

11102433D

SENATE BILL NO. 1381

Offered January 14, 2011

A *BILL to amend and reenact § 8.01-670.1 of the Code of Virginia, relating to interlocutory appeal; sovereign immunity.*

Patron—Stanley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-670.1 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-670.1. Appeal of interlocutory orders and decrees.

A. When, prior to the commencement of trial, the circuit court has entered in any pending civil action, except any matters appealable to the Court of Appeals pursuant to § 17.1-405, an order or decree that is not otherwise appealable, any party may file in the circuit court a statement of the reasons why an immediate interlocutory appeal should be permitted.

The statement 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) the court and the parties agree it is in the parties' best interest to seek an interlocutory appeal.

Within ~~ten~~ 10 days of such certification by the circuit court, a petition for appeal may be filed with the appellate court that would have jurisdiction in an appeal from a final judgment in the proceeding. If the appellate court 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. No petitions or appeals under this section shall stay proceedings in the circuit court unless the circuit court or appellate court so orders.

The consideration of any petition and appeal by the appellate court shall be in accordance with the applicable provisions of the Rules of the Supreme Court 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 denying a plea of sovereign immunity made by the Commonwealth or any agency, instrumentality, political subdivision, or agent or employee thereof, such order shall be subject to an immediate interlocutory appeal of right to the Supreme Court of Virginia. The party asserting the defense of sovereign immunity and appealing the order shall file with the circuit court a notice of appeal within 30 days after the entry of the order.

The content of the notice of appeal; the content, preparation, and transmission of the record on appeal; and the procedure following perfection of the appeal shall be in accordance with the applicable provisions of the Rules of the Supreme Court. Upon receipt of the record from the clerk of the circuit court, the Clerk of the Supreme Court shall certify to the parties in writing that the record has been received and such certification constitutes perfection of the appeal. The time for filing the opening brief in the Supreme Court shall begin to run on the date of such certification by the Clerk of the Supreme Court.

2. That in pending civil actions that have not commenced to trial where an order denying a plea of sovereign immunity has been entered prior to the effective date of this act, an interlocutory appeal may be filed within 30 days of the effective date of this act.

INTRODUCED

SB1381