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SENATE BILL NO. 715

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary on February 14, 2022)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 8.01-626, 8.01-675.5, 17.1-404, and 17.1-405 of the Code of Virginia, relating to injunctions; review by Supreme Court.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-626, 8.01-675.5, 17.1-404, and 17.1-405 of the Code of Virginia are amended and reenacted as follows:

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

~~Wherein~~ *When* a circuit court (i) grants ~~an~~ *a preliminary or permanent* injunction ~~or~~, (ii) refuses an injunction ~~or~~, (iii) having granted 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 ~~of Appeals~~ within 15 days of the circuit court's order. ~~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 respecting an injunction, a party aggrieved by such action of the Court of Appeals may, within 15 days of the order of the Court of Appeals, present a petition for review of such order to the clerk of the Supreme Court.~~ 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~~, and a copy of the order of the Court of Appeals from which review is sought~~. 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 ~~Court of Appeals or the~~ Supreme Court from resolving a petition for review by an order joined by more than ~~one judge or justice~~ *three justices*. ~~An order issued by a justice of the Supreme Court does not become a judgment of the court except on the concurrence of at least three justices, as provided in § 17.1-308.~~

§ 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

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such order, file a petition for review with the *Supreme* Court ~~of Appeals~~ in accordance with the procedures set forth in § 8.01-626. ~~If the assigned judge or judges grant the petition for review, the clerk shall refer the appeal to a panel of the court, as the court shall direct, and the parties shall prosecute the appeal in the manner provided for in the Rules of Supreme Court of Virginia.~~

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

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

§ 17.1-404. Original jurisdiction in matters of contempt and injunctions, writs of mandamus, prohibition and habeas corpus.

The Court of Appeals shall have authority to punish for contempt. ~~A judge of the Court of Appeals shall exercise initially the authority concerning injunctions vested in a justice of the Supreme Court by § 8.01-626 in any case over which the court would have appellate jurisdiction as provided in §§ 17.1-405 and 17.1-406.~~ In addition, in such cases over which the court would have appellate jurisdiction, the court shall have original jurisdiction to issue writs of mandamus, prohibition and habeas corpus.

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

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

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

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

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

4. Any interlocutory decree or order pursuant to § 8.01-267.8~~, 8.01-626, or 8.01-675.5~~; or

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