qualifying power-of-attorney from a licensed insurer or surety company or pledge cash or approved securities with the commissioner as security for bail bonds.

(e) The applicant shall comply with the provisions of §33-12-37 of this code regarding criminal history record checks.

(f) The commissioner shall require every bondsman licensed to engage in the bonding business as a principal to file with the commissioner a list showing the name, age, and residence of each person employed by the bondsman as an agent, clerk, or representative in the bonding business, and require an affidavit from each of the persons stating that the person will abide by the terms and provisions of this article.

(g) The commissioner shall require a person licensed as a bondsman to renew his or her license every two years and to file an affidavit stating that since his or her previous license to engage in the bonding business, he or she has abided by the provisions of this article.

A person who files a false affidavit is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for the offense.

(h) The commissioner shall keep a list of all bondsmen and, upon the request of a place of detention listed under §51-10-6 of this code, furnish an alphabetical list of all licensed bondsmen to the jail.

(i) After July 1, 2022, a person may not, either as principal, or as agent, clerk, or representative of an agent, engage in the bonding business unless licensed by the commissioner under this section.

WV Legislature

§51-10-9. Penalties.

Any person violating any provisions of this article other than in the commission of false swearing shall be punished by a fine of not more than \$100, or by imprisonment not exceeding six months in the county jail, or both, where no other penalty is provided by this article; and if the person so convicted be a police officer or other public official, he shall upon recommendation of the judge of the criminal court of record of the county to which this article is applicable also be forthwith removed from office; if a bondsman, or the agent, clerk, or representative of a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the judge of the criminal court of record of the county to which this article is applicable shall order; and, if an attorney at law, shall be subject to suspension or disbarment as attorney at law.

§51-10-10. Enforcement of article.

It shall be the duty of the judges of the criminal courts of record, the municipal courts, the justices of the peace of the county to which this article is applicable, to see that this article is enforced, and upon the impaneling of each grand jury in the State of West Virginia it shall be the duty of the judge impaneling said jury to give it in charge to the jury to investigate the manner in which this article is enforced and all violations thereof.

WV Legislature

§51-10A-1. Definitions.

As used in this article:

(a) "Bail bondsman" means any person, partnership or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with a criminal offense or violation of law punishable by fine or imprisonment before any court within or without this state. The term "bail bondsman" includes, but is not limited to, persons conducting a bonding business as defined in section one, article ten of this chapter.

(b) "Bail bond enforcer" means a person who on behalf of a bail bondsman enters this state or is present in this state for the purposes of: (1) Assisting a bail bondsman in presenting the defendant in court when required; (2) assisting in the apprehension and surrender of the defendant to a court; (3) keeping a defendant under surveillance; or (4) executing bonds on behalf of a bail bondsman when a power of attorney has been duly recorded. The term "bail bond enforcer" does not include a duly licensed attorney-at-law or a law-enforcement officer assisting a bail bondsman.

§51-10A-2. Registration of bail bond enforcers and authorization by bail bondsman required; fees.

(a) No person may act in the capacity of a bail bond enforcer within this state or perform any of the functions, duties, or powers prescribed for bail bond enforcers under section one of this article unless duly registered with the West Virginia state police as provided in this section.

(b) The superintendent of the West Virginia state police shall design registration, authorization and notice forms, which, at minimum, shall require:

(1) Identifying information as to the registrant and at least one bail bondsman on whose behalf he or she is authorized to act as agent: Provided, That a registrant may not act on behalf of any bail bondsman until authorization to act is filed with the superintendent;

(2) A complete set of the registrant's fingerprints, certified by an authorized law-enforcement officer;

(3) A recent credential-sized, full-face photograph of the registrant;

(4) Certification, under penalties of perjury, that the registrant is at least twenty-one years of age, is a citizen of the United States, and has never been convicted of a felony in any state of the United States;

(5) Authorization in writing, as provided in subsection (b) or (c) of this section, from any bail bondsman on whose behalf the bail bond enforcer is authorized to enter this state or act within this state; and

(6) Other information as the superintendent determines is reasonable and necessary.

(c) A bail bondsman conducting a bonding business in this state may grant continuing authorization to a bail bond enforcer who is a citizen and resident of this state to act as his or her agent on a continuing basis, for a period of time not to exceed two years, either statewide or within named counties or judicial circuits of the state, with respect to all defendants for whom the bail bondsman acts as surety to secure an appearance. A continuing authorization shall state the expiration date of the authorization on the face of the document.

(d) A bail bondsman within or without this state may grant authorization to a bail bond enforcer within or without this state to act as his or her agent with respect to a named defendant or named defendants, for a period of time not to exceed sixty days, in which case notice in advance of any action to the West Virginia state police of the time and place of any proposed action within this state with respect to any defendant, and the date any bail bond enforcer who is not a resident of this state will enter the state, is required. An authorization shall state the expiration date of the authorization on the face of the document.

(e) The superintendent may require any reasonable interrogatories or examinations relating to a registrant's qualifications or other matters which are reasonably necessary to protect the public.

(f)(1) The superintendent may establish and collect a reasonable registration fee not to exceed \$50 to accompany registration, and a filing fee not to exceed \$10 to accompany the filing of any authorization, to be used for the purposes of defraying administrative and other expenses incurred due to the enactment of this article. No fee is authorized for the filing of notices required under this article.

(2) There is hereby created in the State Treasury a special account, designated the "bail bond enforcer account." All fees collected pursuant to the provisions of this article shall be deposited in the bail bond enforcer account. Expenditures from the account shall be for the purposes set forth in this subsection and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending June 30, 2000, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

(g) The superintendent is authorized to file and disseminate an interpretive rule for the purpose of providing information and guidance to prospective registrants, bail bondsmen, and the general public with respect to the enforcement of this article. The superintendent is charged with the enforcement of this article in the civil and criminal courts of the state and may take any lawful action reasonably necessary to effectuate its purposes.

§51-10A-3. Effect of authorization.

A bail bond enforcer authorized or employed by a bail bondsman to act within this state with respect to any defendant whose custody or appearance the bail bond enforcer secures or attempts to secure, is the agent of the bail bondsman for any act related to the purposes set forth in section one of this article. A bail bond enforcer who acts in that capacity within this state is the agent of the bail bondsman with whom the bail bond enforcer has an agreement or written or verbal contract, whether or not authorization is filed with the West Virginia state police as required in section two of this article.

§51-10A-4. Prohibited conduct.

A bail bond enforcer may not:

- (a) Enter an occupied residential structure without the consent of the occupants who are present at the time of the entry;
- (b) Conduct a bail recovery arrest or apprehension without written authorization from a bail bondsman;
- (c) Wear, carry or display any uniform, badge, shield or other insignia or emblem that implies that the bail bond enforcer is an employee, officer or agent of this state, a political subdivision of this state or the federal government. A bail bond enforcer may display identification that indicates his or her status as a bail bond enforcer only; or
- (d) Conduct a bail bond apprehension or arrest without exercising due care to protect the safety of persons other than the defendant and the property of persons other than the defendant.

§51-10A-5. Unauthorized acts; penalties.

(a) A person who willfully violates any provision of section four of this article, or who acts as a bail bond enforcer within this state without filing a registration, authorization or notice required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 or more than \$10,000, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned.

(b) A bail bondsman who, without filing the authorization required in this article, employs or contracts with a bail bond enforcer who enters this state or acts on the bondsman's behalf within this state; who authorizes an unregistered bail bond enforcer to act on his or her behalf; or whose agent acts in a manner prohibited in section four of this article, is subject to a civil penalty of \$10,000, enforceable by civil action in the circuit court of Kanawha County or the circuit court of any county in which the unauthorized action as a bail bond enforcer has occurred. The superintendent of the West Virginia state police is authorized to enforce payment of civil penalties through the courts of this state. Civil penalties pursuant to this section are payable one-half to the State Police Death, Disability and Retirement Fund and one-half to the crime victims compensation fund.

§51-10A-6. Prohibition against providing fiduciary bonds in estates; exception.

A bail bonding company or a bail bond enforcer may not provide fiduciary bonds for an estate unless the bail bonding company or bail bond enforcer is licensed with the Insurance Commissioner to act as an agent for an insurance company that provides surety or fiduciary bonds.

WV Legislature

§51-11-1. Short title.

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

WV Legislature

§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 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.

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

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

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

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

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

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

(e) The Intermediate Court of Appeals may be located in any seat of county government within the state, or in any other place which is convenient to litigants designated by the Intermediate Court of Appeals for the purpose of hearing oral argument, or may be located in a physical location or on a virtual platform provided by the Administrative Director pursuant to §51-11-8 of this code.

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

WV Legislature

§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 all civil cases, including, but not limited to, those in which there is a request for legal or equitable relief, 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 of Appeals;

(2) Final judgments or orders of a family court, entered after June 30, 2022, except for final judgments or final orders issued by a family court in any domestic violence proceeding pursuant to W. Va. Code §48-27-1 *et seq.* of this code, which appeals shall first be made to a circuit court;

(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;
- (10) Judgments or final orders issued in proceedings where the relief sought is one or more of the following extraordinary remedies: writ of prohibition, writ of mandamus, writ of quo warranto, writ of certiorari, writ of habeas corpus, special receivers, arrests in civil cases, and personal safety orders; and
- (11) Judgments or final orders issued by circuit court upon its review of a family court judgment or final order in any domestic violence proceeding pursuant to §48-27-101 *et seq.* of this code.

§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

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

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

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

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

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

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

(B) The commission shall recommend three qualified nominees for each position for Intermediate Court of Appeals judge: *Provided*, That each person on the list must meet the requirements of §51-11-3(d) of this code at the time such person will begin his or her term on the 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 selected 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 or before July 1, 2022, but no earlier than May 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) 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.

(f) The amendments to §51-11-6(b)(3) of this code enacted by the regular session of the Legislature, 2022, shall be applied retrospectively to December 27, 2021.

§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.

(a) In accordance with section three, article VIII of the Constitution of West Virginia, the Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals. Under those same provisions, the Chief Justice of the Supreme Court of Appeals is the “administrative head” of all West Virginia courts, empowering the Chief Justice to exercise supervisory control over an intermediate court of appeals.

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

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

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

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

(e) *Staff.* — The Administrative Director of the Supreme Court of Appeals shall provide administrative support and may employ additional staff, as necessary, for the efficient operation 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.

(a) The annual salary of a Judge of the Intermediate Court of Appeals is \$142,500. The budget for the payment of compensation and expenses of Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court of Appeals.

(b) Judges of the Intermediate Court of Appeals and staff shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the guidelines prescribed by the Administrative Director of the Supreme Court of Appeals.

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

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

WV Legislature

§51-11-13. Severability.

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

WV Legislature