

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**Statutes of Limitation
and Accrual of Actions**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 55

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**

MEMBERS OF THE COMMITTEE

Bernard S. Cohen, Chairman
Thomas J. Michie, Jr., Vice Chairman
C. Richard Cranwell
Clinton Miller
Mark L. Earley
George E. Allen, III
John M. Oakey, Jr.

STAFF

Legal and Research

Division of Legislative Services

Mary P. Devine, Staff Attorney
Mary K. Geisen, Research Assistant
Sherry M. Smith, Executive Secretary

Administrative and Clerical

Jill A. Stevens, Office of the Clerk, House of Delegates

Interim Report of the
Joint Subcommittee Studying
Statutes of Limitation and Accrual of Actions
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January 1, 1989

TO: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION

The 1988 Session of the General Assembly approved creation of a seven-member joint subcommittee to study various issues involving the statutes of limitation and accrual of civil actions in Virginia. See Appendix A. The chief patron of House Joint Resolution No. 66 explained at the initial meeting of the joint subcommittee that law in this area had become too confusing to permit certain interpretations. In the ten years since recodification of Title 8, the Virginia Supreme Court and the General Assembly had interpreted and amended Title 8.01 so often that it has become increasingly difficult for attorneys to determine whether a particular claim would be time barred. It has been noted that . . . "[t]he present status (of the law) is a confusing mixture of rules as to which period applies and when the period of limitation for various types of claims begins to run."¹ The limitations periods generally applicable to personal injury and property damage claims range from one year (§ 8.01-248, Code of Virginia) to five years (§ 8.01-246, Code of Virginia). However, these periods may be shortened significantly, for example, due to notice of claim provisions applicable to claims against municipalities² or the Commonwealth³ or where the claim is one for medical malpractice.⁴ Further, the case law made it difficult to determine which limitations period would apply to a given set of facts. In one case, fraudulent representation to a prospective purchaser by a real estate agent as to the zoning of an adjoining piece of property was held to give rise to a personal cause of action subject to a two-year limitations period, and not a property damage claim. Pigott v. Moran, 231 Va. 76 (1986). Even more recently, a claim for damages to the foundation of plaintiffs' home caused by a defect in their swimming pool was determined to be a claim for economic loss, a personal action, and not a claim for property damage. Sensenbrenner v. Rust, Orling and Neale, Inc., 236 Va. ____, 5 V.L.R. 1040 (1988). These decisions surprised many members of the bar and the trial bench and emphasized the difficulty in determining whether a set of facts would be considered injury to the person or damage to property. The ambiguous status of the law does not serve the public interest.

The membership of the joint subcommittee was appointed as follows: Delegates Bernard S. Cohen, chief patron of House Joint Resolution No. 66, C. Richard Cranwell and Clinton Miller were appointed by the Speaker of the House of Delegates from the House Committee for Courts of Justice; Senators Thomas J. Michie, Jr., and Mark L. Earley were appointed by the Senate Committee on

Privileges and Elections from the Senate Committee for Courts of Justice; and George E. Allen III, as a member of the Virginia Trial Lawyers Association, and John M. Oakey, Jr., as a member of the Virginia Association of Defense Attorneys, were appointed citizen members by the Speaker of the House. Delegate Cohen was elected chairman and Senator Michie was elected vice chairman. The joint subcommittee held five meetings, including three working sessions, in Richmond. Additionally, Mr. Allen and Mr. Oakey were appointed to a drafting subcommittee and met once with staff to develop draft legislation for discussion during the work sessions.

SUMMARY OF RECOMMENDATIONS

1. A comprehensive revision of the statutes of limitation in civil actions is needed to clarify the laws so they will be easy to understand and will result in consistent and equitable application.

2. The revisions should include: (i) elimination of the various time periods and adoption of but two limitations periods, one for actions for injury to the person and another for actions for damage to property; (ii) modification of the accrual provisions including adoption of a discovery accrual rule to be applied in actions where the injury or damage could not reasonably have been discovered on the traditional accrual date; and (iii) adoption of a statute of repose (i.e., a maximum number of years from the date of injury or damage) applicable to those actions in which the discovery accrual rule is used, unless the action is one for products liability or involves injury resulting from use of or exposure to toxic or harmful substances.

3. The courts should be required to decide, prior to engaging the parties in the time and expense of a trial on the merits, whether an action is barred by the statute of limitations whenever the statute is raised as an affirmative defense and any party requests the determination.

4. Section 8.01-250, Code of Virginia, should be amended to specify that manufacturers and suppliers of ordinary building or construction materials incorporated into improvements in real property are not covered by the statute of repose.

5. The joint subcommittee should be continued to allow further analysis and evaluation of the proposals under consideration for revising the limitations periods and accrual rules.

CONSIDERATIONS AND FINDINGS

The deliberations of the joint subcommittee focused on the two issues which most frequently confuse and frustrate both the bench and the bar. The first issue is the determination of which limitations period applies to the particular facts of the case. The second issue is the determination of when that limitation period begins to run. A number of related issues were discussed in the course of the deliberations.

Limitations Period

The joint subcommittee initially considered the merits of adopting a unitary limitations period as recommended in the articles by Judge Zepkin. The ease with which a unitary period could be applied weighed heavily in its favor. Upon adoption of a unitary period, it technically would not be necessary to classify a particular case as an action for injury to the person or one for property damage. Regardless of the classification, the same limitation period would apply. This would avoid what the joint subcommittee viewed as the problems facing attorneys as a result of some decisions of the Supreme Court. (See e.g., Fuller v. Edwards, 180 Va. 191, holding that defamation is an injury to the person, and compare Lavery v. Automation Management, Inc., 234 Va. 145, holding that the unauthorized use of a person's name constitutes property damage.)

The limitations periods in all fifty states were reviewed by the joint subcommittee. See Appendix B. Sixteen states use the same limitations period for most civil actions. Only Louisiana and Massachusetts have provisions which could truly be labeled unitary limitations periods. In Louisiana, the period is one year and in Massachusetts, three years. The remaining fourteen states generally use either a two- or three-year period.

The joint subcommittee noted with interest that the Boyd-Graves Conference, after several years of consideration, concluded that two limitations periods would be best. The Conference recommended retention of the two-year period for all actions for personal injuries and application of the current five-year period to all claims for property damage or breach of contract. See Appendix C, §§ 8.01-243 and 8.01-246. Although a unitary period would eliminate all confusion and the need to define or classify a particular claim, the joint subcommittee believes there is some merit to the position of the Boyd-Graves Conference.

The two- and five-year limitations periods are most familiar to attorneys, as they govern the majority of civil actions. The joint subcommittee was concerned that lengthening the limitations period for certain actions might be construed to revive claims which would be barred under current law and that reducing limitations periods would create a trap for the unwary. There was also concern that lengthening the limitations period might encourage unnecessary delays in filing claims and could cause some court congestion by compressing a higher number of claims into a condensed filing period. Testimony was received to the effect that the largest number of claims are filed in a short period immediately preceding expiration of the statute of limitations.⁵

Using the limitations periods which govern a significant number of civil actions under current law will minimize confusion and any adverse effects on civil litigation resulting from the revision. Further, a shorter, two-year period is justifiable in actions for personal injury, for example, because evidence to support the injury claim may be lost with the passage of time. When dealing with claims for damage to property or breach of contract, evidence of the damage or breach is generally more enduring; thus a longer, five-year period is appropriate.

The specific reference to the two year limitations period applicable to actions for fraud has been deleted from § 8.01-243. The joint subcommittee believes a special limitations period for fraud is no longer necessary. If the fraud results in an injury to person, the two-year limitations period will apply. If, however, property damage results, the five-year limitations period applies.

It was suggested that the five-year period was too long when applied to oral contracts. However, the joint subcommittee is reluctant to leave oral contracts subject to a different (three-year) limitations period. Arguably, oral contracts could be included in the two-year period. The joint subcommittee was concerned, however, that placing one type of contract (written) within the five-year period and another (oral) within the two-year period would lead to further confusion. The joint subcommittee believes it is best to leave all contracts, including sales contracts under the Uniform Commercial Code, subject to one limitations period (five years). However, it was agreed that this issue would be given further consideration during the continued study. See Appendix C, § 8.2-725.

The recommended change to two limitations periods will be difficult to implement. The discussion draft extends the "catch-all" limitations period from one year to two years. See Appendix C, § 8.01-248. However, the joint subcommittee is concerned that several limitations periods which may be inconsistent with the recommended changes are specified throughout the Code of Virginia. Further review is needed to identify these sections and determine whether the recommended policy of uniformity requires changes in these sections as well. For this reason and also to ensure that a thorough review is given to all the proposed changes, the joint subcommittee recommends continuation of the study and circulation of the discussion draft, Appendix C, among members of the bar and the judiciary during the next several months to receive comments on the proposal. See Appendix D.

Accrual of Actions

Much of the joint subcommittee's time was spent discussing the need for changes in the accrual provisions. Critics of the current statutes governing accrual point to the fact that the plaintiff need not suffer actual harm before the limitations period begins to run.⁶ Additionally, some argue that it is fundamentally unfair to bar a claim for injury or damage where the plaintiff could not have known that the injury or damage had been sustained (e.g., latent injuries or defects in property).

Section 8.01-230 of the Code of Virginia codifies the general accrual rules. In general, the limitations period begins to run (i) when any "injury is sustained" in the case of injuries to the person or (ii) when the breach of contract or duty occurs in the case of damage to property. However, over the years the Supreme Court and the General Assembly have carved out several exceptions to the general rules. A date of discovery accrual rule has been adopted for some cases, while in others the accrual date is postponed.⁷ Again, the joint subcommittee noted that greater certainty in the law is needed.

The discussion draft modifies the accrual rules in several important respects. Section 8.01-230 is amended to include all generally applicable

accrual provisions in one section for ease of reference. For example, paragraph 11 is taken directly from paragraph 3 of current § 8.01-246. No substantive change is intended.

The joint subcommittee has intentionally left the rules governing medical malpractice unchanged. Although some technical, grammatical changes are made (see for example, § 8.01-243 C), no substantive change is intended. The joint subcommittee is well aware that Virginia's medical malpractice laws have been subject to intense review over the last several years. There was a legislative study of the cap on recovery in 1981 and a much broader two-year study beginning in 1984.⁸ The two-year legislative study beginning in 1986 of the liability insurance crisis and the need for tort reform also reviewed and recommended changes in the medical malpractice statutes.⁹ In recognition of this review and of the need to provide stability to the law in the area of medical malpractice due to the volatile insurance climate, to ensure the continued availability and affordability of health care and in order to properly evaluate the effect of the prior changes in these laws, the joint subcommittee does not recommend any changes to the statutes affecting claims for medical malpractice at this time.

Current law appears to hold that a cause of action may not be split.¹⁰ That is, all elements of damage resulting from the same wrong must be claimed in one action. The general accrual provision found in the first paragraph of § 8.01-230 is tied to the injury or damage "for which recovery is sought." The joint subcommittee recognizes that such a provision would allow a plaintiff to alter the accrual date, and thus application of the limitations period, by suing only for a part of the total damages incurred. This is an intended result of the change.

The general accrual rule is also changed as applied to property damage claims. The discussion draft provides that such a claim accrues when the damage for which recovery is sought is sustained, and not when the breach occurs. This change is intended to eliminate the unfairness which may result where the breach precedes the damage by several years. The change is further intended to reverse the law announced in Harbour Gate Owner's Association v. Berg, 332 Va. 98 (1986). There remains, however, some concern that the change may be too open-ended. For example, in a breach of contract there may be no damage until years later. The contract for sale could involve a currently worthless but subsequently valuable patent. It was suggested by one member of the joint subcommittee that a date of the breach accrual rule be adopted in contract actions for damage to property. The joint subcommittee plans to give this issue further consideration.

The general accrual rule is made subject to several exceptions. The first exception is for claims which are subject to the discovery accrual rule, discussed below. The exceptions found in the draft in paragraphs 2 and 3 are taken from current § 8.01-230. The specific statutory references are stricken from paragraph 2. The current references are incomplete. For example, although the tolling provision of § 8.01-233 relating to filing of cross-claims or counterclaims is referenced, the general tolling provisions of § 8.01-229 are not. The joint subcommittee will include specific references in the final draft if, following a more thorough review of other sections and titles of the Code, an exception from the general rule is found to be consistent with the policy of the changes recommended by the joint subcommittee.

Paragraphs 4, 5 and 9 are taken directly from current § 8.01-249 2, 3 and 4. Section 8.01-249 is repealed in the draft. The discovery rule found in paragraph 1 of the repealed section, applicable to actions for fraud, mistake or rescission of a contract for undue influence is not recodified; the new discovery section will cover these actions and others. See § 8.01-230.1, Appendix C. Paragraph 6 is included to clarify and emphasize that no change is being made to the accrual rule applicable to contracts for the sale of goods (as that term is defined in § 8.2-105) governed by the U.C.C. Similar language was previously found in the last paragraph of § 8.01-246.

Paragraph 7 is modeled on the recommendations of the Revisers of Title 8.11 A separate discovery accrual rule for products liability claims is created. There is no statute of repose applicable to these claims. The joint subcommittee reasoned that products liability claims often involve latent defects in the property. It is unfair to say that the limitations period for a subsequent or consequential injury begins to run on the date the original injury or damage is sustained (i.e., when the defective product is sold). For example, suppose a car with defective brakes was sold 11 years ago. The purchaser, who was unaware that the brakes were defective, suffered an "injury" on that date in that he did not receive a car with properly working brakes. However, until the brakes failed to operate properly as a result of the defect, thereby possibly causing injury or damage to the purchaser or another, the purchaser should not be required to bring an action. Further, the joint subcommittee believes a statute of repose would bar too many product liability claims given that the useful life of many products is so long. The joint subcommittee notes that the discovery rule adopted here, as well as the general discovery rule discussed below, provides that the limitations period runs from the date the injury was or, by the exercise of due diligence, should have been discovered. The due diligence standard is the same as that adopted in current law for medical malpractice (§ 8.01-243 C) and fraud, mistake and undue influence (§ 8.01-249).

Paragraph 8 expands the exception from the accrual rule under current law (§ 8.01-249 4) for injury resulting from exposure to asbestos to cover exposure or use of any toxic or otherwise harmful substance. It is intended that the law as it pertains to asbestos-related injuries remain the same. The statute of limitations does not begin to run until the diagnosis is communicated. The joint subcommittee remains concerned over the terminology used. Questions were raised, for example, whether x-rays would be considered harmful substances or whether prescription drugs which were manufactured, prescribed or given in the wrong dosage amount would be covered under this paragraph. The joint subcommittee intends for this paragraph to apply only to situations which are similar to asbestos exposure, i.e., situations where long-term use or exposure results in an injury which does not manifest itself for several years and which may be difficult to detect. Additional attention will be given to this section during the continued study.

Paragraph 10 is new. The joint subcommittee recognizes that this represents a change in the law,¹² but believes the change reflects a proper policy. The concern is that the person who defaults in the payment of one installment in the first year, for example, and who continues to pay but remains one installment behind, may, upon expiration of five years from the date of the default, avoid payment of the remainder of the debt by pleading expiration of the statute as a bar.

The joint subcommittee recognizes that statutes of limitation arbitrarily restrict a person's right to bring an action but that such restrictions are necessary to an ordered civil justice system. The joint subcommittee believes that the unfairness of any limitations period is mitigated when a discovery accrual rule is adopted. As a general proposition, a majority of the joint subcommittee believes an action should not be barred before the person knows or should have known that he was wronged and had damages. Section 8.01-230.1 contains a limited discovery accrual provision. Actions for medical malpractice, and products liability and "toxic torts" actions under paragraphs 7 and 8 of § 8.01-230 are specifically excluded from this new discovery rule. In all other cases involving latent injuries or damage, i.e., damage or injury which could not reasonably have been discovered on the date the injury or damage was actually sustained, the discovery rule, subject to the ten year repose, will apply.

The new discovery rule requires the plaintiff to exercise due diligence in discovering the injury or damage. The due diligence standard is currently used in the discovery rule applicable in actions for fraud, mistake or rescission of a contract for undue influence under § 8.01-249 and in medical malpractice actions involving fraudulent concealment under § 8.01-243 C. The joint subcommittee noted that a due diligence standard was not adopted for medical malpractice cases involving foreign objects under that section. However, those cases are distinguishable. The joint subcommittee believes application of the due diligence standard to the plaintiff in those types of cases would impose a burden on the plaintiff to, in effect, use the same degree of care as a health care provider in discovering the injury.

A ten-year statute of repose is adopted to limit the otherwise open-ended limitations period which results from this discovery rule. While a majority of the joint subcommittee believes an unlimited discovery rule is ultimately fair, they recognize that a degree of certainty is needed. The access to credible evidence of the wrong or in defense of the wrong, and the availability of liability insurance coverage are some of the factors which argue in favor of a narrowly drawn statute of repose.

The ten-year period was chosen in the interests of uniformity. As previously noted, the joint subcommittee does not want to change the law in medical malpractice cases. When the limited discovery rule was adopted in medical malpractice cases, a ten-year statute of repose was chosen.¹³ The actuarial data received in the course of the earlier study suggested that adoption of a discovery accrual rule, coupled with a statute of repose, would have limited impact on the claims costs incurred by insurance companies.¹⁴ The joint subcommittee believes the ten-year period represents an expedient balancing of the competing interests involved (i.e., unlimited right to bring an action versus the need for certainty and termination of exposure to liability) and is therefore reasonable.

A majority of the joint subcommittee believes that the repose provision currently found in § 8.01-250, relating to liability for defective improvements in real estate, should be extended to ten years. See § 8.01-250, Appendix C. This change would conform the section to the repose provisions already adopted and that recommended by the joint subcommittee as discussed above. Twenty-five years ago state legislatures throughout the nation adopted similar repose provisions for architects, engineers, etc., in

claims for design or structural defects in improvements to real property in response to a trend by courts at that time to adopt a discovery accrual provision in these cases. The joint subcommittee does not wish to reverse the policy decision made by the General Assembly in 1963. However, the joint subcommittee believes the longer period would provide more reasonable protection to the citizens of the Commonwealth. The roof of the school in Bedford County collapsed six or seven years after completion of the project. Fortunately, the collapse occurred in the summertime so there were no children in the school. Had there been any injuries, however, recovery would have been barred. The joint subcommittee was also concerned that had the Kansas City Hyatt Regency disaster occurred in Virginia, there could have been no recovery. The skywalk collapsed just over five years after completion of the project. The joint subcommittee will review the statute of repose provisions adopted in other states in an attempt to ascertain whether there is data to support retention of the five-year repose period. The joint subcommittee will review other sections of the Code of Virginia to determine whether other repose provisions exist and, if so, whether they should conform to the ten-year period or if there is a strong policy rationale for the difference.

Application of the ten-year repose period is made subject to several exceptions. First, the repose period is subject to the provisions which currently toll the statute of limitations under § 8.01-229 (e.g., disability of the plaintiff, death of a party, pendency of an action in which a voluntary nonsuit is subsequently taken, etc.). A similar approach was taken when the discovery rule was adopted in medical malpractice cases. See § 8.01-243 C, Code of Virginia. Second, the ten-year repose period is tolled where fraud or intentional and material misrepresentation prevented discovery within that period of either (i) the fact of the injury or damage or (ii) the defendant's connection to the injury or damage. The intent is to relieve the plaintiff of the harsh application of the ten-year limitation where, through no fault of his own, he was prevented from discovering the specified information needed to bring the action. The same change is made for the same reason in the repose provision applicable to architects, engineers, contractors, etc., found in § 8.01-250.

It should be noted that a due diligence standard is not adopted for purposes of determining whether the statute of repose is tolled due to fraud or intentional misrepresentation. The joint subcommittee felt this was unnecessary as the extent of the plaintiff's diligence will necessarily be taken into consideration. Where fraud is alleged to have prevented the discovery prior to expiration of the ten year period, the defense will raise the issue of the plaintiff's diligence to counter the allegation.

A provision is added to the new discovery rule to require the court to determine whether an action alleged to accrue under the new discovery rule is timely. The joint subcommittee believes that in actions in which allegations are being made by the plaintiff that he could not have discovered the injury or damage earlier and by the defendant that the plaintiff failed to exercise due diligence, the timeliness of the action is best determined by the court. It is recognized that this deprives the parties of a jury determination of what may be a factual issue. However, due to the complexity of the legal issues and the greater potential for fraud, such a result is appropriate.

The joint subcommittee considered introducing legislation in 1989 which would have required the court to make the determination on the timeliness of any action, even those not accruing under the discovery rule. The determination would be made upon request of either party. The provision was intended to relieve the parties of the burden of proceeding on the merits, only to have the case dismissed after trial on the grounds that the action was barred by the statute of limitations. However, several concerns were expressed. Absent application of the discovery accrual rule, several members of the joint subcommittee did not want to deprive the parties of the opportunity to have the issue decided by a jury where a legitimate dispute exists as to the facts upon which the determination will be made. The provision was redrafted to address some of the concerns and is included in the discussion draft. See § 8.01-235.1, Appendix C. In a case where separate facts can be presented to a jury in an expedited fashion, prior to a trial on the merits, the court would be authorized to empanel a special jury or use the jury empanelled for the case to decide the issue.

Miscellaneous

In 1985 the Virginia Supreme Court construed § 8.01-250 and held that the five year repose applied to makers and suppliers of ordinary building materials. Cape Henry Towers, Inc. v. National Gypsum Company, et al., 229 Va. 596 (1985). The joint subcommittee believes this decision is incorrect to the extent that it states whom the General Assembly intended to cover under the statute. There should be no distinction between those who furnish ordinary building materials and those who furnish machinery or equipment. The joint subcommittee recommends that § 8.01-250 be amended to eliminate this distinction. See Appendix E. The change will not affect application of the statute of repose to those who furnish the design, planning, surveying, supervision of construction or construction of the project. The change clarifies the intent to exclude from the protection of the repose provision those manufacturers and suppliers who provide materials to the contractors which the contractors will use in construction of the improvement to real property. This legislation is not directly related to changes in the limitations periods or accrual rules. It is intended to correct an erroneous interpretation of the statute before additional time passes. Therefore, the joint subcommittee will submit the legislation for consideration in 1989.

One of the most difficult issues facing the joint subcommittee involved the terminology used in the statutes and in the case law. For example, in many instances the terms "cause of action" and "right of action," or "injury to the person" and "personal injury" are used interchangeably. In the interest of consistency, the discussion draft uses only the terms "cause of action" and "injury to the person" or "damage to property." However, the meanings of these terms require further consideration. It is agreed that injury to the person includes personal (i.e., bodily) injuries. Thus, claims for bodily injuries fall within the two-year limitations period. Difficulties arise, however, when the claim involves an injury to reputation, particularly if an injury to personal reputation were to have an adverse effect on one's business (i.e., property) interests. A lack of clarity and consistency in this area creates further statute of limitations traps for an unsuspecting person and his lawyer. The joint subcommittee has asked several members of the bar to draft some definitions. It is hoped that in the course of the continued study, appropriate definitions for these terms can be developed.

Due to time constraints and the complexity of the issues, the joint subcommittee was unable to give adequate consideration to the development of these definitions and to the questions (i) whether the Commonwealth should be subject to statutes of limitations (see § 8.01-231) and (ii) whether actions under the Virginia Tort Claims Act should be specifically included or excluded from the new discovery accrual rule. Continuation of the study will allow for review and analysis of these issues as well.

CONCLUSION

The state of the law is such that a thorough review of the statutes of limitation and accrual provisions is needed to preserve the credibility of the civil justice system. The effects of the changes being considered will be far reaching. Considerable progress has been made in identifying the issues and making basic policy decisions on those issues. Additional input and review are needed, however, to ensure that the work product of the joint subcommittee is given full and fair consideration by those who will be most affected by the new statutory scheme.

Respectfully submitted,

Bernard S. Cohen, Chairman
Thomas J. Michie, Jr., Vice Chairman
C. Richard Cranwell
Clinton Miller
Mark L. Earley
George E. Allen, III
John M. Oakey, Jr.

Footnotes

1 For an excellent analysis of the problems, see Limitation of Actions in Virginia: Do Too Many Clocks Spoil the Broth?, Honorable J. R. Zepkin, Virginia Bar Association Journal, Winter and Spring, 1988.

2 See § 8.01-222, Code of Virginia.

3 See § 8.01-195.6, Code of Virginia.

4 See § 8.01-581.2, Code of Virginia.

5 A representative of Nationwide Mutual Insurance Company testified before the joint subcommittee on September 7, 1988, that a review of bodily injury claims in the company's private passenger automobile line over the preceding nine years established that in one-third of the cases in which suit was filed, suit was filed within the ten days preceding expiration of the limitations period.

6 Limitation of Actions, supra, page 4, Spring, 1988.

7 See e.g., Farley v. Goode, 219 Va. 969 (1979) adopting a "continuous treatment" exception to the rule of accrual on the date of the injury; § 8.01-243 C, Code of Virginia, adopting a date of discovery accrual rule in medical malpractice cases involving (i) foreign objects or (ii) fraudulent concealment of the wrong by the defendant; and Stone v. Ethan Allen, Inc., 232 Va. 365 (1986) holding that the statute of limitations on a claim for fire damage to a home resulting from a defect in a refrigerator delivered to the home years earlier did not begin to run until the subsequent injury (i.e., the fire) was sustained.

8 See Joint Subcommittee Studying Virginia's Medical Malpractice Laws, Interim Report, House Document No. 21 (1985); Final Report, House Document No. 12 (1986).

9 See Joint Subcommittee Studying the Liability Insurance Crisis and the Need for Tort Reform, Interim Report, Senate Document No. 11 (1987); Final Report, Senate Document No. 20 (1988).

10 See e.g., Friedman v. Peoples Drug Store, 208 Va. 700 (1968); but compare Stone v. Ethan Allen, Inc., 232 Va. 365 (1986).

11 See Code Commission Report, Recodification of Title 8, House Document No. 14 (1977).

12 See Country Club of Portsmouth, Inc. v. Wilkins, 166 Va. 325 (1936).

13 House Document No. 12 (1986), pp. 6-7.

14 Id., Appendix I.

Appendices

Appendix A	House Joint Resolution No. 66
Appendix B	Statutes of Limitation/Repose
Appendix C	Discussion Draft
Appendix D	Recommended Legislation--Resolution Continuing the Study
Appendix E	Recommended Legislation--Defective Improvements to Realty

APPENDIX A

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION
HOUSE JOINT RESOLUTION NO. 66

Establishing a subcommittee to study statutes of limitations and accrual of causes of action.

Agreed to by the House of Delegates, March 11, 1988
Agreed to by the Senate, March 9, 1988

WHEREAS, it has been over ten years since Title 8.01 of the Code of Virginia was adopted; and

WHEREAS, since that time, there have been several decisions of the Supreme Court of Virginia construing various statutes of limitations and determining the dates on which causes of action accrue; and

WHEREAS, the General Assembly of Virginia, on several occasions, has enacted legislation in response to decisions of the Supreme Court; and

WHEREAS, the public interest would be served by a legislative study and review of the laws pertaining to limitations of actions and accrual of causes of action; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study Virginia's statutes of limitations and accrual of causes of action.

The joint subcommittee shall consist of seven members as follows: three members of the House Committee for Courts of Justice to be appointed by the Speaker of the House; two members of the Senate Committee for Courts of Justice to be appointed by the Senate Committee on Privileges and Elections; one member of the Virginia Trial Lawyers Association and one member of the Virginia Association of Defense Attorneys to be appointed by the Speaker of the House.

The joint subcommittee shall make its report and recommendations, if any, to the 1989 Session of the General Assembly.

The indirect costs of this study are estimated to be \$10,650; the direct cost of this study shall not exceed \$5,040.

State Statutes of Limitations/ReposeALABAMA

PERSONAL INJURY	<u>1 year</u> for trespass on the case (6-2-38); <u>2 years</u> malicious prosecution, libel, slander, fraud (from discovery) (6-2-38); <u>6 years</u> for trespass (6-2-39).
WRONGFUL DEATH	<u>2 years</u> (6-2-38).
PROPERTY DAMAGE	<u>1 year</u> for trespass on the case (6-2-39).
BREACH OF WARRANTY	<u>4 years</u> (6-5-502(c)).
PRODUCT LIABILITY	<u>1 year</u> ; 10 year statute of repose held unconstitutional (<u>Lankford v. Sullivan, Long & Hagarty</u> , 416 So.2d 996 (1982)).

ALASKA

PERSONAL INJURY	<u>2 years</u> (09.10.070(1)); if fraud, accrues on discovery (09.10.230).
WRONGFUL DEATH	<u>2 years</u> (09.55.580(a)).
PROPERTY DAMAGE	<u>6 years</u> (09.10.050(1)).
BREACH OF WARRANTY	<u>4 years</u> (45.05.242).

ARIZONA

PERSONAL INJURY	<u>2 years</u> (12-542(1)); except <u>1 year</u> (from discovery) for libel, slander, false imprisonment (12-541) and <u>3 years</u> for fraud (12-543).
WRONGFUL DEATH	<u>2 years</u> (12-542(2)).
PROPERTY DAMAGE	<u>2 years</u> (12-542(3)-(5)).
BREACH OF WARRANTY	<u>6 years</u> - written (12-548); <u>3 years</u> - oral (12-543(1)).
PRODUCT LIABILITY	<u>2 years</u> , but no more than 12 years after the product was first sold for use and consumption (12-551).

APPENDIX B

ARKANSAS

PERSONAL INJURY 3 years (16-56-105); 1 year for assault, battery, false imprisonment, slander (16-56-104).

WRONGFUL DEATH 3 years ().

PROPERTY DAMAGE 3 years (16-56-105).

BREACH OF WARRANTY 4 years (85-725).

CALIFORNIA

PERSONAL INJURY 1 year - general (includes libel and slander) (CCP 340(3)); if med. mal. 3 years from injury or 1 year from discovery (CCP 340.5) but if injury to minor child received before birth, within 6 years of birth (CCP 29), fraud 3 years from discovery (CCP 338); legal malpractice, 1 year from discovery, maximum 4 years from wrong (CCP 340.6).

WRONGFUL DEATH 1 year (340(3)).

PROPERTY DAMAGE 3 years (338(2)-(3)).

BREACH OF WARRANTY 4 years (Cucc 2725) - does not apply to actions for personal injury, Becker v. Volkswagon of America, Inc., 125 Cal. Rptr. 326 (1975).

COLORADO

PERSONAL INJURY 2 years for all torts (regardless of theory of recovery) (13-80-102).

WRONGFUL DEATH See PERSONAL INJURY above.

PROPERTY DAMAGE See PERSONAL INJURY above.

BREACH OF WARRANTY 4 years (4-2-7-25).

CONNECTICUT

PERSONAL INJURY 3 years for any action founded on tort (52-577); 2 years from date of injury or discovery, injury to person or property (negligence/recklessness,

APPENDIX B

wanton misconduct or malpractice), maximum 3 years from act or omission (52-584).

WRONGFUL DEATH

2 years from date injury sustained or discovered, maximum 3 years from act or omission (52-555).

PROPERTY DAMAGE

See PERSONAL INJURY above.

BREACH OF WARRANTY

4 years (42a-2-75).

PRODUCT LIABILITY

3 years from injury or discovery, but no more than 10 years from date of sale, lease or bailment, unless still within "useful life" or express warranty present (1979 Conn. Pub. Act 483 Sect. 3).

DELAWARE

PERSONAL INJURY

2 years (10.8119); if Med. Mal. and not discoverable within 2 years, 3 years from injury (18.6856).

WRONGFUL DEATH

2 years (10.8107).

PROPERTY DAMAGE

2 years - Personal property (10.8107);
3 years - Realty (10.8106).

BREACH OF WARRANTY

4 years (6.2-725).

DISTRICT OF COLUMBIA

PERSONAL INJURY

3 years (12-301(8)).

WRONGFUL DEATH

1 year (16-2702).

PROPERTY DAMAGE

3 years (12-301(2)&(3)).

BREACH OF WARRANTY

4 years (28:2-725).

FLORIDA

PERSONAL INJURY

4 years for any action founded on negligence; professional malpractice accrues on discovery (due diligence) (95-11(3)(a)); 2 years from discovery (due diligence) but not more than 4 years from occurrence/incident for Med. Mal. (95-11(4)).

APPENDIX B

WRONGFUL DEATH	<u>2 years</u> (95-11(4)(d)).
PROPERTY DAMAGE	<u>4 years</u> (95-11(3)(g)&(h)).
BREACH OF WARRANTY	<u>4 years</u> (672.2-725).
PRODUCT LIABILITY	<u>4 years</u> , but must be within 12 years of date of delivery of completed product to original purchaser (95-11(3)(e)).

GEORGIA

PERSONAL INJURY	<u>2 years</u> for general injury to person; <u>1 year</u> for injury to reputation; <u>4 years</u> for Loss of Consortium (9-3-33).
WRONGFUL DEATH	<u>2 years</u> (9-3-33).
PROPERTY DAMAGE	<u>4 years</u> (9-3-32).
BREACH OF WARRANTY	<u>4 years</u> (109A-2-725).
PRODUCT LIABILITY	Maximum <u>10 years</u> , from first sale (105-106(b)(2)).

HAWAII

PERSONAL INJURY	<u>2 years</u> (657-7).. Accrues when act, damage and causal connection discovered or should have been discovered (reasonable diligence), 648 P.2d 689; med. mal. subject to maximum of 6 years from act/omission (657-7.3).
WRONGFUL DEATH	<u>2 years</u> from death (663-3).
PROPERTY DAMAGE	<u>2 years</u> for personalty (657-1).
BREACH OF WARRANTY	<u>4 years</u> (490:2-725).

IDAHO

PERSONAL INJURY	<u>2 years</u> (5-219(4)) discovery accrual for fraud (5-218(4)), and med. mal. if fraudulent concealment or foreign object (5-219(4)).
WRONGFUL DEATH	<u>2 years</u> from occurrence, act, or omission (5-219).

APPENDIX B

PROPERTY DAMAGE 3 years (5-218).
BREACH OF WARRANTY 4 years - Sales (28-2-725). 2 years -
Personal injury or death (5-219).

ILLINOIS

PERSONAL INJURY 2 years (110-13-202); 1 year - slander
or libel (110-13-201).
WRONGFUL DEATH 2 years (70-2).
PROPERTY DAMAGE 5 years (110-13-205).
BREACH OF WARRANTY 4 years (26-2-725).
PRODUCT LIABILITY 2 years from date of known injury or 8
years if unknown; in no case more than
12 years from date product leaves
possession of manufacturer, or 10 years
from date of first possession by
initial owner, whichever period expires
earlier (110-13-213); 12-year
limitation not applicable to negligence
actions, Dintelman v. Alliance Machine
Co., 453 N.E.2d 128 (Ill. App., 1983).
Constitutionality of statute of repose
upheld, Thornton v. Mono Manufacturing
Co., 425 N.E.2d 522 (1981).

INDIANA

PERSONAL INJURY 2 years for injury to person, character
or personal property (34-1-2-2(1)); 6
years for Fraud (34-1-2-1).
WRONGFUL DEATH 2 years (34-1-1-2).
PROPERTY DAMAGE 6 years - Realty (34-1-2-1(3)). 2
years - Personalty (34-1-2-2(2)).
BREACH OF WARRANTY 4 years (26-1-2-725).
PRODUCT LIABILITY 2 years after cause of action accrues
or 10 years after delivery of the
product to initial user, provided that
if action accrues more than 8 but less
than 10 years after initial delivery,
it may be brought any time within 2
years of accrual (34-4-20A-5).

APPENDIX B

IOWA

PERSONAL INJURY	<u>2 years</u> for injury to person or reputation, whether contract or tort (614.1(2)); discovery accrual for med. mal (614.1(9)).
WRONGFUL DEATH	<u>2 years</u> (614.1(2)).
PROPERTY DAMAGE	<u>5 years</u> (614.1(4)).

KANSAS

PERSONAL INJURY	<u>2 years</u> from injury or discovery (reasonably ascertainable), maximum of <u>10 years</u> from the act (60-513(4)); Med. Mal. - maximum of <u>4 years</u> from act.
WRONGFUL DEATH	<u>2 years</u> from injury or discovery, maximum of <u>10 years</u> (60-513(5)).
PROPERTY DAMAGE	<u>2 years</u> from injury or discovery, maximum of <u>10 years</u> (60-513(1)&(2)).
BREACH OF WARRANTY	<u>4 years</u> (84-2-7-25).

KENTUCKY

PERSONAL INJURY	<u>1 year</u> (413.140(1)(a)); <u>5 years</u> for fraud (413.120(12)). Accrues on discovery if fact of injury not reasonably ascertainable.
WRONGFUL DEATH	<u>1 year</u> (413.140(1)(a)).
PROPERTY DAMAGE	<u>5 years</u> (413.120(6)).
BREACH OF WARRANTY	<u>4 years</u> (355.2-725).
PRODUCT LIABILITY	<u>3 years</u> (411.1).

LOUISIANA

PERSONAL INJURY	<u>1 year</u> (3492).
WRONGFUL DEATH	<u>1 year</u> (3492).
PROPERTY DAMAGE	<u>1 year</u> (3492).
BREACH OF WARRANTY	<u>1 year</u> - Sales.

APPENDIX B

MAINE

PERSONAL INJURY	<u>6 years</u> - all civil actions, except <u>2 years</u> for assault and battery, false imprisonment, slander, libel and med. mal. (14 § 752).
WRONGFUL DEATH	<u>2 years</u> (18 § 2-804).
PROPERTY DAMAGE	<u>6 years</u> (14 § 752).
BREACH OF WARRANTY	<u>4 years</u> (11 § 2-725).
PRODUCT LIABILITY	<u>6 years</u> (14 § 752).

MARYLAND

PERSONAL INJURY	<u>3 years</u> for "all civil actions", except <u>1 year</u> for assault, battery, libel, slander (5-105) and <u>5 years</u> from injury or <u>3 years</u> from discovery for med. mal. (5-101).
WRONGFUL DEATH	<u>3 years</u> (3-904).
PROPERTY DAMAGE	<u>3 years</u> (5-101).
BREACH OF WARRANTY	<u>4 years</u> (2-725).
PRODUCT LIABILITY	<u>3 years</u> (5-101).

MASSACHUSETTS

PERSONAL INJURY	<u>3 years</u> for tort, contract (personal injuries), replevin malpractice, assault, battery, libel, slander, false imprisonment, etc. (260 § 2A and 260 § 4).
WRONGFUL DEATH	<u>3 years</u> (229 § 2) (death must occur within two years of death--causing injury).
PROPERTY DAMAGE	<u>3 years</u> (260 § 2A).
BREACH OF WARRANTY	<u>3 years</u> (106 § 2-318).

MICHIGAN

PERSONAL INJURY	<u>2 years</u> , except <u>1 year</u> for slander or libel (600.5805).
-----------------	--

APPENDIX B

WRONGFUL DEATH	<u>3 years</u> (600.5805(8)).
PROPERTY DAMAGE	<u>3 years</u> (600.5805).
BREACH OF WARRANTY	<u>4 years</u> (440.2725).
PRODUCT LIABILITY	<u>3 years</u> (600.5805(9)).

MINNESOTA

PERSONAL INJURY	<u>2 years</u> - med. mal. and torts resulting in personal injury (541.05).
WRONGFUL DEATH	<u>3 years</u> from death, but no more than <u>6 years</u> after act or omission (573.02) except, 2 years if med. mal.
PROPERTY DAMAGE	<u>6 years</u> (541.05).
BREACH OF WARRANTY	<u>4 years</u> (336-2-725).
PRODUCT LIABILITY	<u>4 years</u> (541.05).

MISSISSIPPI

PERSONAL INJURY	<u>6 years</u> (15-1-49) except <u>1 year</u> for assault, battery, maiming, false imprisonment, slander, libel (15-1-35) and <u>2 years</u> for med. mal.
WRONGFUL DEATH	<u>6 years</u> (15-1-49).
PROPERTY DAMAGE	<u>6 years</u> (15-1-49).
BREACH OF WARRANTY	<u>6 years</u> (75-2-725).

MISSOURI

PERSONAL INJURY	<u>5 years</u> for injury to person or rights of another (from discovery, if fraud, subject to <u>10 year</u> maximum (516.120)), except <u>2 years</u> for libel, slander, assault, battery, false imprisonment, etc. (516.140) and <u>2 years</u> for med. mal. (from discovery if foreign object) (516.105).
WRONGFUL DEATH	<u>3 years</u> (537.100).
PROPERTY DAMAGE	<u>5 years</u> (516.120).
BREACH OF WARRANTY	<u>4 years</u> (400.2-725).

APPENDIX B

MONTANA

PERSONAL INJURY	<u>3 years</u> for actions on liability not founded upon an instrument (27-2-204); from discovery for med. mal. (27-2-205) except <u>2 years</u> for libel, slander, assault, battery, false imprisonment or seduction and fraud or mistake (27-2-203).
WRONGFUL DEATH	<u>3 years</u> (27-2-204).
PROPERTY DAMAGE	<u>2 years</u> (27-2-207).
BREACH OF WARRANTY	<u>8 years</u> if written obligation (27-20-202) or <u>4 years</u> if contract for sale (30-2-725).

NEBRASKA

PERSONAL INJURY	<u>4 years</u> for injury to rights not arising on contract (from discovery for fraud) (25-207(3)) except <u>1 year</u> from discovery for professional malpractice and <u>1 year</u> for libel, slander, false imprisonment, malicious prosecution and <u>2 years</u> for other professional malpractice (25-208).
WRONGFUL DEATH	<u>2 years</u> (30-810).
PROPERTY DAMAGE	<u>4 years</u> (25-207(2)).
BREACH OF WARRANTY	<u>4 years</u> (2-725).
PRODUCT LIABILITY	<u>4 years</u> , but within 10 years of injury or first sale, or <u>2 years</u> from "being informed" if asbestos-related disease (25-224).

NEVADA

PERSONAL INJURY	<u>2 years</u> (11.190(4)(e)) except <u>3 years</u> from discovery if fraud or mistake (11.190(3)).
WRONGFUL DEATH	<u>2 years</u> (11.190(4)).
PROPERTY DAMAGE	<u>3 years</u> (11.190(3)).
BREACH OF WARRANTY	<u>4 years</u> (104.2725).

APPENDIX B

NEW HAMPSHIRE

PERSONAL INJURY 3 years for all personal actions (from discovery of injury and causal relationship) (508:4).

WRONGFUL DEATH 3 years (508:4).

PROPERTY DAMAGE 3 years (508:4).

BREACH OF WARRANTY Sales contract - 4 years (382-A:725).

PRODUCT LIABILITY 3 years from injury, but not more than 12 years after product left control of manufacturer (507-D:2). 12-year statute of repose held unconstitutional, Heath v. Sears, Roebuck & Co., 464 A.2d 288 (N.H. 1983).

NEW JERSEY

PERSONAL INJURY 2 years for injury to person from wrongful act, neglect or default (2A:14-2).

WRONGFUL DEATH 2 years (2A:31-3).

PROPERTY DAMAGE 6 years (2A:14-1).

BREACH OF WARRANTY 4 years (12A:2-725).

NEW MEXICO

PERSONAL INJURY 3 years for injury to person or reputation (37-1-8).

WRONGFUL DEATH 3 years (41-2-2).

PROPERTY DAMAGE 4 years (37-1-4).

BREACH OF WARRANTY 4 years (55-2-725). But see, Chavez v. Kitsch, 374 P.2d 497 (1962) - court applied the 3-year period in a personal injury action prosecuted under warranty.

NEW YORK

PERSONAL INJURY 3 years (CPLR 214(5)); 1 year for assault, battery, false imprisonment,

APPENDIX B

slander, libel (CPLR 215); 2 years 6 months for med. mal. (from discovery for foreign object) (CPLR 214a).

WRONGFUL DEATH

2 years (EPTL 5-4.1).

PROPERTY DAMAGE

3 years, (CPLR § 214(4)).

BREACH OF WARRANTY

Sale - 4 years (2-725 UCC); Other - 6 years (CPLR 213(2)).

NORTH CAROLINA

PERSONAL INJURY

3 years for injury to person or rights of another; accrues when injury was or should have been apparent (1-52(5)&(16)).

WRONGFUL DEATH

2 years (1-53(4)).

PROPERTY DAMAGE

3 years from when damage is or should have been apparent (1-52(5)&(16)).

BREACH OF WARRANTY

4 years (25-2-725(1)).

PRODUCT LIABILITY

6 years from initial purchase for use or consumption.

NORTH DAKOTA

PERSONAL INJURY

6 years (28-01-16); 2 years for libel, slander, assault, false imprisonment (28-01-18) and 2 years for med. mal. (28-01-18).

WRONGFUL DEATH

2 years (28-01-18).

PROPERTY DAMAGE

6 years (18-01-16).

BREACH OF WARRANTY

4 years (41-02-104).

PRODUCT LIABILITY

Injury, death or damage occurred within 10 years from initial purchase for use or consumption or 11 years from date of manufacture (28-01.1-02).

OHIO

PERSONAL INJURY

2 years for bodily injury (2305.10); 1 year for slander, libel, malicious prosecution, false imprisonment and

APPENDIX B

med. mal. (maximum 4 years from occurrence) (2305.11); 4 years for fraud.

WRONGFUL DEATH 2 years (2305.10).

PROPERTY DAMAGE 2 years (2305.10); 4 years for recovery (2305.09).

BREACH OF WARRANTY 4 years if contractual relationship (1302.98); other - 2 years (2305.10).

OKLAHOMA

PERSONAL INJURY 2 years for injury to rights of another (12-95(3)); 1 year for assault, battery, libel, slander, malicious prosecution, false imprisonment (12-95(4)).

WRONGFUL DEATH 2 years (12-1053).

PROPERTY DAMAGE 2 years (12-95(3)).

BREACH OF WARRANTY 5 years (12A-2-725).

OREGON

"STATUTE OF ULTIMATE REPOSE"

Notwithstanding other longer statutory provisions as a result of tolling or delayed commencement of running of the statute of limitations, all actions for negligent injury to person or property must be brought within 10 years from the date of the act or omission complained of (12.115[1]). Constitutionality upheld, Josephs v. Burns, 491 P.2d 203 (1971). Action accrues when injury manifests if injury not previously discoverable by exercise of due diligence, O'Gara v. Kaufman, 726 P.2d 402 (1986).

PERSONAL INJURY 2 years (12.110(1)); from discovery if fraud, deceit or med. mal. (subject to 5 years max. unless fraud/deceit).

WRONGFUL DEATH 3 years from death-causing injury (30.020).

PROPERTY DAMAGE 6 years (12.080(3)&(4)).

APPENDIX B

BREACH OF WARRANTY 4 years (72.7250).
PRODUCT LIABILITY 2 years from date on which death, injury or damage occurs (from discovery if asbestos related), but not later than 8 years after first purchase of product (30.905).

PENNSYLVANIA

PERSONAL INJURY 2 years (42 § 5524).
WRONGFUL DEATH 2 years (42 § 5524).
PROPERTY DAMAGE 2 years (42 § 5524).
BREACH OF WARRANTY 4 years (12A § 2-725). But, 2 years for third-party personal injury actions based upon warranty. See Salvador v. Atlantic Steel Boiler Co., 319 A.2d 903 (Pa. Super. 1978).

RHODE ISLAND

PERSONAL INJURY 10 years for all civil actions (9-1-13); 3 years for injuries to the person (9-1-14) - from discovery for med. mal. (9-1-14.1); 1 year for actions for words spoken.
WRONGFUL DEATH 3 years (10-7-2).
PROPERTY DAMAGE 10 years (9-1-13(a)).
BREACH OF WARRANTY 4 years (6A-2-725).
PRODUCT LIABILITY Personal injury - 3 years (9-1-14); Property damage - 6 years (9-1-13); Statute of Repose - 10 years from date of first purchase for consumption (9-1-13(b)) - Unconstitutional, Kennedy v. Cumberland Co., Inc., 471 A.2d 195 (R.I. 1984).

SOUTH CAROLINA

PERSONAL INJURY 6 years for injury to person or rights of another (15-3-530(5)); 3 years from reasonable discovery if med. mal. (15-3-545); 2 years for libel, slander, assault, battery, false imprisonment (15-3-550).

APPENDIX B

WRONGFUL DEATH 6 years (15-3-530(6)).
PROPERTY DAMAGE 6 years (15-3-530(3)&(4)).
BREACH OF WARRANTY 6 years (36-2-725).

SOUTH DAKOTA

PERSONAL INJURY 3 years for personal injury (15-2-14(3)); 6 years for other injury to rights of another not arising on contract and for fraud (15-2-13); 2 years for libel, slander, assault, battery or false imprisonment (15-2-15); 3 years for legal malpractice (15-2-14.2).
WRONGFUL DEATH 3 years (21-5-3).
PROPERTY DAMAGE 6 years (15-2-13(3)&(4)).
BREACH OF WARRANTY 6 years (15-2-13(1)).
PRODUCT LIABILITY 3 years from injury, death or damage (15-2-12.2).

TENNESSEE

PERSONAL INJURY 1 year (28-3-104).
WRONGFUL DEATH 1 year (28-3-104).
PROPERTY DAMAGE 3 years (28-3-105).
BREACH OF WARRANTY 4 years (47-2-725).
PRODUCT LIABILITY Governed by personal injury and property damage limitations periods but must be brought within 6 years of date of injury, 10 years of first purchase or 1 year of expiration of anticipated life of products; whichever is shorter (29-28-103).

TEXAS

PERSONAL INJURY 2 years (16.003(a)); 1 year for malicious prosecution, slander, libel ().
WRONGFUL DEATH 2 years (16.003(b)).

APPENDIX B

PROPERTY DAMAGE 2 years (16.003(a)).

BREACH OF WARRANTY 4 years (2-725).

UTAH

PERSONAL INJURY 4 years for actions not otherwise covered (78-12-25(2)); 2 years for civil rights actions (78-12-28); 1 year for libel, slander, assault, battery, false imprisonment.

WRONGFUL DEATH 2 years (78-12-28(2)).

PROPERTY DAMAGE 3 years (78-12-26(1)&(2)).

BREACH OF WARRANTY 4 years (70A-2-75).

PRODUCT LIABILITY Governed by personal injury and property damage limitations periods, but must be brought within 6 years of initial purchase or 10 years of manufacture (78-15-3).

VERMONT

PERSONAL INJURY 3 years from discovery (12-512(4)); Med. Mal. - 3 years from incident or 2 years from reasonable discovery (12-521).

WRONGFUL DEATH 2 years (14-1492(a)).

PROPERTY DAMAGE 3 years - Personalty (12-512(5)). 6 years - Realty (12-511).

BREACH OF WARRANTY 4 years (9A-2-725(1)).

WASHINGTON

PERSONAL INJURY 3 years for injury to person or rights of another (4.16.080(2)) - fraud accrues on discovery; 2 years for libel, slander, assault, battery, false imprisonment.

WRONGFUL DEATH 3 years (4.16.080(2)).

PROPERTY DAMAGE 3 years (4.16.080(1)&(2)).

BREACH OF WARRANTY 4 years (62A.2-725).

APPENDIX B

WEST VIRGINIA

PERSONAL INJURY 2 years (55-2-12).
WRONGFUL DEATH 2 years (55-7-6).
PROPERTY DAMAGE 2 years (55-2-12).
BREACH OF WARRANTY 4 years - Sales (46-2-275); 2 years -
Personal injury (55-2-12).

WISCONSIN

PERSONAL INJURY 6 years for injury to character or
rights of another (893.53); 3 years for
injuries to the person (893.54); 3
years from injury or 1 year from
reasonably diligent discovery, subject
to maximum of 5 years from act for med.
mal. (893.55); 2 years for intentional
torts (893.57). Discovery rule adopted
for all torts, Hansen v. A.H. Robins,
335 N.W. 2d 578 (1983).

WRONGFUL DEATH 3 years (893.54).

PROPERTY DAMAGE 6 years (893.52).

BREACH OF WARRANTY 4 years (402A.725).

WYOMING

PERSONAL INJURY 4 years for injury to rights
(1-3-105[a][iv]); 1 year for slander,
libel, assault, battery, false
imprisonment ().

WRONGFUL DEATH 2 years (1-38-102).

PROPERTY DAMAGE 4 years (1-3-105[a][iv]).

BREACH OF WARRANTY 4 years (34-21-299.5).

1 RDF 1/10/89 Devine T 1/11/89 smw

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact §§ 8.01-228, 8.01-230, 8.01-243, 8.01-246
4 8.01-248, 8.01-250 and 8.2-725 of the Code of Virginia, to amend
5 the Code of Virginia by adding sections numbered 8.01-230.1 and
6 8.01-235.1 and to repeal § 8.01-249 of the Code of Virginia,
7 relating to statutes of limitation; accrual of personal actions.

8

9 Be it enacted by the General Assembly of Virginia:

10 1. That §§ 8.01-228, 8.01-230, 8.01-243, 8.01-246, 8.01-248, 8.01-250
11 and 8.2-725 of the Code of Virginia are amended and reenacted and that
12 the Code of Virginia is amended by adding sections numbered 8.01-230.1
13 and 8.01-235.1 as follows:

14 § 8.01-228. Scope of limitations; "personal action"
15 defined.--Every action for which a limitation period is prescribed by
16 law must be commenced within the period prescribed in this chapter -
17 unless otherwise specifically provided in this Code. As used in this
18 chapter, the term "personal action" shall include means an action
19 wherein a money judgment ~~for money~~ is sought ~~;~~ ~~whether~~ ~~for~~ ~~damages~~
20 for injury to person or damage to property.

21 § 8.01-230. Accrual of cause of action.-- In every action ~~for~~
22 ~~which~~ ~~a~~ ~~limitation~~ ~~period~~ ~~is~~ ~~prescribed,~~ ~~the~~ A. ~~A~~ cause of action
23 shall be deemed ~~to~~ accrue and the prescribed limitation period shall
24 begin to run from the date the injury to the person or damage to
25 property for which recovery is sought is sustained ~~in the case of~~
26 ~~injury to the person,~~ when the breach of contract or duty occurs in
27 the case of damage to property and not when the resulting damage is

1 discovered except as follows:

2 1. As provided in § 8.01-230.1 where the injury or damage is not
3 reasonably discoverable;

4 2. Where the relief sought is solely equitable or ;

5 3. Where otherwise specifically provided under § 8-01-233,
6 subsection C of § 8-01-245, §§ 8-01-249, 8-01-250 or other by statute
7 or ;

8 4. In actions or other proceedings for money on deposit with a
9 bank or any person or corporation doing a banking business, the period
10 shall begin to run when a request in writing is made therefor by
11 check, order or otherwise;

12 5. In actions for malicious prosecution or abuse of process, the
13 period shall begin to run when the relevant criminal or civil action
14 is terminated;

15 6. In actions on contracts for the sale of goods, except those
16 products liability actions governed by subsection 7, the period shall
17 begin to run when the breach occurs as provided in § 8.2-725;

18 7. In products liability actions based on breach of warranty or
19 negligence for injury to person or damage to property other than the
20 product itself, the period shall begin to run when the injury or
21 damage is discovered or, by the exercise of due diligence, reasonably
22 should have been discovered;

23 8. In actions for injury to the person resulting from exposure to
24 or use of substances harmful to the human body, such as asbestos, or
25 products, materials or drugs containing substances toxic to the human
26 body, except actions for malpractice against a health care provider,
27 the period shall begin to run when a diagnosis of injury or disease
28 related to the exposure to or use of the substance, product, material

1 or drug is first communicated to the person or his agent by a
2 physician;

3 9. In actions for contribution or for indemnification, the period
4 shall begin to run when the contributtee or the indemnitee has paid or
5 discharged the obligation, provided that a third-party claim permitted
6 by subsection A of § 8.01-281 and the Rules of Court may be asserted
7 before the cause of action is deemed to accrue hereunder;

8 10. In actions on an installment debt, the period shall begin to
9 run from the date of the last payment on the debt, notwithstanding
10 that the total debt was accelerated at an earlier date upon nonpayment
11 of an installment; or

12 11. In actions by a partner against another for settlement of
13 the partnership account or in actions upon accounts concerning the
14 trade of merchandise between merchants, their factors or servants, the
15 period shall begin to run from the date of cessation of the dealings
16 in which they are interested together.

17 § 8.01-230.1. When action may be brought after discovery of -
18 injury or damage.--Notwithstanding the provisions of § 8.01-230 and
19 except as provided in subdivisions 7 and 8 of § 8.01-230 and
20 subsection C of § 8.01-243, if an injury to person or damage to
21 property is not reasonably discoverable on the date the cause of
22 action would have accrued under § 8.01-230, the cause of action shall
23 accrue when the injury or damage is discovered or, in the exercise of
24 due diligence, reasonably should have been discovered. But in no
25 event shall an action be commenced pursuant to this section more than
26 ten years after the last act or omission alleged to give rise to the
27 cause of action except that the provisions of § 8.01-229 shall apply
28 to toll the statute of limitations in actions brought by or on behalf

1 of a person under a disability. The ten-year statute of repose shall
 2 be tolled during any period where fraud or intentional
 3 misrepresentation of a material fact prevented discovery of the injury
 4 or damage or its causal connection to the act or omission complained
 5 of within that period. In any action alleged to accrue under this
 6 section in which the bar of the statute of limitations is raised as a
 7 defense, upon motion of either party made fourteen days prior to trial
 8 on the merits, the court shall determine whether the action is timely
 9 under this section.

0 § 8.01-235.1. Court to determine whether limitation is bar.--In
 1 any action in which the bar of the statute of limitations is raised as
 2 a defense, upon motion of either party made at least fourteen days
 3 prior to trial on the merits, the court shall determine whether the
 4 action is timely. If a dispute of facts is involved which cannot be
 5 stipulated by the parties, any party can request that the disputed
 6 facts be determined by a jury.

7 § 8.01-243. Personal action for injury to person or damage to-
 8 property generally; medical malpractice.--A. Unless otherwise
 9 specifically provided in this section or by other statute, every
 0 action for personal injuries to the person, whatever the theory of
 1 recovery, and every action for damages resulting from fraud, shall be
 2 brought within two years after the cause of action accrues.

3 B. Every action for injury damage to property, including actions
 4 by a parent or guardian of an infant against a tort-feasor for
 5 expenses of curing or attempting to cure such the infant from the
 6 result of a personal injury or loss of services of such the infant,
 7 shall be brought within five years after the cause of action accrues.

8 C. The two-year limitations period specified in subsection A

1 ~~shall be extended in actions~~ Every action for malpractice against a
 2 health care provider shall be brought within two years after the cau-
 3 of action accrues except as follows:

4 1. In cases arising out of a foreign object having no therapeut:
 5 or diagnostic effect being left in a patient's body, the limitations
 6 period is extended for a period of one year from the date the object
 7 is discovered or reasonably should have been discovered; and

8 2. In cases in which fraud, concealment or intentional
 9 misrepresentation prevented discovery of the injury within the
 10 two-year period, the limitations period is extended for one year from
 11 the date the injury is discovered or, by the exercise of due
 12 diligence, reasonably should have been discovered.

13 However, the provisions of this subsection shall not apply to
 14 extend the limitations period beyond ten years from the date the caus
 15 of action accrues, except that the provisions of § 8.01-229 A 2 shall
 16 apply to toll the statute of limitations in actions brought by or on
 17 behalf of a person under a disability.

18 § 8.01-246. Actions based on contracts.-- ~~Subject to the~~
 19 ~~provisions of § 8.01-243 regarding injuries to person and property an~~
 20 ~~of A. Except as otherwise provided in (i) § 8.01-245 regarding the~~
 21 ~~application of limitations to fiduciaries , and their bonds and (ii)~~
 22 8.01-243 regarding injury to person or damage to property , actions
 23 founded upon a contract, other than actions on a judgment or decree,
 24 shall be brought within the following number of years next after the
 25 cause of action shall have has accrued:

26 1. In actions or upon a recognizance, except recognizance of bail
 27 in a civil suit, within ~~ten~~ five years , and in actions or motions
 28 upon a recognizance of bail in a civil suit, within ~~three~~ five years,

omitting from the computation of such three years such the five-year period the time as during which the right to sue out such the execution shall have has been suspended by injunction, supersedeas or other process;

2. In actions on any contract , whether written or unwritten, express or implied which is not otherwise specified and which is in writing and signed by the party to be charged thereby, or by his agent , within five years whether such or not the writing be is under seal; or not and

3. In actions by a partner against another for settlement of the partnership account or in actions upon accounts concerning the trade of merchandise between merchant and merchant, their factors, or servants, merchants or their agents, within five years from the cessation of the dealings in which they are interested together,

4. In actions upon any unwritten contract, express or implied, within three years .

Provided that as to any action to which § 8-2-725 of the Uniform Commercial Code is applicable, that section shall be controlling except that B. However, in products liability actions for injury to person and or for injury damage to property, other than the property subject to contract, the limitation prescribed in § 8.01-243 shall apply and § 8.2-725 shall apply to contracts for sale under the Uniform Commercial Code .

§ 8.01-248. Actions for which no other limitation is specified.--Every personal action, for which no limitation is otherwise prescribed, shall be brought within one year two years after the right to bring such cause of action has accrued.

§ 8.01-250. Statute of repose in certain actions for damages

1 arising out of defective or unsafe condition of improvements to real
 2 property.--No action to recover for any injury damage to property,
 3 real or personal, or for bodily injury to the person or wrongful
 4 death, arising out of the defective and unsafe condition of an
 5 improvement to real property, nor any action for contribution or
 6 indemnity for damages sustained as a result of such injury, shall be
 7 brought against any person performing or furnishing the design,
 8 planning, surveying, supervision of construction, or construction of
 9 such improvement to real property more than five ten years after the
 10 performance of or furnishing of such services and construction.
 11 However, the ten-year statute of repose shall be tolled during any
 12 period where fraud or intentional misrepresentation of a material fact
 13 prevented discovery of the injury or damage or its causal connection
 14 to the act or omission complained of within that period.

15 The limitation prescribed in this section shall not apply to the
 16 manufacturer or supplier of any product, equipment or machinery or
 17 other articles, including ordinary building or construction
 18 materials, installed in a structure upon incorporated into
 19 improvements in real property, nor to any person in actual possession
 20 and in control of the improvement as owner, tenant or otherwise at the
 21 time the defective or unsafe condition of such improvement constituted
 22 the proximate cause of the injury or damage for which the action is
 23 brought; rather each such action shall be brought within the time
 24 next after such injury occurs as provided in §§ 8-01-243 and 8-01-244
 25 .

26 § 8.2-725. Statute of limitations in contracts for sale.--(1)
 27 action for breach of any contract for sale must be commenced within
 28 four five years after the cause of action has accrued. By the

1 original agreement the parties may reduce the period of limitation to
2 not less than one year but may not extend it.

3 (2) A cause of action accrues when the breach occurs, regardless
4 of the aggrieved party's lack of knowledge of the breach. A breach of
5 warranty occurs when tender of delivery is made, except that where a
6 warranty explicitly extends to future performance of the goods and
7 discovery of the breach must await the time of such performance the
8 cause of action accrues when the breach is or should have been
9 discovered.

10 (3) Where an action commenced within the time limited by
11 subsection (1) is so terminated as to leave available a remedy by
12 another action for the same breach such other action may be commenced
13 after the expiration of the time limited and within six months after
14 the termination of the first action unless the termination resulted
15 from voluntary discontinuance or from dismissal for failure or neglect
16 to prosecute.

17 (4) This section does not alter the law on tolling of the statute
18 of limitations nor does it apply to causes of action which have
19 accrued before this act becomes effective.

20 2. That § 8.01-249 of the Code of Virginia is repealed.

21 3. That provisions of this act shall apply prospectively and shall
22 not be construed to affect actions which accrued under the law in
23 effect prior to July 1, 1989.

24

#

APPENDIX D

1 D 12/23/88 Devine C 12/30/88 LL

2 HOUSE JOINT RESOLUTION NO.....

3 Continuing the joint subcommittee studying statutes of limitation a
4 accrual of actions.

5
6 WHEREAS, the 1988 Session of the General Assembly created a jo
7 subcommittee to study statutes of limitation and accrual of civil
8 actions; and

9 WHEREAS, the joint subcommittee focused on simplifying
10 determinations of (i) what the applicable limitations period is, (i
11 when the limitations period begins to run, and (iii) to which actio
12 the limitation period applies; and

13 WHEREAS, the joint subcommittee believes a comprehensive revisi
14 of the statutes is needed to properly address these issues; and

15 WHEREAS, considerable progress has been made but further input
16 and analysis are needed to assess the effects of the revisions being
17 considered; now, therefore, be it

18 RESOLVED by the House of Delegates, the Senate concurring, That
19 the joint subcommittee studying statutes of limitation and accrual o
20 actions be continued. The membership of the joint subcommittee shall
21 remain the same, with any vacancy being filled in the same manner as
22 the original appointment. The joint subcommittee shall complete its
23 work in time to submit its recommendations to the 1990 Session of th
24 General Assembly.

25 The indirect costs of this study are estimated to be \$10,350; t

1 direct costs of this study shall not exceed \$3,240.

2

#

1 D 12/16/88 Devine T 12/19/88 jds

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 8.01-250 of the Code of Virginia,
4 relating to statute of repose; actions for unsafe improvements
5 realty.

6

7 Be it enacted by the General Assembly of Virginia:

8 1. That § 8.01-250 of the Code of Virginia is amended and reenacted
9 as follows:

10 § 8.01-250. Limitation on certain actions for damages arising
11 out of defective or unsafe condition of improvements to real
12 property.--No action to recover for any injury to property, real or
13 personal, or for bodily injury or wrongful death, arising out of the
14 defective and unsafe condition of an improvement to real property, r
15 any action for contribution or indemnity for damages sustained as a
16 result of such injury, shall be brought against any person performin
17 or furnishing the design, planning, surveying, supervision of
18 construction, or construction of such improvement to real property
19 more than five years after the performance of or furnishing of such
20 services and construction.

21 The limitation prescribed in this section shall not apply to th
22 manufacturer or supplier of any products, equipment ~~or~~ , machinery c
23 other articles installed in a structure upon , including ordinary
24 building or construction materials, incorporated into real property,
25 nor to any person in actual possession and in control of the
26 improvement as owner, tenant or otherwise at the time the defective

1 unsafe condition of such improvement constitutes the proximate cause
2 of the injury or damage for which the action is brought; rather each
3 such action shall be brought within the time next after such injury
4 occurs as provided in §§ 8.01-243 and 8.01-246.

5 #

