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HOUSE BILL NO. 1386

Offered January 11, 2023

Prefiled November 13, 2022

A BILL to amend and reenact §§ 8.01-626, 8.01-675.5, and 17.1-405 of the Code of Virginia, relating to appeals of certain interlocutory decrees or orders; report.

Patron—Ballard

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-626, 8.01-675.5, and 17.1-405 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-626. Review of injunction; petitions for review.

When a circuit court (i) grants a preliminary or permanent injunction, (ii) refuses such an injunction, or (iii) having granted such an injunction, dissolves or refuses to enlarge it; ~~or (iv) enters an order reviewable pursuant to subsection B of § 8.01-675.5,~~ an aggrieved party may file a petition for review with the clerk of the Supreme Court within 15 days of the circuit court's order.

The clerk shall assign the petition to a three-justice panel of the Supreme Court. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings before the circuit court, including the original papers and the circuit court's order respecting the injunction. The Supreme Court may take such action thereon as it considers appropriate under the circumstances of the case.

Nothing in this section shall be construed to prevent the Supreme Court from resolving a petition for review by an order joined by more than three justices.

§ 8.01-675.5. Appeal of interlocutory orders and decrees by permission; immunity.

A. When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order or decree that is not otherwise appealable, any party may file in the circuit court a motion requesting that the circuit court certify such order or decree for interlocutory appeal.

The motion shall include a concise analysis of the statutes, rules, or cases believed to be determinative of the issues and request that the court certify in writing that the order or decree involves a question of law as to which (i) there is substantial ground for difference of opinion; (ii) there is no clear, controlling precedent on point in the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia; (iii) determination of the issues will be dispositive of a material aspect of the proceeding currently pending before the court; and (iv) it is in the parties' best interest to seek an interlocutory appeal. If the request for certification is opposed by any party, the parties may brief the motion in accordance with the Rules of Supreme Court of Virginia.

Within 15 days of the entry of an order by the circuit court granting such certification, a petition for appeal may be filed with the Court of Appeals. If the Court of Appeals determines that the certification by the circuit court has sufficient merit, it may, in its discretion, permit an appeal to be taken from the interlocutory order or decree and shall notify the certifying circuit court and counsel for the parties of its decision.

The consideration of any petition and appeal by the Court of Appeals shall be in accordance with the applicable provisions of the Rules of the Supreme Court of Virginia and shall not take precedence on the docket unless the court so orders.

B. When, prior to the commencement of trial, the circuit court has entered in any pending civil action an order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted, would immunize the movant from compulsory participation in the proceeding, the order is eligible for immediate appellate review. Any person aggrieved by such order may, within 15 days of the entry of such order, file a petition for review with the Supreme Court in accordance with the procedures set forth in ~~§ 8.01-626 of Appeals.~~ *The clerk shall assign the petition to a three-judge panel of the Court of Appeals. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings, including the original papers and the court's order respecting the injunction. The court may take such action thereon as it considers appropriate under the circumstances of the case.*

When the Court of Appeals has initially acted upon a petition for review of an order of a circuit court granting or denying a plea of sovereign, absolute, or qualified immunity, a party aggrieved by

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59 *such action of the Court of Appeals may, within 15 days of the order of the Court of Appeals, present a*
60 *petition for review of such order to the clerk of the Supreme Court. The clerk shall assign the petition*
61 *to a three-justice panel of the Supreme Court. The aggrieved party shall serve a copy of the petition for*
62 *review on the counsel for the opposing party, which may file a response within seven days from the date*
63 *of service unless the court determines a shorter time frame. The petition for review shall be*
64 *accompanied by a copy of the proceedings before the circuit court, including the original papers and*
65 *the circuit court's order respecting the injunction, and a copy of the order of the Court of Appeals from*
66 *which review is sought. The Supreme Court may take such action thereon as it considers appropriate*
67 *under the circumstances of the case.*

68 *Nothing in this subsection shall be construed to prevent the Court of Appeals or the Supreme Court*
69 *from resolving a petition for review by an order joined by more than three judges or justices.*

70 C. No petitions or appeals under this section shall stay proceedings in the circuit court unless the
71 circuit court or appellate court orders such a stay upon a finding that (i) the petition or appeal could be
72 dispositive of the entire civil action or (ii) there exists good cause, other than the pending petition or
73 appeal, to stay the proceedings.

74 D. The failure of a party to seek interlocutory review under this section shall not preclude review of
75 the issue on appeal from a final order. An order by the Supreme Court or Court of Appeals denying
76 interlocutory review under this section shall not preclude review of the issue on appeal from a final
77 order, unless the order denying such interlocutory review provides for such preclusion.

78 **§ 17.1-405. Appellate jurisdiction — Administrative agency, Virginia Workers' Compensation**
79 **Commission, and civil matter appeals.**

80 A. Unless otherwise provided by law, any aggrieved party may appeal to the Court of Appeals from:

81 1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency, or
82 (ii) a grievance hearing decision issued pursuant to § 2.2-3005;

83 2. Any final decision of the Virginia Workers' Compensation Commission;

84 3. Except as provided in subsection B of § 17.1-406, any final judgment, order, or decree of a circuit
85 court in a civil matter;

86 4. Any interlocutory decree or order pursuant to § 8.01-267.8 or 8.01-675.5;

87 5. ~~Any~~ Except as provided in subsection B, any interlocutory decree or order involving an equitable
88 claim in which the decree or order (i) requires money to be paid or the possession or title of property to
89 be changed or (ii) adjudicates the principles of a cause; or

90 6. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed
91 weapons permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2, (ii) involving
92 involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or
93 injunctive relief under § 57-2.02.

94 B. No interlocutory decree or order shall be appealed if such decree or order involves:

95 1. Affirmance or annulment of a marriage;

96 2. Divorce;

97 3. Custody of a minor child;

98 4. Spousal or child support;

99 5. Control or disposition of a minor child; or

100 6. Any other domestic relations matter arising under Title 16.1 or 20.

101 2. That the Virginia Family Law Coalition (the Coalition) shall conduct a study on appeals of
102 interlocutory decrees or orders involving domestic relations matters in the Commonwealth. The
103 Coalition shall report the findings of such study to the Chairmen of the Senate Committee on the
104 Judiciary and the House Committee for Courts of Justice by October 1, 2024.