

SENATE BILL NO. 811

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Petersen)

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

**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.**

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

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

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

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

44           B. When, prior to the commencement of trial, the circuit court has entered in any pending civil  
45 action an order granting or denying a plea of sovereign, absolute, or qualified immunity that, if granted,  
46 would immunize the movant from compulsory participation in the proceeding, the order is eligible for  
47 immediate appellate review. Any person aggrieved by such order may, within 15 days of the entry of such  
48 order, file a petition for review with the ~~Supreme Court in accordance with the procedures set forth in §~~  
49 8.01-626 of Appeals. The clerk of the Court of Appeals shall assign the petition to a panel of the Court of  
50 Appeals, as the Court of Appeals shall direct, and the parties shall prosecute the appeal in the manner  
51 provided for in the Rules of Supreme Court of Virginia.

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

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

60 **§ 17.1-405. Appellate jurisdiction — Administrative agency, Virginia Workers'**  
 61 **Compensation Commission, and civil matter appeals.**

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

- 63 1. Any final decision of a circuit court on appeal from (i) a decision of an administrative agency,  
 64 or (ii) a grievance hearing decision issued pursuant to § 2.2-3005;
- 65 2. Any final decision of the Virginia Workers' Compensation Commission;
- 66 3. Except as provided in subsection B of § 17.1-406, any final judgment, order, or decree of a  
 67 circuit court in a civil matter;
- 68 4. Any interlocutory decree or order pursuant to § 8.01-267.8 or 8.01-675.5;
- 69 5. Any interlocutory decree or order involving an equitable claim in which the decree or order (i)  
 70 requires money to be paid or the possession or title of property to be changed or (ii) adjudicates the  
 71 principles of a cause; or
- 72 6. Any final judgment, order, or decree of a circuit court (i) involving an application for a concealed  
 73 weapons permit pursuant to Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2, (ii) involving  
 74 involuntary treatment of prisoners pursuant to § 53.1-40.1 or 53.1-133.04, or (iii) for declaratory or  
 75 injunctive relief under § 57-2.02.

76 **2. That the Supreme Court of Virginia shall promulgate rules no later than July 1, 2023, governing**  
 77 **the appeal of an interlocutory order granting or denying a plea of sovereign, absolute, or qualified**

78 immunity. Such rules shall be consistent with the procedures set forth in § 8.01-626 of the Code of  
79 Virginia, as amended by this act.

80 #