

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 652

By Senator Tarr

[Introduced February 16, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §8-1-5b; and to amend and reenact §51-11-4 of said code, all relating to
 3 Municipal Home Rule appeals; providing for appeals and grounds therefor; providing who
 4 is eligible to appeal; and providing procedures for the appeal.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS;
 CONSTRUCTION.**

**§8-1-5b. Municipal Home Rule; appeals and grounds therefor; persons eligible to appeal;
 procedures for appeal.**

1 (a) The validity, scope, or application of any ordinance, act, resolution, rule, or regulation
 2 enacted by a Municipal Home Rule participating municipality, alleged to be in violation of the
 3 provisions of §8-1-5a(i) of this code may be appealed to the Intermediate Court of Appeals, who
 4 shall be the trier of fact in such appeals.

5 (b) Appeal may be had by any person who is subject to any portion of the jurisdiction of a
 6 municipality participating in the Municipal Home Rule Program; for purposes of this section, this
 7 includes any person who pays any tax or fee to the participating municipality, including any user
 8 fee.

9 (c) There is created in the office of the State Treasurer a special revenue account fund to
 10 be known as the Home Rule Appeal Escrow Fund. The collections required by the provisions of
 11 §8-1-5b(d) of this code shall be deposited into the fund, and expenditures from the fund shall be
 12 made in accordance with appropriation of the Legislature under the provisions of this section.

13 (d) During the pendency of such appeal, revenue from the municipal sales tax of 1 percent
 14 shall be collected but shall be deposited in the Home Rule Appeal Escrow Fund. If the municipality
 15 is found to be in violation of the provisions of §8-1-5a(i) of this code in enacting an improper

16 ordinance, then those revenues collected shall be deposited in the General Revenue Fund of the
 17 state. If the municipality is found to have not acted improperly, the funds will revert to the
 18 municipality.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-4. Jurisdiction; limitations.

1 (a) The Intermediate Court of Appeals has ~~no~~ original jurisdiction over proceedings
 2 initiated under §8-1-5b of this code.

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to
36 §49-4-601 *et seq.* of this code;

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

38 (5) Any proceedings of the Lawyer Disciplinary Board;

39 (6) Any proceedings of the Judicial Investigation Commission;

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

42 (8) Interlocutory appeals;

43 (9) Certified questions of law;

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

46 (11) Judgments or final orders issued by circuit court upon its review of a family court
47 judgment or final order in any domestic violence proceeding pursuant to §48-27-101 *et seq.* of this
48 code.

NOTE: The purpose of this bill is to modify Municipal Home Rule appeals. The bill provides for appeals and grounds therefor. The bill provides who is eligible to appeal. Finally, the bill provides procedures for the appeal.

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